

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

CRL.A.No. 1060 of 2011 ()

AGAINST THE ORDER IN CRL.M.C.560/2011 IN SC 177/2011 of ADDITIONAL
DISTRICT & SESSIONS COURT (FAST TRACT NO.1, THRISSUR DATED 20-05-2011

APPELLANTS/RESPONDENTS:

1. VARGHESE, S/O. PANJIKARAN MARIYAM,
PUTHNVELIKKADA DESOM & VILLAGE, (PUTHENVELIKKARA
DESOM & VILLAGE) PAVAROOR TALUK.

2. CHANDRAN, S/O. CHEREDATH KARIMBA,
PUTHENCHIRA DESOM & VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.P.K.SAJEEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY ADV. PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1060 of 2011

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Dated this the 28th day of October, 2015

JUDGMENT

Appellants were the sureties of the 4th accused in S.C.No.1086 of 2008. They had executed a 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 subject to a maximum of Rs.25,000/-. Admittedly, accused remained absent and the court below initiated MC proceedings. The sureties appeared and sought time to produce the accused. In spite of time granted, accused was not produced and thereafter, sureties also remained absent but were represented through the counsel. Hence the court below imposed a penalty of Rs.10,000/- each payable by each of the surety. This is challenged in this appeal.

2. Heard both sides and examined the records.

3. Learned counsel for the appellants fairly conceded that the accused had not appeared even now. Even before the court below, they have expressed their inability to produce the accused, since he had gone abroad. The court below, after having regard to all factual circumstances, had granted remission of Rs.15,000/- and

confined the penalty to Rs.10,000/- each. There is no illegality in the above order.

4. However, learned counsel submitted that pursuant to the notice issued, the sureties appeared and sought time. They could not procure the presence of the accused in spite of the earnest efforts taken by them. Hence, learned counsel sought for a lenient view. Considering the above facts, I am inclined to take a lenient view and confine the penalty to Rs.5,000/- payable by each of the appellant.

In the result, the appeal is allowed in part. In modification of the impugned order, penalty is modified to Rs.5,000/- (Rupees five thousand only) each payable by each of the appellant. They are granted one months' time to remit the amount. Remission is granted regarding the remaining amount. If any amount is deposited pursuant to this Court's order, that will be given credit to.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge