

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

CRL.A.No. 960 of 2012 ()

AGAINST THE ORDER IN CRMC NO.4/2012 IN SC NO.133/2006 of THE
ADDITIONAL DISTRICT & SESSIONS JUDGE, FAST TRACK COURT-1,
THIRUVANANTHAPURAM DATED 15.06.2012

APPELLANT(S)/COUTNER PETITIONERS/SURETIES 1 AND 2:

1. GIRIJA
W/O.RAJAN, PANAVALAKATHU VEEDU, IRUMPA MURI,
ARUVIKKARA VILLAGE.

2. SARASWATHI @ SARASU,
D/O.MEENAKSHI, RENJINI BHAVAN, MAYILATTAMPARA
AYANIKKADU, KARAKULAM VILLAGE.

BY ADV. SRI.M.DINESH

RESPONDENT(S)/PETITIONER:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM. 682 031.

BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl. Appeal No. 960 of 2012

Dated this the 4th day of November, 2015

J U D G M E N T

The appellants were the sureties of the accused in S.C. No.133/2006, for offence punishable under Section 55(a) and 8(1) read with 8(2) of the Abkari act. 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 the bail bond and to pay a penalty subject to a maximum of ₹15,000/- each. Thereafter, the accused absconded and MC proceedings were initiated. The appellants herein appeared and pleaded their inability to procure the presence of the accused. The court below thereupon took a lenient view and imposed a penalty of ₹13,000/- payable by each of the appellant. This is under challenge in this appeal.

2. The learned counsel for the appellants contended that, the appellants had taken all earnest efforts to procure the presence of the accused. They had pleaded their inability before the trial court also. This is evident from the impugned order itself which shows that, two adjournments were taken by the appellants and they ultimately pleaded their inability to produce the accused. It was submitted that the accused has left the place.

Evidently, both the appellants are women. They could not have executed a bond knowing that or had reason to believe that the accused would abscond and invite a penalty to be imposed on the appellants. They also tried their level best to procure the presence of the accused. In the above circumstance, I feel that the court below could have taken a more lenient view to impose a penalty which obviously could have a direct bearing on the intention of ensuring the presence of the accused alone, rather than to work out as a punishment.

3. I feel that a sum of ₹8,000/- payable by each of the appellant would serve the interest of justice. If any amount has been remitted pursuant to the orders of this court, it will be given credit to and if any amount in excess of this order is remitted it would be returned to the appellants, through the counsel.

4. In the result, the appeal is allowed in part. In modification of the impugned order, the penalty imposed by the court below is reduced to ₹8,000/- each payable by each of the appellant. If the amount has not been remitted, they are granted one months time from today to pay the amount.

Sd/-
SUNIL THOMAS, JUDGE.
/true copy/

P. A. to Judge