

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

CRL.A.No. 254 of 2014 (A)

AGAINST THE ORDER IN CRMC 1412/2013 OF THE COURT OF SESSIONS,
THALASSERY DATED 28-02-2014
CRIME NO. 161/2013 OF KUDIYANMALA POLICE STATION, KANNUR

APPELLANT(S) :

1. IGNASHYAS,
S/O.PHILIP, AGED 58 YEARS, KOTTUKAPPALLY HOUSE,
MANDALAM P.O,
NADUVIL AMSOM DESOM, TALIPARAMBA TALUK
KANNUR DISTRICT.

2. MARY KUTTY,
W/O.GEORGE, AGED 78 YEARS, THANAPARAMBIL HOUSE,
MANDALAM P.O
NADUVIL AMSOM DESOM, TALIPARAMBA TALUK
KANNUR DISTRICT.

BY ADVS.SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI

RESPONDENT(S) :

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

BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 254 of 2014

Dated this the 2nd day of November, 2015

J U D G M E N T

The appeal arises from the order dated 28.02.2014 in Crl.M.C.No.1412/2013 of the Court of the Sessions, Thalassery. The accused stood charged for offences punishable under Section 4 & 6 of Protection of Children from Sexual offences Act 2012. The appellants herein got him released on bail on executing a bond for a sum of ₹25,000/- undertaking to produce the accused on all posting dates and in case of default to forfeit the bond and to pay a penalty subject to a maximum to ₹25,000/-. The accused thereafter did not appear and M.C. proceedings were initiated against the accused and the appellant. The court below, on the ground that the appellants did not procure the presence of the accused in spite of sufficient opportunities granted, imposed the penalty of ₹25,000/- each payable by each of the surety, without granting any remission. This is assailed in this appeal.

2. Heard and examined the records.

3. When the matter came up for hearing, the learned counsel for the appellants produced an order in CMP No. 6796/2015 in S.C. No.139/2015 dated 8th September, 2015 by

which the accused appeared and was granted bail by the order of the Court on execution of a fresh bond. The learned counsel contended that, it was pursuant to the earnest efforts of the appellants that the accused appeared before the Sessions Court and took fresh bail.

4. The impugned order indicates that, the appellants had appeared before the Court below and sought time for production of the accused. It is not in dispute that they had executed a bond undertaking, *inter alia* to forfeit the sum of ₹25,000/- each and that the accused did not appear before the Court below on subsequent posting dates. The impugned order further indicates that, in spite of sufficient opportunities granted, the accused was not produced. He appeared almost one year thereafter.

5. Having regard to the fact that the accused has since appeared, that the entire facts of the case do not justify imposition of a penalty to the tune of ₹25,000/-, I feel that a lenient view can be taken and slash down the penalty to a sum of ₹10,000/- each payable by each of the appellant. This will satisfy the interest of justice, notwithstanding the fact that, the court below was perfectly justified in passing an appropriate order in

the facts and circumstances of the case.

In the result, the appeal is allowed in part. The impugned order imposing a penalty of ₹25,000/- is modified by reducing the penalty to ₹10,000/- each, payable by each of the appellant. They are granted one months time to remit the amount, if it has not been remitted pursuant to any interim order passed by this Court dated 14.03.2014. If the amount has already been remitted that will be given credit to. Remission is granted for the balance amount.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

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