

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

CRL.A.No. 949 of 2015 ()

S.C.NO.49/2013 OF ADDL.SESIONS JUDGE IV, KOZHIKODE DATED
17.09.2015

APPELLANTS/RESPONDENTS:

1. KAUSU AGED 53 YEARS
W/O NANU, MARAKANDI THAZHEKUNI (HOUSE), EDACHERI (P.O.)
VADAKARA, KOZHIKODE DISTRICT

2. PREMI AGED 50 YEARS
W/O SOMAN, KOYAMBATTA KUNIYIL, EDACHERI (P.O.)
VADAKARA, KOZHIKODE DISTRICT

BY ADVS.SRI.P.R.SREEJITH
SRI.M.PROMODH KUMAR

RESPONDENT/PETITIONER:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031

BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.949 of 2015

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Dated this the 5th day of October, 2015

JUDGMENT

The appellants were the sureties of the accused in S.C.No.49 of 2013 for offence punishable under Section 55(a) of the Abkari Act. The appellants had executed a bond, inter alia undertaking to ensure the presence of the accused on all posting dates and in case of default, to forfeit a sum of Rs.25,000/-. The accused failed to appear before the Court and thereafter, the court below initiated MC proceedings. By the impugned order dated 17.11.2014, the court imposed a penalty of Rs.10,000/- each granting remission with respect to the balance amount. This order is under challenge in this proceeding.

2. Heard both sides and examined the records.

3. It is an admitted fact that the accused had appeared before the Court and was released on bail on executing a bond with two sureties. The appellants had undertaken to ensure the presence of the accused and in case of default, to forfeit a sum of Rs.25,000/-. The essential facts are not in dispute. It is also not in dispute that in spite of notice, the appellants did not appear and showed any cause regarding non production of the accused. In the

above circumstances, the court below was perfectly justified in passing an appropriate order. Evidently, the court below has taken a lenient view by granting remission to the extent of Rs.15,000/- each.

4. Learned counsel for the appellants submitted that subsequently the accused appeared before the court below, faced the trial and was convicted imposing a fine. A copy of the judgment in S.C.No.49 of 2013 dated 17th September 2015 is also produced. Considering the above facts and also the further contention of the learned counsel for the appellants that they are poor persons and in spite of their earnest efforts, the accused could not be produced, I am inclined to take a lenient view. A penalty of Rs.5,000/- each will serve the interest of justice.

The appeal is hence allowed in part. Impugned order is modified to the extent of imposing the penalty of Rs.5,000/- (Rupees Five Thousand Only) each, payable by each of the appellant. In case of default, distress warrant shall be issued to them for recovery of the money due. Remission is granted with respect to the balance amount.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

PA to Judge