



CNR: KAHC010521832025

NC: 2026:KHC:42677
CRL.A No. 1598 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 10TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE S RACHAIAH
CRIMINAL APPEAL NO. 1598 OF 2025
(449(Cr.PC)/495(BNSS))

BETWEEN:

1. RESHMA
W/O MAHAMMAD
AGED ABOUT 59 YEARS
R/AT #1-6-136-1
KANCHINADKA
NADSAL, PADUBIDRI
UDUPI -574 111

2. FIROZ
C/O ABDUL RAHIMAN
AGED ABOUT 47 YEARS
R/AT# 1-6-121, KANCHNADKA
NADSAL, UDUPI, -574 111

...APPELLANTS

(BY SMT. SWATHI R. BHAT, ADVOCATE)

Digitally
signed by
SUSHMA
LAKSHMI
B S
Location:
High
Court of
Karnataka



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AND:

STATE OF KARNATAKA
BY ULLAL POLICE STATION
MANGALURU, D.K.
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
HIGH COURT BUILDING
BANGALORE 560 001

...RESPONDENT

(BY SRI. JAVEED S., HCGP)

THIS CRIMINAL APPEAL IS FILED U/S 449 CR.PC
(FILED U/S 495 BNSS) PRAYING TO SET ASIDE THE
ORDER DATED 21.10.2024 PASSED BY THE I
ADDL.DISTRICT JUDGE, MANGALORE IN
CRL.MISC.NO.692/2024 PROCEEDINGS IS INITIATED
UNDER SECTION 446 OF CR.PC.

THIS APPEAL, COMING ON FOR CLARIFICATION,
THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS
UNDER:

CORAM: HON'BLE MR. JUSTICE S RACHAIAH



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ORAL JUDGMENT

1. The appellants are the sureties to accused No.2 in S.C.No.71/2021 pending on the file of the I Additional District Judge, Mangaluru. They had stood as sureties for accused No.2 and he was released on bail. However, thereafter, he remained absent. NBW was issued against the accused and also notice to sureties was issued on 22.04.2024. Thereafter, bail bond of accused No.2 and surety bonds of appellants were forfeited by the Trial Court by its order dated 22.07.2024 and directed the office to register Criminal Miscellaneous Petition against the accused No.2 and his sureties and also directed to initiate proceedings as per Section 446 of the Code of Criminal Procedure (for short, "Cr.P.C.") against the appellants to recover the bond amount. Hence this appeal.
2. Heard Smt. Swathi R. Bhat, learned counsel for the appellants and Sri Javeed S., learned High Court Government Pleader for the respondent - State.



3. Learned counsel for the appellants submitted that the Trial Court has committed an error in understanding the provision of Section 446 of Cr.P.C. As per the said provision, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why he should not be paid.
4. It is further submitted that no such notices or NBWs were issued to the sureties. However, the Trial Court passed an order dated 21.10.2024 directing the Tahsildar of Kapu to sell the property of respondent Nos.1 and 2, which is arbitrary and illegal. Therefore, the said order has to be set aside and permit the appellants to approach the Court to pay the bond amount in view of the judgment of the Co-ordinate Bench of this Court in the case of ***Mr. CHANDRASHEKARA v. STATE OF KARNATAKA*¹**.

¹ Crl.A. No.116/2022 disposed on 24.02.2022.



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5. *Per contra*, learned High Court Government Pleader for the respondent - State justified the order passed by the Trial Court and prays to confirm the said order.
6. Having gone through the order passed by the Trial Court, it is relevant at this stage to refer Section 446 of Cr.P.C. which reads as under:

"446. Procedure when bond has been forfeited.—(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.—A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to



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recover the same as if such penalty were a fine imposed by it under this Code:

1[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The Court may, 2[after recording its reasons for doing so], remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved."

7. On going through the said provision stated *supra*, bond will be executed by the surety for appearance of the accused against whom he stood as surety. If he remained absent or in spite of issuance of NBW, if the



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accused is not traced or not possible to execute the warrant, notice to the surety is to be given and ask him to produce the accused or else he has to deposit the bond amount. On appearance of the surety before the Court, the Court shall record the reasons to forfeit the bond and proceed in accordance with law.

8. In the present case, the notices to sureties were not served and opportunity was not given to them to defend the case. However, the impugned order has been passed in their absence. Therefore, the order of the Trial Court in forfeiting the bond and directing the Tahsildar of Kapu to sell the property for compliance of the bond amount appears to be erroneous and untenable. Therefore, the same is liable to be set aside.
9. Hence, it is appropriate to pass the following:-

ORDER

- i) The Criminal Appeal is allowed.



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- ii) The order dated 21.10.2024 passed by the I Additional District Judge, Mangaluru, in Crl.Misc. No.692/2024 is set aside.
- iii) The appellants/ sureties are directed to appear before the Trial Court on 17.09.2026 to file necessary application to deposit the bond amount as per the judgment of the Hon'ble Supreme Court in accordance with law.
- iv) The Registry is directed to communicate this order to the Trial Court forthwith.

Sd/-
(S RACHAIAH)
JUDGE

Bss
List No.: 1 Sl No.: 49