

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

CRL.A.No. 647 of 2012 (A)

AGAINST THE ORDER IN MC 19/2007 OF THE COURT OF SESSIONS, KASARAGOD
DATED 09-07-2008

APPELLANT(S)/COUNTER PETITIONERS:

1. K.M.ABDUL RAHIMAN,
S/O.MUHAMMED HAJI, KOLLAMMA HOUSE, KUDLU,
KASARAGODE.

2. K.B.ABDUL KHADER,
S/O.BEERAN MOIDEEN, BARAKATH MANZIL, ERIVAL,
KUDLU VILLAGE, KASARAGODE.

BY ADV. SRI.P.K.ANIL

RESPONDENT(S)/COMPLAINANT :

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

BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 647 of 2012

Dated this the 2nd day of November, 2015

J U D G M E N T

The appellants were the sureties of the accused in S.C. No.628/2006 of the Sessions Court, Kasaragod. He stood accused of offence punishable under Section 308 IPC. The accused, on appearance, was released on bail on he executing a bond with two sureties for a sum of ₹15,000/- wherein, the appellants as sureties, had undertaken to ensure the presence of the accused on all posting dates and in case of default to forfeit the sum of ₹ 15,000/- each. The accused thereafter did not appear and M.C. proceedings were initiated against the appellants. They did not appear and to show any cause as to why the penalty shall not be imposed on them. Consequently, the Court below by the impugned order imposed a penalty of ₹25,000/- each payable by each of the accused. This is impugned in this appeal.

2. Heard and examined the records.

3. It is an admitted fact that, the sureties had undertaken to procure the presence of the accused on all posting dates and to forfeit a sum of ₹15,000/-, in case of default. It is further not in dispute that the accused did not appear and M.C. proceedings

were initiated. Admittedly, the sureties though served with notice did not appear and showed any cause as to why the penalty subject to the maximum of ₹15,000/- shall not be imposed. In the above circumstances, legally the Court below was perfectly justified in passing an appropriate order.

4. The learned counsel for the appellants vehemently contended that, they had taken all earnest efforts to ensure the presence of the accused. The accused had subsequently appeared. Though the learned counsel invited my attention to ground No.B which states that, the accused had surrendered and was released on bail, the details are not forthcoming. However, having regard to the fact that the bail was granted long back in 2006 and evidently the Court below had initiated appropriate legal proceedings, I feel that a lenient view can now be taken. It appears that a penalty of ₹7,500/- (Rupees seven thousand five hundred only) each payable by each of the appellant will serve the interest of justice. The learned counsel had referred to a receipt produced in this Court dated 14.06.2012 indicating that each of the appellant has remitted a sum of ₹7,500/- each. This can be given credit to.

In the result, this appeal is allowed in part. The impugned order is modified to a penalty of ₹7,500/- (Rupees seven thousand five hundred only) each, payable by each of the appellant. The amount already remitted is given credit to and remission is granted regarding the remaining amount.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn