

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. 1624 of 2011 ()

AGAINST THE ORDER/JUDGMENT IN SC 216/2007 of ADDITIONAL DISTRICT COURT
(ADHOC), PATHANAMTHITTA DATED 03-05-2010

APPELLANTS/SURETIES:

1. RAJAPPAN, AGED 62 YEARS, S/O. CHELLAPPAN,
KANDATANATTIL CHIRAYIL VEDU, NEDUMPURAM VILLAGE
THIRUVALLA.

2. LAKSHMIKUTTY, AGED 60 YEARS,
W/O. KUMARAN, NARANATHU KUNNEL VEEDU, VENPALA MURI
KUTTOOR, THIRUVALLA.

BY ADV. SRI. R. SANTHOSH BABU

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM -31.

BY 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.

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Crl.A.No.1624 of 2011

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Dated this the 13th day of November, 2015

JUDGMENT

The appellants were the sureties of the sole accused in S.C.No.216 of 2007 for offence punishable under Sections 342, 376 and 392 of the Indian Penal Code. They had executed a bond offering themselves as sureties, inter alia, assuring that the accused would be made available on all posting dates and in case of default, to suffer a penalty subject to the maximum of Rs.30,000/-. The records reveal that thereafter the accused remained absent and MC proceedings were initiated. The appellants appeared and filed an application to produce the accused before the Court which was granted. In spite of the extended time granted, they could not procure the presence of the accused. Consequently, the court below imposed a penalty of Rs.30,000/- as mentioned in the bond. No remission was granted. This order is impugned in this appeal.

2. Heard and examined the records.

3. It is an admitted fact that the appellants had executed a bond undertaking to ensure the presence of the accused of which a

breach was committed. In the MC proceedings, they appeared and sought time for procuring the presence of the accused. In spite of time granted, they could not procure the presence of the accused. In the above circumstance, court below was legally justified in passing the impugned order.

4. However, learned counsel for the appellants vehemently contended that the Court did not grant them a further opportunity to ensure the presence of the accused. Learned counsel contended that had they been given some more time, they could have procured the presence of the accused. Learned counsel contended that immediately thereafter, accused appeared before the Court and faced the trial. Ultimately, by the judgment dated 01.01.2011 the accused was acquitted. A copy of the above judgment of the Sessions Court was made available for perusal. It was further contended that the appellants are poor people and they are unable to pay a huge penalty. He sought for a lenient view to be taken.

5. Having regard to the fact that they appeared before the court below and took earnest efforts to procure the presence of the accused and the further fact that the purpose of MC proceedings stood served by procuring the presence of the accused later, I feel

that a very lenient view can be taken. I feel that a sum of Rs.6,000/- each payable by each of the accused will serve the interest of justice.

In the result, the appeal is allowed in part. The impugned order is modified by imposing a penalty of Rs.6,000/- (Rupees six thousand only) each payable by each of the appellant. If any amount in excess has been remitted pursuant to the order of this Court, that would be returned to the appellant through their counsel. Remission is granted regarding the remaining amount.

Sd/-

SUNIL THOMAS
Judge

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