

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

CRL.A.No. 814 of 2015 ()

AGAINST THE ORDER IN MC 55/2015 OF THE COURT OF SESSIONS JUDGE,
PATHANAMTHITTA DATED 08-06-2015

AGAINST THE ORDER/JUDGMENT IN Cr1.MC 90/2015 of HIGH COURT OF KERALA
DATED 08-01-2015

CRIME NO. 1011/2009 OF THIRUVALLA POLICE STATION, PATHANAMTHITTA

APPELLANT(S)/CP 1-3:

1. ABRAHAM CHACKO,
CHUNKATHIL VEETIL, ERUVALLIPRA MURI, THIRUVALLA.

2. K.E.JOSEPH,
KUNNEL VEETIL, PERUMTHURUTHY MURI,
KAVUMBHAGOM VILLAGE.

3. LILLY JOSEPH
KUNNEL VEETIL, PERUMTHURUTHY MURI
KAVUMBHAGOM VILLAGE.

BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEESH KUMAR

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A.No. 814 of 2015 ()

APPENDIX

PETITIONERS' EXHIBITS

ANNEXURE A TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED FROM THE BASE HOSPITAL LUCKNOW DATED 24.10.2014.

ANNEXURE B TRUE COPY OF THE ABSENT APPLICATION DATED 20.10.2014.

ANNEXURE C TRUE COPY OF THE ORDER DATED 20.10.2014 IN CRL.M.P.NO.3526/2014

ANNEXURE D TRUE COPY OF THE JUDGMENT DATED 08.01.2015 IN CRL.M.C. NO.90/2015

ANNEXURE E TRUE COPY OF THE PROCEEDINGS IN S.C.NO.533/2010

ANNEXURE F TRUE COPY OF THE ABSENT APPLICATION ON 08.06.2015

ANNEXURE G CERTIFIED COPY OF THE ORDER OF THE SESSIONS COURT, PATHANAMTHITTA, DATED 08.06.2015 IN M.C.NO.55/2015 IN S.C.NO.533/10.

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 814 of 2015

Dated this the 23rd day of September, 2015

J U D G M E N T

The appellants are the sureties in S.C. No.533/2010, who challenge the order dated 08.06.2015 in M.C. No.55/2015.

2. The appellants herein had stood as sureties for the 2nd accused in S.C.No.533/2010 for offences punishable under Sections 3(1)(x) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Rules, 1995. They *inter alia*, had undertaken to ensure the presence of the accused on all posting dates and in case of default, to forfeit a sum of ₹10,000/-. It appears that, the 2nd accused remained absent on 20.10.2014 and an application was filed seeking condonation of his absence. The learned Sessions Judge rejected the application and issued non-bailable warrant, and notices to the sureties of accused No.2.

3. The second accused approached this Court in Crl.M.C.90/2015 challenging the order, by which warrant was issued to him and notices to sureties. This Court by order dated 08.01.2015, noted that, the absence of the accused was not consistent and hence the impugned order issuing warrant was

suspended with permission to surrender before the trial Court and to seek fresh bail. Pursuant to that order, the accused appeared, the case was advanced to 17.01.2015 and fresh bail was taken. The learned Sessions Judge granted bail with a rider that the accused must appear before the Court on all posting dates. Thereafter the case was adjourned to 20.03.2015, on which day M.C. was ordered to be registered against sureties on the ground that no satisfactory reason was advanced. On 8.6.2015 by the impugned order, held that the accused and the sureties did not appear in spite of notice on the previous posting dates. It was further noted that, on that day, there was no appearance for the 1st appellant and vakalath was filed on behalf of surety Nos.2 & 3. The Court held that, no sufficient reason was shown by the sureties and hence imposed a penalty of ₹10,000/- each without granting any remission. This order is under challenge in this appeal.

4. Heard and examined the records.

5. It is an admitted fact that, the appellants have offered as sureties and had executed a bond *inter alia* undertaking to ensure the presence of the accused on all posting dates. It is

pertinent to note that, the 2nd accused remained absent on 20.10.2014, whereupon the M.C. proceedings were initiated. In Crl.M.C.90/2015, this Court by its order had indicated that, the absence of the 2nd accused was not consistent. This is also seen from the proceedings sheet produced as Annexure E, which shows that, on almost all posting dates, both the accused were present and whenever there was absence of one of the accused, application was filed for their absence. It is also pertinent to note that, all the proceedings were formal since the charge had not yet been framed. In the above circumstances, this Court had held that the absence was neither wilful nor consistent.

6. With respect to the steps taken by the Court against the sureties, an observation was made by this Court that in the particular facts and circumstances stated in the order, appropriate judicial decision shall be taken by the trial Court as to whether such a procedure was absolutely necessary against the sureties.

7. The impugned order has to be appreciated in the back ground of the earlier order. The learned Sessions Judge had indicated that, in spite of notice served, the sureties remained

absent. This is factually incorrect as evident from Annexure E, which shows that, on 07.02.2015, the Judge was on other duty and the case was adjourned by notification. Thereafter, on the next posting date namely 20.03.2015, it is specifically recorded that old sureties were present. On that day, on a reasoning that, no satisfactory reason was advanced, M.C. proceedings were ordered to be registered against them. On 08.06.2015, vakalath was filed on behalf of accused Nos.2&3 though the 1st appellant remained absent on that day. The impugned order does not disclose whether any explanation was given by them, atleast through the counsel. The Court has held that, there was no other option but to impose the entire bond amount as penalty and proceeded to impose the penalty.

8. In the light of the facts and circumstances, especially in the back ground of the earlier order passed by this Court directing the Court below to consider whether M.C. proceedings were necessary and the further fact that, the accused had appeared and taken bail, the further M.C. proceedings were unnecessary and redundant. Hence, I find no reason to sustain the impugned order, by which the penalty was imposed without

granting any remission. The impugned order is not legally sustainable and is liable to be set aside.

In the result, the appeal is allowed and the impugned order is set aside. M.C. proceedings as against the appellant shall stand closed.

Sd/-

SUNIL THOMAS, JUDGE.

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