

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

CRL.A.No. 710 of 2015 (A)

AGAINST THE ORDER IN M.C.NO.97 OF 2014 IN S.C.NO.456 OF 2014 OF THE
COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE-I, KASARAGOD
CRIME NO. 39/2009 OF KUMBLA POLICE STATION , KASARGOD

APPELLANTS/COUNTER PETITIONERS:

1. ABBAS, S/O. ABDULKHADER,
RESIDING AT MANKATHADKA
BERIPADAVU P.O, KASARAGOD
2. BALAKRISHNA SHETTY,
S/O. MAHALINGA SHETTY, RESIDING AT KUDALMARKALA
SULAIKATTA P.O, KAYYAR VILLAGE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT/COMPLAINANT & STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY PUBLIC PROSECUTOR SMT.T.Y.LALIZA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.A.No.710 of 2015

Dated 30th July, 2015

JUDGMENT

This appeal preferred under Section 449 of the Code of Criminal Procedure is directed against the order in M.C.No.97 of 2014 in S.C.No.456 of 2014 passed by the Court of Additional District and Sessions Judge-I, Kasaragod. The appellants stood as sureties to the accused in S.C.No.456 of 2014 who is facing trial for prosecution on the charge of commission of an offence under Section 307 read with Section 34 of the Indian Penal Code. Since the accused for whom the appellants stood as sureties remained absent the trial Court issued non-bailable warrant against him. The court also issued notice to the appellants requiring them to procure the presence of the accused to whom they stood as sureties and to appear before the court and offer explanation as to why the bail bond should not be forfeited and penalty should not be imposed on them. Evidently, the notice on the first appellant was served through his relative and that of the second appellant was served by affixture. Despite service of notice they did not care even to appear before the court. Consequently, after following the procedures the bail bond was forfeited and the trial Court

imposed ₹ 25,000/- each as penalty on the appellants. Distress Warrant was issued and it was further ordered that in case Distress Warrant is impracticable, the defaulters shall undergo imprisonment in civil prison for three months. Hence, this appeal.

2. Taking note of the contention of the appellants that the accused was available very much in the locality the appellants were virtually granted time by this Court to procure his presence before the trial Court. Even when this matter is taken up for consideration today it is admitted by the counsel that the appellants could not procure the presence of the accused and produce him before the trial Court. There cannot be any doubt with respect to the position that whenever a person stood as surety to an accused who is facing a trial in a serious offence as and when the court required the said surety to procure the presence of the accused he is bound to procure the presence of the concerned accused. Evidently, in this case, owing to the absence of the accused before the court, the court issued notice to the appellants who stood as sureties to the accused who is facing trial in a very serious charge for the offence under Section 307 read with Section 34, IPC. The learned counsel for the appellants contended that notices were not actually

served on the appellants. When the notice was served on the first appellant through relative and notice on the second appellant was served by affixture the appellants could not be heard to contend that notices were not duly served on them. That apart, pending this appeal, this Court virtually adjourned the matter solely to enable the appellants to procure the presence and to produce the concerned accused before the trial Court. Hitherto the appellants could not secure the presence and produce the concerned accused before the trial court. It is to be noted that the appellants have not appeared before the trial Court and offered an explanation as to why they could not procure the presence of the accused and why the bail bond should not be forfeited or penalty should not be imposed on them. When that be the manner in which the appellants who stood as sureties responded pursuant to the receipt of notice from the trial Court in the proceedings initiated under Section 446, Cr.P.C. I am of the view that the order impugned does not call for any interference especially on account of their failure to secure the presence of the accused and produce him before the Court. Though a proceeding under Section 446, Cr.P.C. requires a serious consideration and such a serious consideration in accordance with law is not actually reflected in the impugned order, in view of the aforesaid circumstances, I

do not think that any appellate interference is called for. There is absolutely no justification for the appellants for not appearing before the trial Court. In the said circumstances, this appeal is liable to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS