

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

CRL.A.No. 20 of 2011 ()

AGAINST THE ORDER IN SC 353/2007 of ADDL. DISTRICT & SESSIONS COURT,
VADAKARA DATED 29-06-2009

APPELLANTS/C.P.NO.1 & 2:

1. AMMAD,S/O.MAMMOOTTY, KORUMBATH,
CHEKKYAD AMSAM, KURUVANTHERI DESAM, VATAKARA-TALUK
KOZHIKODE DISTRICT.

2. KUNHAMMAD,S/O.ALI, MATTUMMAL, CHEKKYAD
AMSAM, KURUVANTHERI DESAM, VATAKARA-TALUK
KOZHIKODE DISTRICT.

BY ADVS.SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

RESPONDENT(S) /COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-31.

BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
27-10-2015,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 20 of 2011

Dated this the 27th day of October, 2015

J U D G M E N T

The appellants were the sureties to the accused in S.C. No.353/2007. They had executed a bond undertaking to produce each of the accused on all posting dates and in case of default, to forfeit the bond and to pay a penalty of ₹10,000/- each. Subsequently, the accused remained absent. M.C. proceedings were initiated and though they were served with notice, they appeared and sought time. In spite of granting time the presence of the accused could not be procured. Hence the court below by the impugned order imposed a penalty of ₹10,000/- each payable by each of the appellant. This is under challenge in this appeal.

2. Heard the learned counsel for the appellants and the learned Public Prosecutor. The appeal itself was heard on the basis of the available materials, since the essential facts were not in dispute.

3. It is an admitted fact that the appellants had executed a bond undertaking to ensure the presence of the accused on all posting dates and in case of default to forfeit a sum of ₹10,000/-

each. Admittedly, in spite of the M.C. proceedings, they could not procure the presence of the accused. Hence the Sessions Court was well within its authority to impose a penalty, which the Court deemed fit and proper. Having regard to this, I find no illegality in the impugned order.

4. However, the learned counsel for the appellant submitted that, the sureties have made all attempts to procure the presence of the accused. It is also seen from the impugned order that they appeared before the Court and sought time to produce the accused. Their inability to produce the accused is hence patent from the records. It cannot be readily presumed that they would have purposefully not produced the accused and invited an adverse order of penalty. It is also submitted that, the sureties belong to the lower strata of the society and are unable to pay the huge amount.

5. Considering the fact that the M.C. proceedings were initiated in 2009, I feel that a sum of ₹5,000/- each, payable by each of the surety will serve the interest of justice.

In the result, the appeal is allowed in part. The impugned order is modified by reducing the penalty to a sum of ₹5,000/-

each payable by each of the appellant. Remission is granted regarding the remaining. Each of the appellant is granted one months time to remit the sum and in case of default the court below shall initiate appropriate proceedings in accordance with law. If any amount is deposited in court pursuant to the order of this Court, that would be given credit to.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn