

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

CRL.A.No. 193 of 2011 ( )

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AGAINST THE ORDER IN CRL.M.C.26/10 IN SC 261/2010 of ADDL.DISTRICT &  
SESSIONS COURT (ADHOC)-II, KOTTAYAM DATED 31-12-2010

APPELLANTS/COUNTER PETITIONERS/SURETIES:

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1. GEORGE ,S/O.VARGHESE,  
CHIRATTAVAYALIL HOUSE, KALTHOTTI  
AYYAPPAN KOVIL VILLAGE, UDUMBANCHOLA, IDUKKI.

2. BIJOY THOMAS, S/O.THOMAS DEVASYA,  
ENTHANAL VEEDU, KOZHIMALA KARA, AYYAPPAN KOVIL VILLAGE  
UDUMBANCHOLA, IDUKKI.

BY ADVS.SRI.C.S.MANILAL  
SRI.S.NIDHEESH

RESPONDENT/RESPONDENT/STATE:

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THE 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 14-09-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**SUNIL THOMAS, J.**

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**Crl.A.No.193 of 2011**

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Dated this the 14<sup>th</sup> day of September, 2015

**JUDGMENT**

This appeal arises from the order of the learned Additional District and Sessions Judge, (Adhoc)-II, Kottayam in S.C.No.261 of 2010.

2. The appellants herein were the sureties of the accused. They had executed a bond undertaking to ensure the presence of the accused who was accused of offences, inter alia assuring that the accused will be present on all posting dates. It was undertaken that in case they commit default, the entire bond amount shall be forfeited.

3. The accused, thereafter, remained absent, in spite of the summons served on him and coercive steps taken. Hence, M.C. proceedings were initiated against the accused and the counter petitioners herein. Though notice was issued to the sureties, they remained absent. Hence, the court below by the impugned order dated 31.12.2010 held that the bond has been forfeited and imposed a penalty of Rs.5,000/- each. A warrant was issued thereafter. This is assailed in this appeal.

4. Heard both sides and examined the records.

5. It is an admitted fact that the appellants had executed a bond undertaking to ensure the presence of the accused on all posting dates. It is further undertaken that in case of default, the bond shall be forfeited and the penalty be paid. There is no dispute to the fact that the accused was absent and sureties could not procure his presence also. It is also on record that in spite of notice served on the sureties, they did not appear and show any cause as to why the penalty shall not be imposed. In the above circumstances, learned Additional Sessions Judge was well within his authority to impose a penalty, subject to the bond amount, which he found to be appropriate.

6. Though, few legal issues were raised regarding competency of the court below to pass such orders, I find no reason to be persuaded by such contentions. However, learned counsel for the appellants contended that the sureties were not having sufficient funds to pay the amount imposed as penalty. It was contended that the court should have taken a lenient view and imposing a penalty of the entire amount was not proper. Having considered the entire facts, I feel that the Court could have taken a lenient view considering the fact that earnest efforts were taken by

the petitioners to ensure the presence of the accused. Hence, I feel that a penalty of Rs.2,500/- each payable by each of the petitioner will serve the interest of justice.

In the result, the appeal is allowed in part. In modification of the impugned order, each of the appellant is directed to remit a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred Only) each. Remission is granted regarding the balance amount.

Sd/-  
**SUNIL THOMAS**  
**Judge**

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