

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

CRL.A.No. 659 of 2011 ()

AGAINST THE ORDER IN SC 10/2004 of ADDITIONAL DISTRICT & SESSIONS
COURT (ADHOC)-II, KOLLAM DATED 28-02-2008

APPELLANT(S)/3RD COUNTER PETITIONER:

MINIYAMMA, MULAKKAL THOTTATHIL VEEDU,
PANAYAM CHERRY, PANAYAM VILLAGE, KOLLAM.

BY ADVS.SRI.K.S.MANU (PUNUKKONNOOR)
SRI.P.SREEKUMAR
SRI.P.S.SIDHAN
SRI.V.K.RAJANANDAN

RESPONDENT(S)/COMPLAINANT/ACCUSED:

1. THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. BABU, VIJAYABHAVANAM VEEDU,
PANAYAM CHERRY, PANAYAM VILLAGE, KOLLAM.

3. VASANTHIYAMMA, MULAKKETHOTTATHIL VEEDU
(DIED), PANAYAM CHERRY, PANAYAM VILLAGE
KOLLAM.

R1 BY PUBLIC PROSECUTOR SMT.M.T.SHEEBA

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

SUNIL THOMAS, J.

Crl. Appeal No. 659 of 2011

Dated this the 11th day of November, 2015

J U D G M E N T

This appeal is filed by the 2nd surety in M.C. No.84/2007 in S.C. No.10/2004. The appellant along with another surety had stood as sureties for the accused in the above crime under Section 55A of the Abkari Act. They had *inter alia* undertaken to ensure the presence of the accused on all posting dates and in case of default to forfeit the bond and to pay a penalty as directed by the court, subject to a limit of ₹25,000/-. Thereafter, the accused remained absent and M.C. proceedings were initiated against the accused and the sureties. In spite of service being effected on them, the appellant did not appear and did not show any cause. The 2nd respondent was reported to be dead. Hence the Court below by the impugned order imposed a penalty of ₹25,000/- each without granting any remission. This is under challenge in this appeal.

2. Heard. Notice served on the 3rd respondent has been returned with an endorsement that he had died.

3. It is an admitted fact that, the bond was executed undertaking to procure the presence of the accused on all posting dates. It is further not in dispute that, the accused remained

absent and M.C. proceedings were initiated. Even in the M.C. proceedings, the appellant herein did not appear and showed any cause as to why an appropriate penalty shall not be imposed. Hence the trial court cannot be faulted for having passed an order which it deemed fit and proper to grant. Further it is submitted by the learned counsel for the appellant, relying paragraph 2 of the appeal memorandum that, the accused thereafter appeared and was enlarged on bail on 21.04.2009. To that extent, the purpose of initiating M.C. proceedings stood satisfied. The appellant claims to be a woman and it was submitted by the learned counsel that she does not have any source of income.

Considering these facts, I am inclined to take a lenient view. Hence the appeal is allowed in part. In modification of the impugned order, the penalty imposed by the court below is modified to ₹7,500/- (Rupees seven thousand five hundred only) payable by the appellant. If any amount has been remitted pursuant to the orders of this Court that would be given credit to. Remission is granted regarding the balance amount.

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

P. A. to Judge