

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

CRL.A.No. 1761 of 2011 (A)

AGAINST THE ORDER IN MC 7/2010 of ADDL. DIST. COURT (ADHOC) III,
PALAKKAD DATED 13-10-2010

APPELLANT/COUNTER PETITIONER:

BABY AMMA, D/o.KAMALAKSHI AMMA
R/AT SASIKALALAYAM, OOTHUKUZH, SHOLAYUR VILLAGE
MANNARKAD TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.S.PRASANTH
SRI.JAGADEESH LAKSHMAN

RESPONDENTS/COMPLAINANT:

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

2. ADDITIONAL SUB INSPECTOR OF POLICE,
AGALI POLICE STATION, PALAKKAD-678001

3. THE VILLAGE OFFICER, SHOLAYUR,
MANNARKADU, PALAKKAD-678 002

BY PUBLIC PROSECUTOR: SRI. ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1761 of 2011

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Dated this the 25th day of November, 2015

JUDGMENT

The appellant herein was one of the sureties of the accused in S.C.No.501 of 2008 of the Additional Sessions Court, Adhoc-III, Palakkad who stood accused in an abkari offence. A bail bond was executed by the appellant herein, inter alia, 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/-. Thereafter, accused remained absent and MC proceedings were initiated by the court below. In spite of service of notice, the appellant did not appear nor produced the accused. Hence, the court below, by the impugned order, imposed a penalty of Rs.10,000/- without granting any remission. This is under challenge in this appeal.

2. Heard and examined the records.

3. There is no dispute that the appellant had executed a bond undertaking to procure the presence of the accused on all posting dates and in case of default, to suffer penalty subject to a maximum of Rs.10,000/-. It is also not disputed that the accused remained absent and MC proceedings were initiated. Learned

counsel for the appellant contended that the appellant did not receive any notice in the MC proceedings. I am not inclined to believe this, since the impugned order itself indicates that notice was served on the appellant and she did not appear before the court below. In the above situation, Sessions Court was well within its jurisdiction to pass an order taking into consideration all facts and circumstances of the case.

4. However, learned counsel for the appellant invited my attention to paragraph 3 of the appeal memorandum wherein, it is stated that pursuant to the receipt of notice from the Village Officer, appellant approached the accused and persuaded him to appear before the Court. He was produced before the Court on 27.01.2011 and the Court remanded him. Learned counsel further contended that appellant is a woman and is not having any definite source of income. According to him, she is unable to pay the penalty and lives in a hut.

5. Having regard to the entire facts and circumstances, I feel that the court below ought to have taken a lenient view. It is true that accused was produced before the Court on a date subsequent to the impugned order. However, having regard to the

entire facts and circumstances of the case, I feel that a lenient view is liable to be taken. A sum of Rs.3,000/- payable by the appellant would serve the interest of justice.

In the result, the appeal is allowed in part. The impugned order is modified reducing the penalty imposed by the court below to a sum of Rs.3,000/- (Rupees three thousand only). Appellant is granted a months' time to remit the above amount, if not remitted earlier. If any amount in excess of it is remitted, the excess will be returned to the appellant through his counsel. Remission is granted with respect to the balance amount.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge