

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

CRL.A.No. 1103 of 2015 (A)

AGAINST THE ORDER DATED 12.03.2012 IN M.C.NO.5/2012 IN S.C.NO.
392/2011 ON THE FILES OF THE ADDL. DISTRICT AND SESSIONS JUDGE,
ADHOC-I, MANJERI.

CRIME NO. 585/2008 OF TANUR POLICE STATION , MALAPPURAM

APPELLANT(S)/COUNTER PETITIONER 1 & 2:

1. GAFOOR
S/O.KHALID, KUPPANTE PURAKKAL HOUSE, PO TANUR,
MALAPPURAM DISTRICT.

2. BASHEER,
S/O.MOIDEEN BAVA, KUPPANTE PURAKKAL HOUSE, PO TANUR,
MALAPPURAM DISTRICT.

BY ADV. SRI.U.K.DEVIDAS

RESPONDENT(S)/STATE:

STATE OF KERALA,
REPRESENTED BY THE S.I. OF POLICE
TANUR POLICE STATION, THROUGH PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 1103 of 2015

Dated this the 9th day of December, 2015

J U D G M E N T

The appellants were the sureties of an accused in S.C. No.392/2011 of the Additional District & Sessions Judge, Manjeri. They had offered themselves as sureties and executed a bond undertaking to procure the presence of the accused on all posting dates and in case of default, to forfeit the bond and to pay a penalty as fixed by the Court, subject to the maximum of ₹20,000/- agreed in the bond. Thereafter the accused remained absent and MC proceedings were initiated against the appellant. They did not appear before the Court below or showed any cause through their counsel. Consequently, the Court below by the impugned order imposed a penalty of ₹20,000/- each without granting any remission. This is under challenge in this appeal.

2. Heard and examined the records.

3. It is an admitted fact that the appellants had executed a bond undertaking to ensure the presence of the accused on all posting dates. It is also admitted that the accused remained absent and in spite of service of notice in the MC proceedings,

they did not show any cause as to why the penalty shall not be imposed. Having regard to the facts and circumstances of the case, the Court below was perfectly within its jurisdiction in passing an order.

4. However, the learned counsel for the appellants submitted that the accused had thereafter appeared before the Court below, faced the trial and were acquitted by judgment dated 22.02.2013. A copy of that judgment is also produced. Having regard to this fact and all attending circumstances, I feel that a lenient view is liable to be taken. A sum of ₹5,000/- each payable by each of the appellant will serve the interest of justice.

In the result, the appeal is allowed. The impugned order is modified by imposing a penalty of ₹5,000/- (Rupees five thousand only) each by each of the appellant. They are granted one months time to remit the amount, if not already remitted. If any amount is remitted, credit will be given on that amount.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge