

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

CRL.A.No. 32 of 2012 ()

CRL.M.C.15/11 IN S.C.594/2008 OF THE ADDITIONAL DISTRICT & SESSIONS
COURT, (ADHOC-1) PATHANAMTHITTA

APPELLANTS/COUNTER PETITIONERS:

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1. GANGADHARAN
S/o.KESAVAN, PUTHENPURA VEETIL
ENATHU VILLAGE, ADOOR
 2. LATHA KUMARI, D/o.PUSHAPAVALLY
CHEMPASSERI KIZHAKKETHIL VEEDU
CHITTOOR, PANMANA, KOLLAM DISTRICT

BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S

RESPONDENT/PETITIONER:

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

BY PUBLIC PROSECUTOR: SMT LISHA M G

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.32 of 2012

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Dated this the 9th day of November, 2015

JUDGMENT

The appellants herein were the sureties of the sole accused in S.C.No.594 of 2008. They had 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 the penalty as fixed by the court below, subject to the maximum of Rs.20,000/-. The accused remained absent and the Court initiated MC proceedings.

2. Notices were served on the appellants, but they did not appear or showed cause as to why the penalty shall not be imposed on them or a lenient view shall not be taken. Consequently, the court below by the impugned order imposed a penalty of Rs.20,000/- without granting any remission.

3. This is under challenge in this appeal. Heard both sides and examined the records.

4. The fact that the appellants had executed a bond and that the accused remained absent thereafter is not in dispute.

Admittedly, they did not appear before the court below and showed any cause as to why a lenient view shall not be taken. Hence, the court below was perfectly justified in passing an appropriate order.

5. However, learned counsel for the appellant relying on paragraph 5 of the appeal memorandum and ground No.3 in the grounds contended that the accused was charged of an offence punishable under the Abkari Act and thereafter, he appeared before the court below and faced the trial. He suffered a conviction. There is nothing on record to disbelieve this version. In the light of the above and the fact that the second appellant is a women and their social status, I feel that the court below could have imposed a reasonable penalty rather than imposing the maximum penalty. I feel that a sum of Rs.8,000/- each payable by each of the appellant will serve the interest of justice.

In the result, the appeal is allowed in part. In modification of the impugned order, penalty imposed by the court below is slashed to Rs.8,000/- (Rupees Eight Thousand only) each payable by each of the appellant. Remission is granted regarding the remaining amount. If any amount is remitted pursuant to the

directions of this Court, that would be given credit to and if the amount remitted is in excess of the amount ordered, the excess amount shall be refunded to the appellants through their concerned counsel.

Sd/-
SUNIL THOMAS
Judge

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