

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

CRL.A.No. 1037 of 2011 ()

AGAINST THE ORDER IN M.C.NO.106/2010 IN SC 561/2005 of ADDL. DISTRICT
AND SESSIONS COURT (ADHOC-III), KASARAGODE DATED 01-02-2011

APPELLANTS/RESPONDENTS:

1. KHADEEJA, AGED 49/11 YEARS,
W/O. ABDUL RAHIMAN, KARODI (HOUSE), PATLA
MADHUR VILLAGE, KASARAGOD TALUK.

2. HAJIRA, AGED 37/11 YEARS,
W/O. ABDULLA, ACHAKARA (HOUSE), PAIVALIGE VILLAGE &
POST, KASARGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENT/PETITIONER:

STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1037 of 2011

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Dated this the 16th day of October, 2015

JUDGMENT

This appeal is preferred by the respondent in M.C.No.106 of 2010 in S.C.No.561 of 2005 of the Additional District and Sessions Court (Adhoc)-III, Kasaragod.

2. The appellants were the sureties of the accused in the above case. They 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.25,000/- each. Thereafter, the accused remained absent and M.C proceedings were initiated. Though, the respondents appeared initially, thereafter they remained absent and did not procure the presence of the accused. They also did not show cause as to why the penalty shall not be imposed. Consequently, the court below by the impugned order imposed a penalty of Rs.25,000/- each. This is under challenge in this appeal.

3. Heard and examined the records.

4. It is an admitted fact that the sureties have executed a bond and thereafter, the accused remained absent. The lower court records also indicates that on the date of the impugned order, the

sureties remained absent and consequently, there was no cause was shown. In the above circumstance, court below was perfectly within its jurisdiction to impose a penalty which it deemed fit.

5. However, learned counsel for the appellants submitted that pursuant to the notice issued, the accused was produced and he was thereafter remanded on 14.12.2010. Evidently, this fact was not brought to the notice of the court below. It was the duty of the appellants to have showed this cause to the court below.

6. Learned counsel for the appellants however contended that both the sureties are women and that they have made all attempts to ensure the presence of the accused. Having considered the above facts and the further submission that the accused was produced thereafter and subsequently released on bail, I am inclined to take a lenient view and to reduce the penalty to a sum of Rs.7500/- payable by each of the surety.

In the result, the appeal is allowed in part. In modification of the impugned order, it is directed that each of the appellant shall pay the sum of Rs.7,500/- (Rupees Seven Thousand Five Hundred Only) as penalty. If any amount is remitted pursuant to the order of this Court, that would be given credit to. The parties are directed to deposit the amount within a period of one month

from today, failing which, the court will be entitled to initiate appropriate proceedings after the expiry of one month. Remission is granted with respect to the remaining amount and further proceedings for realization of the money will stand deferred for one month from today.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge