IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

CRL.A.No. 923 of 2011 ( )

AGAINST THE ORDER IN M.C.20/06 IN SC 1430/2001 of ADDL.SESSIONS COURT FOR THE TRIAL OF ABKARI ACT CASES,NEYYATTINKARA DATED 18-04-2006

APPELLANT/RESPONDENT:

*** 1. MOHANAN, S/O.CHELLAN,**
PLANTHOTTAM MELEVEEDU, KULATHOOR DESOM
KULATHOOR VILLAGE.

2. AUSTIN SKINNER @ AUGUSTINE SKINNER,
S/O.ROBINSON, CHERIYA PAMPUKALA PUTHEN VEEDU
KARUMKULAM DESOM, KARUMKULAM VILLAGE.

(* - FIRST APPELLANT IS DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 31.05.2011 IN Crl.M.A.12034/2007 IN Crl.M.A.11315/2007)

BY ADV. SRI.BLAZE K.JOSE

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
REPRESENTING THE SUB INSPECTOR OF POLICE
KAJIRAMKULAM POLICE STATION.

BY ADV. PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.923 of 2011

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Dated this the 26th day of October, 2015

JUDGMENT

Appellants were the sureties of the sole accused in S.C.No.1430 of 2001. They had executed a bail bond, inter alia, undertaking 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 of Rs.25,000/-. The accused thereafter remained absent and MC proceedings were initiated against the sureties. On 18.04.2006, when the matter was taken up, both the sureties were absent and they did not show any cause as to why the penalty subject to the maximum undertaken shall not be imposed. Consequently, learned Additional Sessions Judge by the impugned order imposed a penalty of Rs.25,000/- each, payable by each of the surety, without granting any remission. This is challenged in this appeal by the sureties.

2. Heard and examined the records.

3. Though appeal was filed by both sureties, second appellant filed Crl.M.A.No.11315 of 2007 stating that the appeal was filed by both the appellants on a wrong belief that proceedings

were initiated against the first appellant also. Thereafter it was understood that the proceedings were initiated against the property of the second appellant alone. Consequently, first appellant was sought to be deleted, which was allowed by this Court by order dated 31.05.2011. Hence, the appeal is filed by the second appellant alone. Learned counsel for the appellant submitted that the second appellant had taken all possible efforts to ensure the presence of the accused. It was further submitted that thereafter the appellant appeared before the court below and after trial by judgment dated 21.06.2006, accused was acquitted. A copy of the judgment of the Sessions Court was also produced for perusal.

4. In the light of the above, I feel that though the court below was perfectly justified in imposing penalty of its choice, having regard to the facts and circumstances of the case and that the accused has faced trial and ultimately resulted in his acquittal, a lenient view is liable to be taken. I feel that a penalty of Rs.5,000/- will serve the interest of justice.

In the result, the appeal is allowed in part. While sustaining the impugned order, the penalty imposed by the court below is modified to Rs.5,000/- (Rupees Five Thousand Only) payable by the second appellant herein. Pursuant to the order of

this Court, a sum of Rs.5,000/- was remitted on 14.11.2007 before the Additional Sessions Court, Neyyattinkara. This is recorded. Hence, remission is granted regarding the remaining amount.

Sd/-

SUNIL THOMAS
Judge

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True Copy /

P.A to Judge