

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

CRL.A.No. 1231 of 2015 ()

AGAINST THE ORDER DATED 7.4.2015 IN M.C.NO.5/2015 IN S.C.NO.749/2014
ON THE FILES OF THE ADDITIONAL SESSIONS JUDGE-II, KASARAGOD.

APPELLANT(S)/COUNTER PETITIONERS:

1. RADHA P.V., AGED 52 YEARS,
W/O.P.V.THAMBAN, PULIKKODAN HOUSE, KALICHANADUKKAM P.O
THAYANNUR VILLAGE.

2. THAMBAN, AGED 61 YEARS,
PARATTOOR VEEDU, ERALAL, THAYANNUR VILLAGE.

BY ADV. SRI.P.K.SUBHASH

RESPONDENT(S)/RESPONDENT:

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

BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A.No. 1231 of 2015 ()

APPENDIX

PETITIONERS' EXHIBITS

ANNEXURE A1 A TRUE COPY OF THE ORDER DATED 7.4.2015 IN MC
 NO.5/15 IN S.C.NO.749 OF 2014

ANNEXURE AII A TRE COPY OF THE JUDGMENT DATED 14.7.2015 IN
 CRL.M.C.NO.4378 OF 2015.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 1231 of 2015

Dated this the 10th day of December, 2015

J U D G M E N T

The appellants were the sureties of the accused in S.C.No.749/2014 of the Additional District and Sessions Judge II, Kazaragod. They had executed a bond undertaking to ensure the presence of the accused on all posting dates and in case of default, to forfeit the bond and to pay penalty, subject to the maximum of ₹25,000/-. Admittedly, the accused remained absent and M.C. proceedings were initiated. They appeared but did not show cause as to why penalty shall not be imposed. Hence by the impugned order the Court below imposed a penalty of ₹25,000/- each and ordered distress warrant to be issued. This is under challenge in this appeal.

2. When the matter came up for admission State took notice through the learned Public Prosecutor.

3. Heard both sides. Since this matter can be decided on the basis of the admitted facts, records are not called for.

4. Learned counsel for the appellants contended that pending the proceedings, the FIR in the above case was quashed by this Court by order dated 14.07.2015 in Crl.M.C. No.4378/2015. The order of this Court is produced as Annexure II. It reveals that the crime was registered as FIR No.306/2012 of

Vellarikundu Police Station which was taken cognizance by the Court of Sessions as S.C. No.236/2013. Subsequently, after the committal proceedings it was numbered as S.C. 749/2014. By the order of this Court, the FIR and all the subsequent proceedings were quashed.

5. In the light of the above, I feel that a lenient view is liable to be taken in so far as it relates to the sureties of the accused also. Though the conduct of the sureties in not procuring the presence of the accused and in not showing any valid cause are sufficient reasons for not interfering in the order, I still feel a lenient view is liable to be taken, having regard to the fact that the FIR has been quashed and the both sureties are in their late fifties. A penalty of ₹5,000/- each, payable by each of the appellant would serve the interest of justice.

In the result, the appeal is allowed in part. The impugned order is modified by imposing a penalty of ₹5,000/- (Rupees five thousand only) each payable by each of the appellant. They are granted one months time to deposit the amount. Till that time, the distress warrant, if any, issued from the trial court will stand deferred.

Sd/-
SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn