

V. Sasi and Others

Vs

State of Kerala

Criminal Appeal No. 504 of 1991

(A.M. Ahmadi, S.C. Agarwal JJ)

12.08.1991

ORDER

1. Special leave granted.

2. Heard counsel on both sides. The appellants were convicted by the Judicial Magistrate, First Class, Tellicherry for the commission of offences punishable under Sections 143, 147, 447 and 448 read with section 149 IPC and were ordered to pay a fine of Rs 250 under each count. The appellants filed an appeal against the said order of conviction and sentence but the same was dismissed. Thereupon they filed a revision application and when the said revision application came up for admission, the High Court issued notice suo motu for enhancement of sentence. The notices issued for enhancement of sentence were not served on the appellants and were returned with the endorsement that the appellants have gone to Ooty for excursion. Thereupon the High Court directed substituted service of the notices and fixed date of hearing as August 16, 1988. Even at the time of service of the notices it was reported that the appellants had gone to Ernakulam in connection with their revision application. The learned counsel Shri M. K. Damodaran, Advocate filed a memo stating that although his name is shown in the cause list as counsel for the appellants, he in fact was not appearing on their behalf. His junior may have represented them in their revision application but he had no authority to argue the case since he had no instructions. One Shri Alan Papali who had earlier represented them consented to argue the case on August 16, 1988. However, on that date he was not present in court and the matter was heard ex parte. The High Court imposed a sentence of imprisonment for 3 months while relating the fine. It would appear from the above facts that the notice for enhancement was not served on the appellants. They were not evading the service. It is, therefore, difficult to understand why substituted service was resorted to. Besides, as Mr Damodaran had already informed the court that he was not representing the appellants, it was not obligatory on his part to remain present to argue the matter. Mr Alan Papali who had represented them in their revision application was also not present at the date of hearing presumably because he had already filed an application to permit withdrawal of the revision application; although on an earlier occasion he had agreed to proceed with the matter on August 16, 1988. In the circumstances it would appear that the appellants were neither properly served nor were they represented through their counsel when show-cause notice for enhancement of sentence was heard by the High Court.

3. We would have thought it proper to remit the case to the High Court if we were satisfied that the High Court was justified in taking suo motu action. Here is a case in which the members of the public were annoyed with the doctor as they thought, rightly or wrongly, that the negligence of the doctor was the direct cause of Balan's death. Their wrath turned to the doctor as soon as the fact of death became known and they entered his dispensary and ransacked it. Otherwise they had nothing against the doctor. They gave vent to their feeling by damaging some articles but no personal harm

was caused to anyone. In the circumstances the approach of the subordinate courts did not demand suo motu intervention. We, therefore, allow this appeal, set aside the order of the High Court and restore the Magistrate's order. Personal bonds cancelled.

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