

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

CRL.A.No. 663 of 2013 ()

AGAINST THE ORDER IN M.C.20/2012 IN S.C.498/2010 OF the ADDITIONAL
SESSIONS COURT, ADHOC - II, ALAPPUZHA DATED 24.09.2012

APPELLANTS/ COUNTER PETITIONERS:

1. XAVIOR AGED 65 YEARS
S/O DEVASSY, PUTHUSSERI HOUSE, PARAVOOR EAST MURI
KUNNUKARA VILLAGE

2. NAZEEMA, AGED 53 YEARS
W/O HAMEED, KAVAPPURATHU HOUSE, MANJALI MURI
KARAMALLOOR VILLAGE

BY ADVS.SRI.C.V.MANUVILSAN
SRI.G.SUDHEER (THURAVOOR)
SMT.K.VIDYA

RESPONDENT/PETITIONER:

STATE OF KERALA
REPRESENTED THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682031

BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-12-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.663 of 2013

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Dated this the 01st day of December, 2015

JUDGMENT

The appellants were the sureties of the accused in S.C.No.498 of 2010 of the Additional Sessions Court, Alappuzha. There were three accused and the appellants herein offered themselves as sureties to accused Nos.1 and 2 and had executed a bond undertaking to ensure the presence of the accused in Court on all posting dates. Accused No.1 and 2 remained absent and thereafter MC proceedings were initiated. In spite of service of notice in the MC proceedings, appellants remained absent and hence the court below, by the impugned order, imposed a penalty of Rs.50,000/- each without granting any remission. This is under challenge in this appeal.

2. Learned counsel for the appellants submitted that the second accused has died. He seems to be the son of the first appellant. The first accused remained absent who is stated to be the son of the second appellant. The third accused alone faced the trial. It is an admitted fact that the appellants had executed a bond undertaking to ensure the presence of the accused in Court on all

posting dates. It is not in dispute that the accused thereafter remained absent and MC proceedings were initiated. In spite of service of notice, appellants did not appear to show cause, as to why the penalty shall not be imposed on them. In the above circumstances, I feel that the impugned order is legally unassailable.

3. However, learned counsel for the appellants relying on Annexures-A2 and A3 contended that both the appellants are aged, in financially difficult condition and are undergoing treatment for various ailments. Relying on Annexure-A1, learned counsel contended that the first appellant was admitted in the hospital and a CT scan of the brain indicated that he was suffering from acute intra cerebral bleed measuring 5.1 x 3.3 cm in right parieto occipital lobe. The second appellant had also undergone surgery in a hospital for Fibroid in Uterus. According to her, her husband has died and she is isolated in her house and being a Pardanashin muslim, unable to seek livelihood. Having regard to the above facts, though the penalty imposed by the court below is not very high, I find that a further lenient view is liable to be taken. This is essentially since the MC proceedings are initiated not to punish the

sureties but to ensure the presence of the accused. The sureties failed in their attempt and a very high penalty was imposed. Having regard to the very special circumstances involved in this case, I feel that a penalty of Rs.10,000/- 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 Rs.10,000/- (Rupees ten thousand only) each payable by each of the appellant. Remission is granted regarding the remaining amount. They are granted one months' time to remit the amount. If any amount has already been remitted, that shall be given credit to and excess amount if any, would be returned to the respective appellants through their counsel.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge