

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

CRL.A.No. 1930 of 2010 ()

AGAINST THE ORDER IN MC 1180/2008 of ADDITIONAL SESSIONS COURT
(ADHOC), FAST TRACK COURT NO.1, THRISSUR DATED 09-07-2008

APPELLANT(S)/COUNTER PETITIONERS 2 & 3:

1. VISWANATHAN, S/O.MUTHALIPALAYATHII
SUNDARAN, ERAVATHODI THERUVU, ERAVATHODI DESOM
KANIYARKODE VILLAGE, THALAPPILLY TALUK
THRISSUR DISTRICT.

2. NARAYANAN, S/O.PALAKKAPARAMBIL VEETIL
SANKARAN, -DO- -DO- .

BY ADV. SRI.RAJIT

RESPONDENT(S)/STATE:

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
06-10-2015, ALONG WITH CRL.APPEAL NOS. 1931/2010 & CRA. 1932/2010,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Pn

SUNIL THOMAS, J.

Crl. Appeal Nos. 1930, 1931 & 1932 of 2010

Dated this the 6th day of October, 2015

J U D G M E N T

The appellants herein stood as sureties for all the 3 accused in S.C.No.643/2007. They *inter alia* had undertaken to ensure the presence of the accused on all posting dates and in case of default, to forfeit a sum of ₹25,000/- each. The accused were convicted and thereafter they filed an appeal as Crl.Appeal No.849/2008. It is submitted by the learned counsel for the appellants that, the sentence was suspended as against 2nd and 3rd accused and there was a direction to remit the fine. For non-compliance of remittance of fine by them proceedings were initiated. They were arrested in the meanwhile and they have undergone the sentence. In the meanwhile 1st accused remitted the fine belatedly. Without noticing this, separate M.C. proceedings No.1179/08, 1180/08 and 1181/08 were initiated against the appellants herein. Ultimately, penalty of ₹25,000/- each was imposed without granting any remission. These orders are under challenge in these appeals.

2. Heard and examined the records.

3. It is an admitted fact that, the appellants had executed the bond undertaking to ensure the presence of each of the accused and in case of default, to forfeit a sum of ₹25,000/- each. It is also an admitted fact that, an appeal was filed thereafter. The appellants have taken up a ground that, the notice were not served on them. However, from the proceedings of the Court below and the impugned orders it is evident that, the notice was served on them and they did not appear and show the cause. Hence legally the Court below was perfectly justified in imposing the penalty which it deemed fit and proper to grant. However, it is on record that, an appeal was filed and according to the learned counsel for the appellant, the sentence was suspended with respect to the imprisonment alone and for non-remittance of the fine, two of the accused were arrested. The other appellant thereafter filed an application for extension of time, which was ultimately granted. Without noticing this, M.C. proceedings were initiated. Had these facts been brought to the notice of the Court below, necessarily, the Court below would not have passed such an order. According to the appellants they are poor and illiterate. However, having regard to the entire facts, I feel that, a lenient

view can be taken and considering the special circumstances a penalty of ₹6,000/- (Rupees six thousand only) by each of the surety in each M.C. will serve the interest of justice.

In the result, all the appeals are allowed in part. While sustaining the orders imposing the penalty, the amount payable as penalty in each M.C. proceeding by each surety is slashed down to ₹6,000/- each, payable within a period of 4 weeks from today. Remission is granted with respect to the remaining. If the amount is not remitted as above, the Court below will be justified in initiating appropriate legal steps. Coercive steps shall be kept in abeyance till that time.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

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