

**(2024) 07 KL CK 0114****High Court Of Kerala****Case No:** Criminal Appeal No.1120 Of 2024

Nissar

APPELLANT

Vs

State Of Kerala

RESPONDENT

**Date of Decision:** July 30, 2024**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 446, 446(2)

**Hon'ble Judges:** P.G. Ajithkumar, J**Bench:** Single Bench**Advocate:** P.V.Dileep, Sheeba Thomas**Final Decision:** Allowed**Judgement**

P.G. Ajithkumar, J

1. Appellants are the counter petitioners in M.C. No.5 of 2022 in S.C. No.798 of 2018 before the Assistant Sessions Judge, Karunagappally. As per the order dated 22.11.2023, the learned Assistant Sessions Judge imposed a penalty of Rs.20,000/- each on the appellants under Section 446(2) of the Code of Criminal Procedure, 1973. Aggrieved thereby this appeal has been filed.

2. Heard the learned counsel for the appellants and the learned Public Prosecutor.

3. The learned counsel for the appellants would submit that the case against accused No.4 in S.C. No.798 of 2018, for whom the appellants stood as sureties, was quashed by this Court as per Annexure-1 order, and therefore the trial court ought not to have imposed any penalty. Having gone through the records, it is seen that the accused No.4 failed to appear before the trial court on many occasions, which resulted in transferring the case against him to the register of long pending cases. It was in the

said circumstances, M.C. No.5 of 2022 was initiated. Even after the initiation of the proceedings under Section 446 of the Code, appellants could not produce the accused before the court. Holding that no reasonable explanation was offered by the appellants, the trial court imposed bond amount of Rs.20,000/-as penalty.

Subsequently, the case against accused No.4 was quashed and thereby the proceedings against him came to an end, that does not absolve the appellants from their liability under the bail bond they had executed. However, taking into account that the requirement of accused No.4 appearing before the trial court would not occasion on account of the subsequent quashment of the case, a lenient view can be taken in the matter of imposing penalty. A part of the bond amount is liable to be remitted. Accordingly, the penalty amount is reduced to Rs.5,000/- each.

This appeal is allowed to the above extent.