

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

CRL.A.No. 455 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN Cr1.MC 34/2011

AGAINST THE ORDER/JUDGMENT IN CRA 57/2009 of ADDITIONAL DISTRICT COURT
(ADHOC), PATHANAMTHITTA

APPELLANT(S)/APPELLANTS.:

1. SASIDHARA KAIMAL, AGED 59 YEARS,
S/O.PARAMESWARAN PILLAI, MADAPPALLIKKARA VEEDU,
ANIKKADU, MALLAPPALLY, THIRUVALLA,
PATHANAMTHITTA DISTRICT.

2. MANU,
S/O.BALAKRISHNA KURUP, AGED 46 YEARS, PARAMAKKAL VEEDU,
MALLAPPALLY, THIRUVALLA, PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENT(S)/COMPLAINANT & STATE:

STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
(NOTICE TO WHOM MAY BE SERVED ON THE PUBLIC PROSECUTORY
HIGH COURT OF KERALA)

R BY PUBLIC PROSECUTOR M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.Appeal.455 of 2012

Dated this the 25th day of October, 2015

JUDGMENT

The appellants were the sureties for an accused who was one of the appellant in criminal appeal No. 57/2009 filed against the conviction and sentence imposed by the Assistant Sessions Court, Thiruvalla for offences punishable under Sections 143,147,148,452,114,307 read with Section 140 of the IPC.

2. The appellants were granted bail and sentence was suspended by the lower appellate court on executing a bond for a sum of Rs.10,000/- each. Subsequently, when the appeal was taken for hearing, neither the appellant nor the learned counsel were present. Hence, the amicus curie was appointed. Thereafter, since he was not available, another amicus curie was appointed who reported that the records were with the previous counsel. Hence court issued notice to the appellants and the sureties. The sureties appeared and sought time. The court below by the impugned order imposed a penalty of Rs.10,000/- each without granting any remission.

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

4. It is an admitted fact that the appellants herein were the sureties for the appellants in Crl.Appeal No.57/2009 and had executed a bond undertaking to ensure the presence of the accused as and when required by the court below. It is also on record that thereafter the appeal was not properly prosecuted by the appellants, necessitating issuance of notice to the sureties. They appears to have appeared before the court and sought time. In spite of the above proceedings, the presence of the accused(the appellants before the lower appellate court) could not be procured.

5. In the above circumstances, the lower appellate court was perfectly within its jurisdiction to pass an appropriate order, which the court found fit and proper in the facts and circumstances of the case. However, it is on record that the appellants before the court below had thereafter moved Cr.M.C. No.1496/2011 justifying their absence before the lower appellate court and seeking appropriate reliefs. By order dated 25/5/2011 that Crl.M.C. was disposed of keeping in abeyance the non

bailable warrant issued to the appellants before the lower appellate court and granting appropriate relief.

6. Even though the impugned order appears to be unassailable in law, the purpose of initiating M.C. proceedings against the appellants herein stood justified, since the appellants before the court below sought appropriate reliefs by moving the court.

7. Having regard to these facts, I feel that a lenient view is liable to be taken in favour of the appellants. The amount of penalty imposed is liable to be reduced to Rs.5,000/- each payable by each of the appellants.

In the result, the appeal is allowed in part. The impugned order is modified by reducing the penalty payable by each of the accused to the appellants herein to a sum of Rs.5,000/-(Rupees Five Thousand only). If any amount is remitted pursuant to the interim order of this court, that will be given credit to. Remission is granted in relation to the remaining amount.

**SUNIL THOMAS,
Judge.**

dpk

/true copy/ PS to Judge.

