

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

CRL.A.No. 1544 of 2011 ()

AGAINST THE ORDER IN MC 167/2009 IN S.C.NO.573/2005 of ADDL. DISTRICT
AND SESSIONS COURT (ADHOC-III), KASARAGODE DATED 31-12-2009

APPELLANTS/RESPONDENTS/SURETIES:

1. AISHABI, W/O.KUNHAMMU, AGED 59 YEARS,
DOOR NO.M.O.10/306, KOOTAMOOLA HOUSE, KOTTOOR P.O.
MULIYAR VILLAGE, KASARAGOD, DISTRICT.

2. AYSHABI, W/O.ABDUL RAHIMAN, AGED 69
YEARS, DOOR NO.KMC 21/02, CHERAMKAI KADAPPURAM
KASARAGOD TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.S.JIJI

RESPONDENT(S)/COMPLAINANT:

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

BY ADV. PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

=====

Crl.A.No.1544 of 2011

=====

Dated this the 13th day of November, 2015

JUDGMENT

The appellants were the sureties of the 8th accused in S.C.No.573 of 2005 of the Additional District and Sessions Court, Adhoc-III, Kasaragod for offences punishable under Sections 143, 147, 148, 427 and 308 r/w Section 149 of the Indian Penal Code. The appellants 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/-. Subsequently, the accused absconded and MC proceedings were initiated. In spite of the service of the notice in the MC proceedings, appellants did not appear and showed any cause. Consequently, the court below imposed a penalty of Rs.10,000/- each payable by each of the appellant, without granting any remission. This is under challenge in this appeal.

2. Heard both sides and examined the records.

3. Evidently, the accused remained absent in spite of the bond executed by the appellants. They also did not show any

cause for the absence and also did not offer themselves to procure the presence of the accused as undertaken by them. Necessarily, Court was legally equipped to pass an order which it deemed fit and proper, in the facts and circumstances of the case.

4. However, learned counsel for the appellants contended that the accused appeared before Court thereafter. The case was thereafter clubbed with S.C.No.150 of 2010 and by judgment dated 18th September 2010, the prosecution was permitted to withdraw the case under Section 321(b) of the Cr.P.C. Permission was granted and the case was withdrawn under Section 321(b) of the Cr.P.C. Learned counsel contended that in the light of the above, the purpose of initiating proceedings have been fulfilled and a lenient view is liable to be taken. Both the appellants are women, aged about 60 years.

5. Having regard to the above facts, I feel that a lenient view is liable to be taken. Pursuant to the orders of this Court, a sum of Rs.2,000/- each was deposited. I feel that the said amount would serve the interest of justice.

In the result, the appeal is allowed in part. The impugned order is modified confining the penalty payable by each of the appellant to Rs.2,000/- (Rupees two thousand only). The amount already in deposit is given credit to. Remission is granted regarding the remaining amount.

Sd/-
SUNIL THOMAS
Judge

Sbna