

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

CRL.A.No. 151 of 2015 (A)

AGAINST THE ORDER IN CRMC 24/2009 IN S.C.NO.797/2006 of ASSISTANT
SESSIONS COURT, QUILANDY DATED 06-03-2013

APPELLANT/RESPONDENTS:

1. KARUNAN AGED 62 YEARS
S/O. VELLAN, KARUNA HOUSE, MANGYARKUNI AMSOM DESOM
KURUVANGAD, KOYILANDY, KOZHIKODE DISTRICT.

2. MOHANAN
S/O. ACHUTHAN, 732 (327), CHERIYAKUNI AMSOM DESOM
KURUVANGAD, KOYILANDY, KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT/PETITIONER :

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY GOVERNMENT PLEADER: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.151 of 2015

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Dated this the 30th day of October, 2015

JUDGMENT

The appellants were the sureties of the accused in S.C.No.797 of 2006. They had executed a bond inter alia undertaking to procure the presence of the accused on all posting dates and in case of default, to forfeit the bond and to suffer a penalty subject to the maximum of Rs.30,000/-. Thereafter, accused remained absent. Hence, MC proceedings were initiated against the sureties. They did not appear before the court below nor they showed any cause for their absence. Consequently, by the impugned order the court below imposed a penalty of Rs.30,000/- each on each of the appellant. They have challenged that order in this appeal.

2. Heard and examined the records.

3. Learned counsel for the appellant referring to the appeal memorandum submitted that immediately on receipt of notice of the court below, they searched for the accused and furnished the correct address to the police. However, it is an

admitted fact that in spite of service of notice, neither they appeared before the court below nor ensured that the accused was produced before the court below. The court below was perfectly justified in passing appropriate order, having regard to the facts and circumstances of the case.

4. Learned counsel for the appellants further contended that they have taken all earnest efforts to find out the accused. It was further contended that both of them are aged and unable to pay the huge amount of Rs.30,000/- each. Having regard to the fact that MC proceedings were initiated for the purpose of ensuring the presence of the accused, I feel that a lenient view can be taken and the penalty imposed by the court below can be slashed down to Rs.15,000/- each. Remission is granted regarding the remaining amount.

In the result, the appeal is allowed in part. In modification of the impugned order, penalty imposed by the court below is modified to Rs.15,000/- (Rupees fifteen thousand only) payable by each of the appellant. Remission is granted regarding the remaining amount. Any amount deposited in Court will be given credit to and the excess amount if any, would be returned to the

appellants through their counsel. If they do not deposit the amount within one month, warrant shall be issued to them. Thereafter, court below shall initiate appropriate proceedings for the recovery.

Sd/-
SUNIL THOMAS
Judge

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