

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

CRL.A.No. 436 of 2012 ()

AGAINST THE ORDER IN M.C.40/2010 IN SC 1161/2007 of ADDITIONAL DISTRICT
& SESSIONS COURT (ADHOC)III, KOLLAM DATED 08-09-2010

APPELLANTS/COUNTER PETITIONERS/SURETIES:

1. THULASEEDHARAN
VADAKKEVAIGANAYIL, THEKKUMBHAGOM CHERRY
THEKKUMBHAGOM VILLAGE, KARUNAGAPPALLY TALUK.

2. VIJAYAN
THACHARUDE KUZHAKKATHIL VEEDU, THEKKUMBHAGOM CHERRY
THEKKUMBHAGOM VILLAGE, KARUNAGAPPALLY TALUK.

BY ADVS.SRI.C.RAJENDRAN
SMT.DHANYA S.DHARAN
SMT.R.S.SREEVIDYA

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR: SRI. ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.436 of 2012

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Dated this the 03rd day of December, 2015

JUDGMENT

The appellants were the sureties of the accused in S.C.No.1161 of 2007. They had executed a bond offering themselves as sureties and inter alia undertaking to procure the presence of the accused on all posting dates. They had also undertaken that in the event of the accused being absent, they shall pay penalty as fixed by the Court subject to a maximum of Rs.10,000/-. The accused remained absent thereafter and MC proceedings were initiated. Sureties did not appear before the court below. They did not show any cause, as to why the penalty shall not be imposed. Court below, by the impugned order, imposed a penalty of Rs.10,000/- each payable by each of the appellant without granting any remission. This is challenged in this appeal.

2. Heard and examined the records.

3. The essential facts remain absent. Learned counsel for the appellants has now filed a status report regarding the criminal case which indicates that the last status of the history of the case

as per the downloading from the e-filing shows that the matter is kept as long pending case and hence, adjourned sine-die after 30.09.2010. It clearly shows that in spite of all efforts to procure the accused by arrest and detention, he still remains illusive. Having regard to this fact and the further fact that this arises from a sessions case of the year 2007 and further, having regard to the submission of the learned counsel for the appellants that they are unable to meet the penalty imposed by the court below, I feel that a lenient view is liable to be taken.

In the result, the appeal is allowed. The impugned order is modified reducing the penalty imposed by the court below to Rs.5,000/- (Rupees five thousand only) payable by each of the appellant. They are granted one months' time to remit the amount. Remission is granted regarding the remaining amount.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge