

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. 588 of 2012 ()

AGAINST THE ORDER IN CRL.M.C.NO.366/12 IN SC 15/2009 of ADDL. SESSIONS
COURT (ADHOC-I), THALASSERY DATED 05.03.2012

APPELLANTS/SURETIES:

1. BABY @ PAULOSE
S/O. MATHAI, ARAKKAPARAMBIL HOUSE
PAYYAVOOR AMSOM DESOM, THALASSERY TALUK
KANNUR DISTRICT.

2. LEEELAMMA
W/O. JOHNY, NELLIKKUNNEL HOUSE
PAYYAVOOR AMSOM AND DESOM, THALASSERY TALUK
KANNUR DISTRICT.

BY ADV. SRI.C.P.PEETHAMBARAN

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.588 of 2012

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Dated this the 03rd day of December, 2015

JUDGMENT

The appellants had executed a bond on behalf of the accused in S.C.No.15 of 2009 of the Court of Sessions, Thalassery. They had, inter alia, undertaken to ensure the presence of the accused on all posting dates and if they failed to do so, to pay a penalty as fixed by the court below subject to a maximum of Rs.50,000/- undertaken in the bail bond. Subsequently, the accused remained absent and MC proceedings were initiated against the appellants. They appeared before the court below and expressed their inability to produce the accused. Hence the court below, by the impugned order, imposed a penalty of Rs.20,000/- each. Remission was granted regarding the remaining amount. This is under challenge in this appeal.

2. Heard both sides and examined the records.

3. Learned counsel for the appellants submitted that pursuant to the order passed by the Court, appellants procured the presence of the accused, produced him before the police, who in turn executed a warrant and produced the accused before the

Sessions Court. Thereafter, he was remanded by order dated 14.03.2012. To substantiate it, a certified copy of the order of the Court of Sessions, Thalassery dated 14.03.2012 was produced. This shows that the accused was arrested and produced on that day and remanded to sub jail till 28.04.2012. Whether it was pursuant to the action taken by the police or not, the fact remains that the bail condition remains satisfied by procuring the presence of the accused. It cannot be forgotten that the appellants appeared before the court below and pursuant to the enquiry conducted by the Court, expressed their inability to procure the accused. In the light of the fact that they answered the notice issued by the Court and try their best to ensure the presence of the accused, I feel that a lenient view is liable to be taken. Learned counsel further submitted that both the appellants are coolies, belonged to the lower strata of the society and hence, unable to pay such a huge amount. Considering these facts, I am inclined to take a very lenient view, especially when MC proceedings are not essentially intended to punish the accused but to ensure the presence of the accused. I feel that a sum of Rs.6,000/- each will serve the interest of justice.

In the result, the appeal is allowed. In modification of the impugned order, the penalty is reduced to Rs.6,000/- (Rupees six 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. In case they have remitted any amount pursuant to the order of this Court, that would be given credit to.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge