

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

CRL.A.No. 530 of 2014 ()

AGAINST ORDER DATED 17.12.2012 IN M.C.NO.18/2012 IN S.C.NO.121/2012
ON THE FILES OF DISTRICT AND SESSIONS COURT, KOTTAYAM

APPELLANT(S)/1ST SURETY:

SURESH @ SURESH KUMAR,
S/O.A.K.DAS, AGED 38 YEARS, AYILOOPARAMBIL,
KANJIRAPPALLY VILLAGE
KANJIRAPPALLY KARA, KOTTAYAM DISTRICT.

BY ADVS.SRI.THOMSTINE K.AUGUSTINE
SRI.K.C.THOMAS (PALA)
SRI.BIJU GEORGE (VADASSERY)
SRI.M.P.RAJU

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A.No. 530 of 2014 ()

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE A1 TRUE COPY OF THE LETTER DATED 21.12.2013 GIVEN BY THE
APPELLANT TO THE SUB INSPECTOR OF POLICE, PALA.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 530 of 2014

Dated this the 15th day of December, 2015

J U D G M E N T

The appellant is the 1st surety of an accused in S.C. No.121/2012 of the District and Sessions Court, Kottayam. The appellant along with another surety had executed a bond undertaking to procure the presence of the accused on all posting dates and in case of default, to forfeit the bond and to pay penalty subject to the maximum of ₹30,000/-. It is an admitted fact that the accused did not appear. Thereafter MC proceedings were initiated against the sureties. In spite of service of notice on the appellant, he did not appear and show any cause as to why the penalty as fixed by the Court shall not be deposited. The Court below by the impugned order imposed a penalty of ₹30,000/- without granting any remission. This is under challenge in this appeal.

2. Heard both sides and examined the records.

3. It is admitted by the appellant that he had executed the bond and that the accused did not appear before the Court below. It is further not in dispute that in spite of service of notice,

he did not appear before the Court below to show any valid cause as to why penalty shall not be imposed. The accused was charged with offence under Section 119A of the Kerala Police Act. According to the appellant, since the accused did not appear, a written information was given to the Police Department evidenced by Annexure A1, Informing about his latest residence. The learned counsel on instructions submitted that the accused had since appeared before the Court below and is facing the trial. However, there is nothing to show that in fact Annexure A1 had been sent.

4. The learned counsel relying on Annexure A2 and A3 contended that he belonging to the BPL group and is a 'coolie worker'. It was submitted that he is unable to have both ends meet. Hence he sought for a lenient view.

5. Having regard to the entire facts, I feel that the petitioner is entitled for a lenient view, especially considering the age of the petitioner and the social circumstances in which he is put now. I feel that a penalty of ₹5,000/- will serve the interest of justice.

In the result, the appeal is allowed in part. The impugned

order is modified to ₹5,000/- (Rupees five thousand only) payable by the appellant. He is granted one months time to remit the above amount.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn