

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. 919 of 2015 ()

AGAINST THE ORDER IN M.C.NO.07/2015 IN S.C.NO.532/2010 OF THE
ADDITIONAL SESSIONS JUDGE-III, MAVELIKKARA DATED 23.07.2015.

APPELLANT(S) :

1. KUNJI, AGED 75 YEARS,
W/O.NEELAKANTAN,
ATHUKKATTU THEKKETHIL,
MANKUZHAY MURI,
BHARANICKAVU VILLAGE,
MAVELIKKARA TALUK.
2. AJAYAN, AGED 42 YEARS,
S/O.BHASKARAN,
CHOONATTU VADAKKATHIL,
MANKUZHAY MURI,
BHARANICKAVU VILLAGE,
MAVELIKKARA.

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT(S) :

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

BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 919 of 2015

Dated this the 23rd day of September, 2015

J U D G M E N T

This appeal is preferred by the sureties in S.C.No.532/2010 of the Additional Sessions Court - III, Mavelikkara for offence punishable under Sections 143, 147, 148, 149, 324, 452, 427 and 308 of IPC. It is an admitted fact that, the appellants stood as sureties *inter alia*, undertaking to ensure the presence of the accused on all posting dates and in case of default to pay a penalty of ₹25,000/-. It is further admitted that, the accused remained absent and thereafter the Court below initiated M.C. proceedings against the accused and the sureties. They could not produce the accused. Hence, the Court below by the impugned order, imposed a penalty of ₹20,000/- each after granting remission of ₹5,000/- each. Distress warrant was therefore issued. Challenging the said order, they have preferred this appeal.

2. When the matter came up for admission, it was found that, the essential facts are not in dispute. The learned counsel

for the appellants contended that, the accused is a relative of the appellants and in spite of the earnest efforts, they could not procure the presence of the accused. It was further contended that, the appellants were poor and unable to pay the huge amount. Since, the contentions were on the basis of material on record, it is felt that appeal can be disposed of at the admission stage itself. Heard both sides.

3. Having considered the entire aspects, I feel that, no illegality is patent in the impugned order. Having considered all aspects including the fact that, the appellants have taken all earnest efforts to procure the presence of the accused and that they belong to lower strata of the society, I feel that, a lenient view is liable to be taken. I feel that, a penalty of ₹10,000/- each, will serve the interest of justice, since the purpose of the statute is not essentially to punish the sureties.

In the result, the appeal is allowed. The impugned order is modified to the extent that, a penalty of ₹10,000/- each is imposed on each of the appellant. They are granted one months time to remit the amount. Distress warrant will be kept in abeyance for a period of one month from today. In case, the

appellants deposit the amount within the above period, the entire proceedings shall be closed. In the event of non-payment of the amount as above, distress warrant can be issued. Remission is granted regarding the balance amount.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn