

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

CRL.A.No. 123 of 2013 ()

AGAINST THE ORDER IN M.C.NO.16/2012 IN SC 67/2008 of ADDL. SESSIONS
COURT (ADHOC)II, KALPETTA DATED 17-04-2012

APPELLANTS/COUNTER PETITIONERS:

1. RAFEEQ
S/O.HAMZA, KOZHIPPATTIL HOUSE, NADAVAYAL (POST)
SULTHAN BATHERY.

2. FAISAL,
S/O.HAMSA, PANNIKKODAN VEETIL, CHERUKATTOOR POST
MANANTHAVADY.

BY ADV. SRI.S.M.PRASANTH

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR: SRI REJI JOSEPH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.123 of 2013

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Dated this the 9th day of October, 2015

JUDGMENT

Appellants were the sureties of the accused in S.C.No.67 of 2008. They had executed a bond for a sum of Rs.25,000/- each, undertaking inter alia to ensure the presence of the accused on all posting dates and in case of default, to forfeit a sum of Rs.25,000/-. Thereafter, the accused remained absent. Hence, MC proceedings were initiated. However, the sureties did not appear and show cause as to why penalty shall not be imposed. Consequently, the impugned order was passed by the court below. This is challenged in this appeal.

2. It is admitted that the appellants had executed a bond undertaking to ensure the presence of the accused. It is also true that accused did not appear and in spite of the notice served in the MC proceedings, the sureties also did not appear. Hence, legally the court below was justified in imposing the penalty which it deemed fit and proper to impose. The Court has taken a lenient view by imposing a penalty of Rs.15,000/- each granting remission to a sum of Rs.10,000/- each.

3. However, learned counsel pointed out that the impugned order itself states that the accused thereafter appeared and were granted bail after coercive steps were issued. Considering the fact that the accused had appeared, contested and acquitted, the purpose of initiating the proceedings was served and hence the court below could have taken a more lenient view.

In the above circumstances, I feel that the penalty to be imposed could have only be a nominal one, only for the reason that they did not appear and showed cause. Hence, I feel that this is a case where an extreme lenient view is liable to be taken and the penalty can further be slashed down to Rs.5,000/- (Rupees Five Thousand Only) each payable by each of the surety. Remission is granted with respect to the remaining amount. If any amount is remitted in excess of this, it would be returned to the appellant through their counsel. Appeal is allowed in part as above.

Sd/-
SUNIL THOMAS
Judge

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