

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

CRL.A.No. 813 of 2010 ()

AGAINST THE ORDER IN M.C.11/2010 IN SC 112/2009 of ADDL. DISTRICT
COURT (ADHOC-III), KASARAGODE

APPELLANT/ACCUSED:

1. REMESH SHETTY, S/O.SHANKARA SHETTY,
R/AT NEKRAJE HOUSE, NEKRAJE POST, KASARAGOD DISTRICT.

2. ABDUL RAHMAN,
S/O.MUHAMMED @ M.P.MUHAMMED, R/AT PATHWODI HOUSE
UPPALA, KASARAGOD DISTRICT.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.813 of 2010

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Dated this the 01st day of October, 2015

JUDGMENT

This appeal is preferred by the sureties of accused in S.C.No.112 of 2009 of the Additional District and Sessions Court (Adhoc-III), Kasaragod.

2. The appellants had offered themselves as sureties for the 3rd accused and had executed a bond, inter alia undertaking to ensure the presence of the 3rd accused on all posting dates and in case of default, to forfeit a sum of Rs.15,000/- each. Thereafter, the 3rd accused remained absent. The court below issued show cause notice to the sureties. Since the sureties did not appear nor showed any cause for their absence, imposed a penalty of Rs.15,000/- each payable by each of the surety. It was directed that in case of default, they shall undergo imprisonment in civil prison for a period of two months.

3. Aggrieved by the above order, the sureties have preferred this appeal. Heard and examined the records.

4. It is admitted fact that the appellants had offered themselves as sureties for the 3rd accused. It is further admitted that the 3rd accused remained absent and in spite of notice, sureties did not appear before the Court and showed any cause. In the above circumstances, the court below was perfectly justified in imposing a penalty which the Court deemed fit and proper, having regard to the facts and circumstances of the case.

5. However, the order is assailed on the ground that the court below did not comply with the statutory formalities before imposing penalty. Though, the impugned order is challenged on a legal ground, the order itself reveals that in spite of notice served on the sureties, they did not appear nor showed any cause. In the light of the above, there is no reason as to why this Court should interfere with the finding of fact arrived at by the court below. However, learned counsel for the appellants contended that in spite of the earnest efforts taken by the sureties, the accused could not be made available. They also submitted that the amount involved is huge, which they are unable to remit.

6. Having regard to the rival contentions and the facts of this case, I feel that a lenient view is liable to be taken. A sum of Rs.7,000/- payable by each of the appellant would serve the interest

of justice. Remission is granted regarding the balance amount.

The appeal is allowed. Impugned order is modified by imposing a penalty of Rs.7000/- (Rupees Seven Thousand Only) each payable by each of the appellant, failing which they shall undergo simple imprisonment for fifteen days. Remission is granted for the balance amount. If any amount has been remitted in compliance with the directions of this Court, that will be given credit to.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge