

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

CRL.A.No. 152 of 2015 (A)

AGAINST THE ORDER DATED 20.11.2013 IN M.C.NO.49/2013 IN
S.C.NO.16/2013 OF THE ADDITIONAL DISTRICT & SESSIONS COURT-V, KOLLAM
CRIME NO. 1072/2012 OF VARKALA POLICE STATION , THIRUVANANTHAPURAM

APPELLANT(S)/COUNTER PETITIONER:

DEVARAJAN,
S/O.NADARAJAN, CANALPURAMPOKKIL VEEDU, VARKALA CHERRY
CHIRAYINKEEZHU, THIRUVANANTHAPURAM.

BY ADV. SRI.M.L.SURESH KUMAR

RESPONDENT/PETITIONER/STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE A THE TRUE COPY OF THE FIR NO.1072/2013 VARKALA POLICS
STATION.

ANNEXURE B THE NEWS PAPER CUTTING DATED 5.12.2012 IN DESABHIMANI
DAILY.

RESPONDENT'S EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 152 of 2015

Dated this the 14th day of October, 2015

J U D G M E N T

The appellant herein was one of the sureties of the 1st accused in Sessions Case No.205/2003 (later refiled as S.C. No.16/2013) of Additional Sessions Court-V, Kollam. The accused was released on bail on he executing a bond for a sum of ₹50,000/- with two sureties for the like sum each. The sureties have *inter alia* undertaken to ensure the presence of the accused on all posting dates and in case of default, to forfeit the bond amount. Subsequently, the accused remained absent and M.C. proceedings were initiated. The Court below by order dated 20.11.2013, forfeited the entire amount and imposed a penalty of ₹20,000/- each payable by each of the surety. The balance portion was remitted. Aggrieved by the above order, the 1st surety has preferred this appeal.

2. Heard both sides and examined the records.

3. The learned counsel for the appellant submitted that, the accused is missing and a complaint was lodged by his wife dated 07.12.2012, pursuant to which a crime has been registered

as FIR 1072/2012 as 'man missing'. Further details are not available. The learned counsel for the appellant further contended that, the appellant is a poor coolie worker and inspite of his earnest efforts, the presence of the accused could not be procured.

4. Having regard to the entire fact and circumstances including that the appellant herein had undertaken all available methods to ensure the presence of the accused, I feel that a lenient view is liable to be taken. A sum of ₹10,000/- payable by the appellant will satisfy the interest of justice.

In the result, the appeal is allowed in part. In modification of the impugned order it is directed that, the appellant herein shall remit a penalty of ₹10,000/-. If any amount is remitted pursuant to the direction of this Court that would be given credit to. Excess amount, if any, would be returned to the appellant through his counsel. Remission is granted with respect to the remaining amount.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

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