

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

CRL.A.No. 997 of 2015 ()

(AGAINST THE ORDER/JUDGMENT IN Bail Appl. 4295/2014 of HIGH COURT OF KERALA DATED 18-06-2014 AGAINST THE ORDER/JUDGMENT IN SC 92/2012 of SPL.C IDAMALAYAR INVN & 5 ADDL.DC.EKM)

APPELLANT(S)/APPELLANTS/SURETIES:

1. YOSEF,
S/O.YOVAN, MANGANAPURAM, THIRUCHENDOOR TALUK
THOOTHUKUDY DISTRICT, TAMILNADU.

2. VICTOR,
S/O.DAVID, 5/38, MIDDLESTEET VEERAMKULAM
VEERAMKULAM-II VILLAGE, THOOTHUKUDY, TAMILNADU.

3. PONDURAI
S/O.CHELLAYYA, 5/320, MIDDLESTEET VEERAMKULAM
VEERAMKULAM-II VILLAGE, THOOTHUKUDY, TAMILNADU.

BY ADV. SRI.K.P.MADHU

RESPONDENT(S):

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

R BY PUBLIC PROSECUTOR M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. No.997 of 2015

Dated this the 18th day of December, 2015

O R D E R

The appellants were the sureties of the sole accused in SC No.92/2011 of the Vth Additional District & Sessions Court, Ernakulam, who stood charged for offences punishable under Sections 302,307 & 436 IPC. The appellants had executed a bail bond undertaking, inter alia, to procure the presence of the accused on all posting dates and in case of default, to forfeit the bail bond and to remit a sum as fixed by the court, subject to the maximum of 30,000/- each. The accused did not appear thereafter on a subsequent posting date and the court below initiated MC proceedings. In spite of service of notice, the appellants did not appear and showed any cause. Hence, the court below, by the impugned order, imposed a penalty of Rs.30,000/- each on each of the appellant.

2. This is assailed in this appeal. Heard both sides and examined the records.

3. the learned counsel for the appellants contended that the accused could not appear on the date of posting before the court

below and in spite of a request to keep aside the matter, non bailable warrant was issued to the accused. Thereafter, MC proceedings were also initiated. According to the learned counsel, sureties were not aware of the entire proceedings. It was further contended that all the three appellants are aged and struggling to find their livelihood. It appears that the accused and the appellants are from Tamil Nadu. It was further submitted that subsequently the accused faced trial and was imposed with death penalty. To substantiate it, the learned counsel produced a copy of the judgment in SC No.92/2012 dated 14/10/2015.

4.Having regard to the fact that the accused has thereafter faced the trial, imposed with death penalty and that the plea of learned counsel for the appellants that a lenient view be taken considering their age and also the social background of the appellants, I feel that a lenient view is liable to be taken. The essential purpose of initiating MC proceedings stands served though the conduct of the appellants in not appearing before the court below and showing a proper cause cannot likely seen. Having regard to these facts, I feel that penalty of Rs. 7500/- each payable by each of the appellant will serve the interest of

justice.

In the result, the appeal is allowed in part. The impugned order will stand modified by imposing a penalty of Rs.7,500/- each payable by each of the appellant, failing which they shall undergo SI for one month. If any amount is deposited pursuant to the order of this Court, credit would be given to that. Remission is granted with respect to the remaining amount.

Sd/-

**SUNIL THOMAS,
Judge.**

dpk

/true copy/ PS to Judge.

