

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

CRL.A.No. 856 of 2011 ()

AGAINST THE ORDER IN M.C.19/2011 IN SC 1069/2008 of ADDITIONAL
SESSIONS COURT (ADHOC)-II, KOLLAM DATED 15-03-2011

APPELLANTS/COUNTER PETITIONERS/3rd ACCUSED AND SURETIES:

1. ANOOB, 25 YEARS, S/O.ABDUL AZEEZ,
PUNCHA VEEDU, KOTTAPURAM CHERRY, KOTTAPPURAM VILLAGE
KOLLAM

2. NAZARUDEEN, S/O.IBRAHIM KUTTY,
N.S.MANZIL, THEKKUMBHAGOM CHERRY, KOTTAPPURAM VILLAGE
KOLLAM

3. SHAHIDA, W/O.NAZARUDEEN,
N.S.MANZIL, THEKKUMBHAGOM CHERRY, KOTTAPPURAM
VILLAGE, KOLLAM

BY ADVS.SMT.MINI GANGADHARAN
SRI.N.C.SAJUNAM

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM-682031

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

=====
Crl.A.No.856 of 2011
=====

Dated this the 9th day of October, 2015

JUDGMENT

The appellants are the accused and the sureties in S.C.No.1069 of 2008, for offences punishable under Section 294(b) and 333 r/w Section 34 of the Indian Penal Code. The sureties had executed a bond undertaking to ensure the presence of the accused on all posting dates and in case of default, to forfeit a sum of Rs.10,000/- each, which was the bond amount. Admittedly, accused remained absent. Hence, MC proceedings were initiated. Since, neither the accused nor the sureties appeared, the court below imposed a penalty of Rs.10,000/- each without granting any remission. This is challenged in this appeal.

2. Heard and examined the records.

3. The essential facts are not in dispute, including the execution of the bond and the undertaking to pay penalty of Rs.10,000/- in case of default. It is also not in dispute that the accused did not appear, bail bond was forfeited and show cause

notice was served on the accused and the sureties. They did not appear and showed any cause. Hence, court below was perfectly within its jurisdiction to impose any penalty which it deemed fit and proper to grant. There is no illegality in the order passed by the court below.

4. However, learned counsel for the appellants submitted that the accused had thereafter appeared before the Court and were granted bail. In paragraph 7 of the appeal memorandum, it is stated that first appellant was present in the Court along with appellants 2 and 3 and fresh sureties. The Court had granted bail to the first appellant, on remitting a fine of Rs.10,000/- with fresh sureties on 15.03.2011 and court below passed the impugned order. In the light of the above, I feel that a lenient view could have been taken by the court below. A penalty of Rs.5,000/- (Rupees five thousand only) payable by the first appellant, being the 3rd accused and a sum of Rs.2,500/- (Rupees two thousand five hundred only) by each of the surety, being appellants Nos.2 and 3 would meet the ends of justice. Remission is granted regarding the remaining amount and they shall remit the amount, if not remitted within a period of three weeks from today. If any amount

has been remitted subject to the orders of this Court, it shall be given credit to and the excess amount shall be returned to the concerned party through their concerned counsel. In case of default of payment of money, the court below shall initiate appropriate legal proceedings for the recovery of the money.

Appeal allowed in part as above.

Sd/-
SUNIL THOMAS
Judge

Sbna