

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

CRL.A.No. 91 of 2015

**AGAINST THE ORDER IN M.C.NO.22/2012 IN S.C.NO.455/2011 OF ADDL.SEESIONS
COURT (ADHOC) III, KASARAGOD**

APPELLANT(S)/RESPONDENTS/SURETIES:

- 1. MEENAKSHI, AGED 35 YEARS
W/O.PURUSHOTHAMA, KRISHNA NAGAR HOUSE, SOORAMBAIL,
EDANAD VILLAGE, KASARAGOD DIST.**
- 2. KUNCHA GATTY, AGED 60 YEARS,
S/O.CHOMANNA GATTY, KALLANGAI, BALLUR HOUSE,
MOGRAL PUTHUR P.O & VILLAGE, KASARAGOD DIST.**

BY ADV. SRI.S.JIJI

RESPONDENT(S)/COMPLAINANT/STATE:

**STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM**

BY PUBLIC PROSECUTOR SRI.JITHESH.R.

**THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 28-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Crl.Appeal.No. 91 of 2015

APPENDIX

APPELLANTS' ANNEXURES

ANNEXURE A-1 TRUE COPY OF THE JUDGMENT IN S.C.NO.455/2011
DATED 15.11.2012.

RESPONDENT'S ANNEXURES

NIL

//True Copy//

P.A. To Judge

Bb

K. Ramakrishnan, J.

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Crl.Appeal.No.91 of 2015

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Dated this, the 28th day of January, 2015.

J U D G M E N T

Counter petitioners in M.C.No.22/2012 on the file of Additional Sessions Court, (Adhoc)-III, Kasaragod are the appellants herein.

2. The appellants stood as surety for the second accused in S.C.No.455/2011 on the file of the Additional Sessions Court, (Adhoc)-III, Kasaragod for releasing him on bail on executing a bond for Rs.25,000/- and he was released on bail. Thereafter, he absconded and in spite of notice served on the appellants either to produce the accused or to show cause, they did not appear. So, the learned Additional Sessions Judge registered M.C.No.22/2012 under Section 446 (1) of Code of Criminal Procedure and since the appellants did not appear and show cause to the notice issued, the learned Additional Sessions Judge has imposed the entire bond amount of Rs.25,000/- each as penalty against the appellants. Aggrieved by the same, the present appeal has been preferred by the appellants - counter petitioners before the court below.

3. Since State is the only respondent and also considering the nature of enquiry involved, this court felt that the appeal can be admitted and disposed of after hearing the Counsel for the appellants and the Public Prosecutor. So, the appeal is admitted and heard and disposed of today itself.

4. The Counsel for the appellants submitted that the appellants are the wife and father in law of the accused in this case and though on receipt of the notice, they entrusted a Counsel to appear and submit their explanation, he omitted to appear and so, the impugned ex-parte order has been passed. Further, as per Annexure A1, it will be seen that the accused appeared and he was tried and acquitted by the court. So, he prayed for leniency.

5. The Public Prosecutor supported the impugned order.

6. It is an admitted fact that the appellants were the sureties of the second accused Purushothama Gatty in S.C.No.455/2011 on the file of the Additional Sessions Court, (Adhoc)-III, Kasaragod for releasing him on bail and he was released on bail by executing a bond for Rs.25,000/- with appellants as sureties. It is also an admitted fact that the

accused did not appear and so, the learned Sessions Judge issued Non Bailable Warrant to the second accused and in spite of that, his presence could not be procured. So, the learned Additional Sessions Judge decided to initiate proceedings against the appellants under Section 446(1) of Code of Criminal Procedure and accordingly, registered M.C.No.22/2012 and issued notice to the appellants either to produce the accused or to submit their explanation as to why the bond amount should not be imposed as penalty. The appellants have no case that they did not receive the notice nor had they appeared and submitted any explanation. The explanation given by the Counsel for the appellants was that though they entrusted the matter to a Counsel, he did not appear and represent the appellants. That is not a ground for coming to the conclusion that the order passed by the court below is illegal.

7. Further, in the decision reported in **Thundichi Vs. State of Kerala [2009 (4) KLT 67]**, the Division Bench of this court has held that once the accused did not appear on a date on which he was expected to appear, then, forfeiture of bond is automatic. Since the appellants did not appear and

submit any explanation, court below was perfectly justified in initiating the proceedings and imposing penalty on the appellants and that action of the court below do not call for any interference.

8. As regards the quantum of penalty imposed is concerned, it is seen from Annexure 1 judgment that the second accused had later appeared and faced trial and he was acquitted by the court below. The appellants are none other than the wife and father in law of the second accused. The fact that he appeared later and faced trial can be taken as a mitigating circumstance to show some leniency in imposing the penalty. So, reducing the penalty amount to Rs.8,000/- each will be sufficient and that will meet the ends of justice. So, the order passed by the court below imposing the entire bond amount of Rs.25,000/- each as penalty is set aside and the same is modified as follows:

The appellants are directed to pay a penalty of Rs.8,000/- each and remission is granted in respect of the balance amount. If the amount is not paid and could not be recovered from the appellants, then, they are directed to be detained in Civil prison for 10 days each. If the appellants have remitted any excess amount over and above the amount fixed by this court

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as penalty, then, the lower court is directed to refund the same to them.

With the above modification of the penalty amount alone, the appeal is allowed in part and disposed of accordingly.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge