

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

CRL.A.No. 990 of 2011 ()

AGAINST THE ORDER IN MC 2/2010 of ADDITIONAL SESSIONS COURT-1,
THODUPUZHA DATED 29-01-2011

APPELLANTS/COUNTER PETITIONER NOS.1 & 2/RESPONDENTS:

1. MATHAI, AGED 57 YEARS, S/O. JOSEPH,
THEKKUMKANATHIL HOUSE, KANNADIPARA KARA
MUTTOM VILLAGE.

2. KARTHIYANI, AGED 68 YEARS, W/O. SASI,
CHERIYIL HOUSE, KOLANI KARA, THODUPUZHA VILLAGE.

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING.

SUNIL THOMAS, J.

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Crl.A.No.990 of 2011
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Dated this the 01st day of December, 2015

JUDGMENT

The appellants were the sureties of the accused in S.C.No.75 of 2009, wherein the accused stood indicted for offence punishable under Section 376 of the Indian Penal Code. The accused was released on bail on he executing a bond with the appellants herein as the sureties. They undertook to procure the presence of the accused on all posting dates and in case of default, to forfeit a sum as directed by the Court subject to the maximum of Rs.25,000/- mentioned in the bond. Thereafter, the accused remained absent and the court below initiated MC proceedings against the sureties. Non-bailable warrant was issued to the accused. They did not appear to show any cause, as to why the penalty shall not be imposed on them. Consequently, court below by the impugned order imposed a penalty of Rs.25,000/- each payable to each of the appellant without granting any remission. This is assailed in this appeal.

2. Heard both sides.

3. It is an admitted fact that the appellants have executed a bond offering themselves as sureties and to ensure the presence of the accused in Court. It is also not in dispute that the accused remained absent, MC proceedings were initiated and also that, they did not appear before the Court in spite of service of notice. Hence, the court below was perfectly justified in imposing a penalty which the court below thought fit and proper to grant.

4. Learned counsel for the appellants contended that both the appellants tried their best to procure the presence of the accused, who is now untraceable. Learned counsel further contended that the first appellant is aged about 57 years and the second appellant is aged about 68 years and they did not have a consistent source of income. He pleaded that a lenient view may be taken.

5. Having regard to the above facts, I feel that a lenient view is liable to be taken and the amount of penalty payable can be reduced to Rs.10,000/- each payable by each of the appellant. Remission is granted regarding the remaining amount.

In the result, the appeal is allowed in part. The impugned order is modified to a penalty of Rs.10,000/- each

payable by each of the appellant. They are granted one months' time to pay the amount, failing which, they shall undergo simple imprisonment in civil jail for a period of one month. If any amount has been remitted pursuant to the orders of this Court, credit would be given to that amount and balance amount if any, need only be deposited within the time granted as above.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge