

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

Crl.Rev.Pet.No. 327 of 2015

JUDGMENT DATED 17-01-2015 IN CRA 488/2014 SESSIONS COURT, KOZHIKODE

**ORDER DATED 07.07.2014 IN MC.NO.2/2014 IN CC.NO.1020/2013 OF JUDICIAL FIRST
CLASS MAGISTRATE - II, THAMARASSERY**
.....

REVISION PETITIONER(S)/APPELLANTS/RESPONDENTS:

- 1. USSAIN @ ASSAIN,
S/O.UNNIMOYI HAJI, THIRITHIMMAL HOUSE, P.O.MANASSERI,
MUKKAM, KOZHIKODE.**
- 2. MOIDEEN,
S/O.ASSAIN, MANIPRA THAZEKKODE AMSOM DESOM, MUKKAM,
KOZHIKODE.**

**BY ADVS.SRI.P.G.JAYASHANKAR
SMT.V.VIJITHA**

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

Crl.Rev.Pet.No. 327 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A: TRUE COPY OF THE JUDGMENT DTD.5.8.2013 IN CC.NO.785/2011 ON
THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE II,
THAMARASSERY.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

C.T.RAVIKUMAR, J

Crl.R.P. No.327 of 2015

Dated this the 17th day of March, 2015

ORDER

This revision petition is directed against the judgment dated 17.1.2015 in Crl.A.No.488/2014 of the court of Session, Kozhikode. In and vide the impugned judgment the appellate court allowed the appeal in part filed against the order dated 7.7.2014 in M.C.No.2/2014 in C.C.No.1020/2013 of the court of the Judicial First Class Magistrate-II, Thamarassery. Evidently, the M.C. was registered against the revision petitioners under section 446 of the Code of Criminal Procedure. They stood as sureties for the accused in C.C.No.1020/013, but failed to make available the said accused for the trial before the trial court despite the receipt of notice in that regard. Evidently, notice was issued to the revision petitioners for producing the accused before the court. However, they failed to do so despite the receipt of such notice. It is in the said circumstances that the aforementioned M.C was registered against them. Admittedly, the revision petitioners executed a bond for ₹25,000/- each undertaking to produce the accused before the court and in case of failure to make available the accused before the court for

trial the said amount is liable to be forfeited. The order passed by the learned magistrate in M.C. No.2/2014 in the said calender case would reveal that show cause notice as contemplated under the provisions under section 446 of the Cr.P.C were issued to the revision petitioners and on receipt of the said notice they sought for time to produce the accused before the court. Evidently, the accused had gone abroad after obtaining bail from the court. It is to be noted that the accused is the son of the first revision petitioner and the brother of the second revision petitioner. In such circumstances, they cannot feign ignorance about the place where the accused is presently available. In such circumstances, the court below is perfectly justified in forfeiting the surety bond. Evidently, it is after effecting forfeiture of the bond that penalty of ₹25,000/- was imposed on the petitioner on the revision petitioner/sureties. The revision petitioners took up the matter in appeal as Crl.A.No.488/2014. The appellate court considered the entire contentions taken up by the revision petitioners to mount challenge against the order in M.C.No.2/2014 in C.C.No.1020/2014. Taking note of the fact that imposition of the entire bond amount as

penalty is too harsh, the appellate court found that the revision petitioners herein are deserving some leniency in the matter of penalty and accordingly interfered with the order of penalty imposed by the court below and modified and reduced it to ₹ 10,000/- This revision petition is filed against the said order.

2. I have heard the learned counsel for the revision petitioners and also the learned Public Prosecutor.

3. The revision petitioners who are respectively the father and brother of the accused in C.C.No.1020/2013 did not dispute the fact that they are stood as sureties to the said accused and executed a bond for ₹25,000/- with an undertaking to produce the accused before the court as and when required. Admittedly, the revision petitioners received notices from the trial court to produce the accused before the court. Despite the receipt of notice they could not produce the accused before the court. It is in the said circumstances that the surety bond was forfeited and the penalty was imposed. The trial court imposed the penalty of ₹25,000/- and taking note of the fact that the bond executed by the revision is for an amount of ₹25,000/- the appellate court interfered with the

same and reduced it to ₹10,000/- No illegality in the matter of procedures adopted by the courts below have been brought to my notice to compel this Court to exercise the revisional jurisdiction. That apart, evidently, the appellate court has interfered with the penalty imposed by the court below and modified and reduced it from ₹25,000/- to ₹10,000/-. I do think that further interference is called for in the said circumstances taking note of the failure on the part of the revision petitioners to make available the accused in C.C.No.1020/2013 for trial before the court below. In the said circumstances, in the absence of any procedural irregularity and in view of the fact that the appellate court has rightly interfered with and reduced the penalty imposed on the revision petitioners, I do not think that there is any further scope of interference. In the result this revision petition is liable to fail. When this Court was about to dismiss this revision petition the learned counsel for the revision petitioners submitted that some reasonable time may be granted to the petitioner to pay the amount of penalty. In the result the trial court is directed to keep in abeyance all coercive steps for recovering the amount of penalty for a period of two months. It is

made cleat that in case of failure on the part of the petitioner to pay the amount of fine as modified by the appellate court within the above stipulated time, appropriate steps shall be taken, in accordance with law, by the trial court.

Subject to the above, this revision petition is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

dlk