

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

CRL.A.No. 1009 of 2015 (A)

AGAINST THE ORDER IN MC 3/15 IN S.C.1081/14 ON THE FILES OF THE
SPECIAL ADDITIONAL SESSIONS JUDGE (MARAD CASES) KOZHIKODE DATED
07.05.2015.

APPELLANT(S) /ACCUSED:

1. MANIKKOTHU MOIDU,
S/O KUNHABDULLA, VADAYAM AMSOM, NITTUR DESOM,
NITTUR PO, KOZHIKODE
2. NADUKANDIYIL AMMAD,
S/O AVULLA, VADAYAM AMSOM, NITTUR DESOM,
NITTUR PO, KOZHIKODE
3. NADUKKANDIYIL SOOPPY,
S/O ABDULLA, VADAYAM AMSOM, NITTUR DESOM
NITTUR PO, KOZHIKODE
4. KUNHAMMAD,
S/O KUNHABDULLA MUSALIYAR, VENKALLULLAPARAMBATH,
VADAYAM AMSOM NITTUR PO, KOZHIKODE

BY ADVS.SRI.T.G.RAJENDRAN
SRI.T.R.TARIN
SMT.ANN SUSAN GEORGE
SRI.V.A.VINOD

RESPONDENT(S) /COMPLAINANT & STATE:

1. SUB INSPECTOR OF POLICE
KUTTIADY POLICE STATION - 673 001
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA , ERNAKULAM-682 031

BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

ANNEXURE 1 TRUE COPY OF THE RECEIPTS

ANNEXURE II TRUE COPY OF THE ORDER IN MC 3/15 ON THE FILES OF
THE SPECIAL ADDITIONAL SESSIONS JUDGE (MARAD CASES)
KOZHIKODE.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

SUNIL THOMAS, J.

Crl. Appeal No. 1009 of 2015

Dated this the 16th day of October, 2015

J U D G M E N T

This is an appeal preferred by the sureties of the accused in S.C. No.1081/2014, aggrieved by the order in M.C. No.3/2015. The appellants were the sureties for the accused. They had executed a bond for a sum of ₹25,000/- undertaking to ensure the presence of the accused on all posting dates and in case of default to pay a penalty of ₹25,000/- each. Admittedly, the accused remained absent and M.C. proceedings were initiated. They did not appear and showed any valid cause regarding the non-forfeiture of the bond amount. Consequently, the Court below imposed a penalty of ₹25,000/- each payable by each of the appellant.

2. When the matter came up for admission, after hearing the learned counsel for the appellant and the learned Public Prosecutor on behalf of the State, it appears that the matter can be disposed of on the basis of the available materials itself.

3. It is an admitted fact that the appellants stood as sureties for the accused. They had executed a bond undertaking

to ensure the presence of the accused and in case of default to pay penalty of ₹25,000/- It is also admitted that, the accused remained absent and even though notice was served on them in the M.C. proceedings they did not appear and showed any valid cause. Considering these facts, the Court below was perfectly justified in law to impose the penalty which the Court below felt appropriate in the facts and circumstances of the case.

4. However, the learned counsel for the appellants relying on paragraph 2 of the appeal memorandum contended that, accused had thereafter appeared and got them released on executing fresh bond with new sureties and that the matter is now pending trial before the Court below. There is nothing on record to show otherwise. Having considered this fact, I feel that a lenient view is liable to be taken. A sum of ₹10,000/- each payable by each of the appellant would serve the interest of justice.

5. In the result, the appeal is allowed in part. The impugned order is modified by directing each of the appellant to pay a penalty of ₹10,000/-. The above amount shall be remitted within a period of one month from today. If any amount is

deposited in excess of this amount, it shall be refunded to the appellant through his counsel. Remission is granted with respect to the remaining amount. Each of the appellant is granted one months time to remit the amount and till that time further proceedings in respect of recovery shall remain deferred. Thereafter, the Court below will be free to proceed with the legal steps, in case of non-remittance.

Sd/-

SUNIL THOMAS, JUDGE.

Pn