

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

CRL.A.No. 21 of 2013 ()

AGAINST THE ORDER IN SC 31/2012 of SPL. COURT (NDPS ACT CASES),
VADAKARA DATED 14-08-2012

APPELLANT(S)/COUNTER PETITIONERS 1 & 2:

1. SUBRAMANNIAN,
S/O.KUNCHUKUTTAN, MADAMBIKKADU HOUSE, KAVASSERY AMSOM
DESOM, ALATHUR TALUK, PALAKKAD.

2. KANDUNNI
S/O.KESAVAN, KOTTEMPEDEM HOUSE
PUTHUPERIYARAM AMSOM DESOM, PALAKKAD TALUK.

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S)/PETITIONER:

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
16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 21 of 2013

Dated this the 16th day of December, 2015

J U D G M E N T

The appellants were the sureties of the accused in S.C. No.31/2012 in the Court of the Special Judge (NDPS Act Cases), Vadakara. They had offered themselves as sureties and had executed a bond, *inter alia* undertaking to procure the presence of the accused on every posting dates and in case of default, to forfeit the bond and to pay the fine as fixed by the court below, subject to a maximum of ₹25,000/-. Thereafter, the accused jumped the bail and MC proceedings were initiated. In spite of service of notice, the appellants did not appear or showed any cause through the counsel. Hence the court below by the impugned order imposed a penalty of ₹25,000/- each, payable by each of the appellant with a default sentence. This is assailed in this appeal.

2. Heard both sides and examined the available records.

3. There is no dispute that the appellants were the sureties for the accused. It is also not in dispute that the accused absconded and the appellants could not procure his presence.

They also did not appear before the court below to show any valid cause as to why the penalty shall not be imposed on them or why a lenient view shall not be taken. Hence the Court below was legally justified in passing an appropriate order which it deemed fit, having regard to the facts and circumstances of the case.

4. The learned counsel for the appellants submitted that, in spite of all the earnest efforts of the appellants they could not trace out the accused nor could he be produced before the court below. The learned counsel contended that the appellants are Coolie workers and are unable to pay the huge penalty. They pleaded for a lenient view.

5. Having regard to the entire facts and circumstances of the case and also the financial situation in which the appellants are put in, I feel that a lenient view is liable to be taken. A sum of ₹10,000/- each payable by each of the appellant will serve the interest of justice.

In the result, the appeal is allowed in part by modifying the impugned order directing each of the appellant to remit a sum of ₹10,000/- (Rupees ten thousand only) within a period of one month from today, failing which each of the appellant shall

undergo simple imprisonment for one month. Distress warrant will be issued after a period of one month from today. If any amount is remitted pursuant to the directions of this Court, that will be given credit to. Remission is granted regarding the remaining amount.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn