

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

CRL.A.No. 471 of 2015 ()

AGAINST THE ORDER IN MC 6/2015 of ADDITIONAL SESSIONS COURT-IV,
KOTTAYAM DATED 21-03-2015

APPELLANTS/COUNTER PETITIONERS/SURETIES:

1. MINI VIJAYAN
W/O.VIJAYAN, KUYILATHUPARAMBIL HOUSE
PAZHAMTHOTTAM KARA, PATTIMATTOM VILLAGE
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT 683562

2. C.M.VARKEY
S/O.MATHAI, CHANDANAPARAMBIL HOUSE, INJOOR KARA
VARAPETTY VILLAGE, KOTHAMANGALAM TALUK
ERNAKULAM DISTRICT 686666

BY ADV. SRI.M.M.ALIKUNJU

RESPONDENTS/STATE:

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

BY PUBLIC PROSECUTOR:SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A.No. 471 of 2015

APPENDIX

APPELLANTS EXHIBITS:

ANNEXURE A1 : CERTIFIED COPY OF ORDER DATED 21.03.2015 BY the
HONOURABLE ADDITIONAL SESSIONS COURT-IV, KOTTAYAM IN
M.C.NO.6/2015

RESPONDENTS EXHIBITS:NIL

True Copy /

P.A to Judge

SUNIL THOMAS, J.

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Crl.A.No.471 of 2015
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Dated this the 23rd day of December, 2015

JUDGMENT

The appellants were the sureties of the 5th accused in S.C.No.342 of 2010 for offences punishable under Sections 114, 454, 395 and 412 of the Indian Penal Code. He was released on bail on he executing a bond with the appellants as the sureties undertaking, inter alia, that accused will appear on all posting dates. It was further undertaken that in case of default, bail bond will be forfeited and penalty as directed by the Court, subject to the maximum of Rs.50,000/- will be paid by them. Thereafter, the accused remained absent and MC proceedings were initiated. The first appellant appeared and sought time to produce the 5th accused. The second appellant did not appear. In spite of time granted, accused could not be produced. Hence, the court below by the impugned order imposed a penalty of Rs.25,000/- each and granted remission of Rs.25,000/- each. This is under challenge in this appeal.

2. Heard both sides and examined the records.

3. Admittedly, the accused remained absent. The appellants in spite of granting time, could not procure the

presence of the accused. In fact, the second appellant did not appear and show any cause. The first appellant, though appeared could not procure the presence of the accused in spite of time granted. In this circumstance, court below was legally justified in passing an order, which it deemed fit and proper to grant.

4. Learned counsel for the appellants contended that the first appellant was the mother, the second appellant stated to be a distant relative. Both of them claimed that in spite of their earnest efforts, accused could not be found out. It is further stated in the appeal memorandum, that the accused was arrested in connection with another case and was on remand from 16.02.2015 onwards. This is not supported by any documentary evidence. However, having regard to the above and the claim of the appellants that they are very poor, aged and sick and also that they have taken every possible steps to ensure the presence of the accused in which they failed, I am inclined to take a lenient view and to reduce the penalty.

In the result, the appeal is allowed and the impugned order is modified by imposing a penalty of Rs.7,500/- (Rupees seven thousand five hundred only) payable by each of the

appellant. In case any amount has been deposited, credit would be given to it. Remission is granted with respect to the remaining amount. They are granted one months' time to remit the amount or balance, if any, as the case may be.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge