

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

CRL.A.No. 812 of 2014 ()

AGAINST THE ORDER IN M.C.NO.6/2014 IN S.C.587/2012 OF ADDITIONAL
SESSIONS COURT, IRINJALAKKUADA DATED 16.07.2014

APPELLANTS/COUNTER PETITIONERS 2 & 3/ SURETIES:

1. VENU, S/O.SUBRAHMANIAN,
THOTTUNGAL HOUSE, AZAD ROAD DESAM,
MUKUNDHAPURAM TALUK, IRINJALAKKUADA
THRISSUR DISTRICT

2. PREMKUMAR
S/O NARAYANAN, MANALI PARAMBIL HOUSE, AZAD ROAD DESAM
MUKUNDHAPURAM TALUK, IRINJALAKKUDA

BY ADVS.SMT.P.DEEPTHI
SRI.SABU JOHN

RESPONDENTS/STATE:

1. THE STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE
IRINJALAKKUDA, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

2. RAMANKUTTY
S/O CHINNAPPAN, KUMBHARA COLONY, PANNIKKULAMB
MANGALAM DAM VILLAGE 678706

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1 : TRUE COPY OF THE ORDER DATED 16.07.2014 IN
M.C.NO.06/2014 IN S.C.NO.587/2012 ON THE FILE OF THE ADDL.SESIONS
COURT, IRINJALAKKUADA

ANNEXURE A2 : TRUE COPY OF THE APPLICATION DATED 16.07.2014 IN
M.C.NO.06/2014 IN S.C.NO.587/2012 ON THE FILE OF THE ADDL.SESIONS
COURT, IRINJALAKKUADA

RESPONDENTS EXHIBITS:NIL

True Copy /

P.A to Judge

SUNIL THOMAS, J.

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Crl.A.No.812 of 2014

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Dated this the 24th day of November, 2015

JUDGMENT

The appellants were the sureties No.2 and 3 of accused No.8 in S.C.No.587 of 2012. They had executed a bond, inter alia, undertaking to ensure the presence of the accused on all posting dates and in case of default, to forfeit a sum of Rs.15,000/-. The 8th accused remained absent and hence MC proceedings were initiated. Pursuant to the notice served on the appellants, they appeared through the counsel and sought time. The court below by the impugned order rejected their prayer and imposed a penalty of Rs.10,000/- each payable by each of the appellant. Remission was granted in relation to the remaining amount. This order is under challenge in this appeal.

2. Heard the learned counsel for the appellants and the learned Public Prosecutor.

3. There is no dispute that the appellants had executed a bond undertaking to procure the presence of the 8th accused on all posting dates and in case of default from their side, to forfeit the penalty subject to a maximum of Rs.15,000/-. It is also not in

dispute that pursuant to the notice served on them, the accused remained absent and MC proceedings were initiated. They could not procure the presence of the accused. In the above circumstance, learned Sessions Judge was well within his jurisdiction to pass an order which it felt fit and justifiable, having regard to the facts and circumstances of the case.

4. However, learned counsel for the appellants invited my attention to Annexure-A2, which is an application submitted by them on 16.07.2014. In that application, it is stated that they came to know about the absence of the accused only on receipt of the notice in the MC proceedings. It was further stated that on enquiry, it was revealed that the 8th accused had closed down his business and had gone to Karnataka in search of a job. They sought a months time to produce the accused. Evidently, such a request was made on 16.07.2014. Court below, it appears that, rejected the above request on a reasoning that they did not appear personally in spite of notice and imposed a penalty of Rs.10,000/-. This reasoning of the court below cannot be sustained, since the appellants had appeared through their counsel and had sought some time to procure the presence of the accused. Possibly, they

could have produced the accused, had sufficient opportunity been granted. However, learned counsel also even now could not submit as to whether the 8th accused has thereafter appeared. There is an indication that coercive steps been taken against the accused. Having regard to these facts, rather than proceeding to impose a penalty, the learned magistrate could have taken a very reasonable stand. Hence the impugned order is liable to be set aside. A sum of Rs.3,000/- payable by each of the appellant would serve the interest of justice.

In the result, the appeal is allowed in part. While confirming the impugned order, the penalty imposed by the court below is slashed down to Rs.3,000/- (Rupees three thousand only) payable by each of the appellant. A receipt has been produced indicating that pursuant to the interim order of this Court, the above amount has been remitted. Credit will be given to the above amount. Remission is granted with respect to the balance amount.

Sd/-
SUNIL THOMAS
Judge

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