

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

CRL.A.No. 1038 of 2015

AGAINST THE ORDER IN M.C NO.1319/2014 DATED 27.12.2014 IN
S.C NO.285/2013 ON THE FILE OF THE COURT OF ADDL.
DISTRICT & SESSIONS JUDGE, ERNAKULAM

APPELLANTS/RESPONDENTS/SURETY:

1. MILTON, AGED 34 YEARS,
S/O.VARGHESE, VAREKKATT,
MARADU, MARADU VILLAGE,
ERNAKULAM DISTRICT.
2. MATHEW, AGED 58 YEARS,
S/O.JOSEPH, VALIYAVEETIL HOUSE, VYTIL, A,
PUNITHURA, KANAYANNOOR TALUK,
ERNAKULAM DISTRICT.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.SEBIN THOMAS
SMT.J.KASTHURI
SRI.VISHNU BHUVANENDRAN

RESPONDENT/STATE:

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

BY PUBLIC PROSECUTOR SRI.M.T SHEEBA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION
ON 21-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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P.UBAID, J.

Crl.A No.1038 of 2015

Dated this the 21st day of October, 2015

J U D G M E N T

The appellants herein are the two sureties of the first accused in S.C No.285/2013 before the Additional Sessions Court, Ernakulam, for the trial of cases relating to Atrocities and Sexual Violence against women and children. When the accused failed to appear in court, the learned trial judge initiated proceedings against the sureties under Section 446 of the Code of Criminal Procedure. On forfeiture of the bond executed by the appellants for ₹30,000/- each, on the finding regarding their failure to produce the accused in court, they were given due show cause notice under the law, to which they could not submit any satisfactory reply. In such a situation, the learned trial judge proceeded with Crl.M.C No.1319/2014 registered under Section 446 of Cr.P.C, and after hearing the sureties and the learned counsel, imposed the entire bond amount as penalty, by order dated 27.12.2014. The aggrieved sureties are before this Court with this appeal under Section 449 of the Code of Criminal Procedure.

2. On hearing the learned counsel and the learned Public Prosecutor, and also on a perusal of the impugned order, I find that penalty was imposed by the trial court after complying with the procedure prescribed under the law. Thus I do not find any reason for interference in the order passed by the court below on the ground of any irregularity or illegality in the procedure or finding.

3. The learned trial judge gave show cause notice to the sureties after forfeiture of the bond, and such forfeiture was recorded in view of the failure of the sureties to produce the accused. Thus the order passed by the trial court is purely legal. Anyway, in the special circumstances where it is submitted that the accused was later produced by the sureties in court, and that he was released on bail afresh by the trial court, I feel that some leniency can be shown by this Court in appeal in the matter of penalty. The learned trial judge imposed the entire bond amount as penalty, and the appellants are to pay a total amount of ₹60,000/-. In the above circumstances, I feel that 1/4th of the bond amount will be the adequate amount of penalty, and the balance can be remitted under the law. To this very limited extent this appeal can be allowed in part.

In the result, this Crl.A is allowed in part to the very limited extent of modifying the impugned order of the trial court to the effect that the amount of penalty payable by each appellant under the impugned order shall be ₹7,500/-. The appellants will remit the amount of penalty in the court below within three weeks from this date, on failure of which the trial court will take necessary steps to realise the amount of penalty or to impose default sentence as provided under the law. The balance amount will stand remitted under the law.

**P.UBAID
JUDGE**

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