

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

Crl.Rev.Pet.No. 1073 of 2015

**AGAINST THE JUDGMENT IN CRL.A.NO.149/2015 OF SESSIONS COURT,
KASARAGOD DATED 01-07-2015**

**AGAINST THE ORDER IN M.C.NO.72/2015 OF JUDICIAL FIRST CLASS
MAGISTRATE'S COURT-II, HOSDRUG DATED 10-03-2015**

REVISION PETITIONER(S)/APPELLANTS/ COUNTER PETITIONERS :

- 1. P.K.HUSSAIN, AGED 58 YEARS,
S/O.HUSSAINKUTTY, RESIDING AT PATERIKUNNATHU KATTIL HOUSE,
NANNAMBRAM VILLAGE, THAYYALINGAL P.O.,
TIRURANGADI TALUK, MALAPPURAM DISTRICT.**
- 2. FAKRUDDEEN, AGED 51 YEARS,
S/O.MUHAMMED, RESIDING AT NOTTAMVEETIL, THANOOR,
TIRURANGADI TALUK, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.T.MADHU
SMT.C.R.SARADAMANI**

RESPONDENT(S)/STATE :

**THE STATE OF KERALA,
THROUGH THE SUB INSPECTOR OF POLICE,
BAKEL POLICE STATION, KASARAGOD DISTRICT,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**

BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 22-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1073 of 2015

Dated this the 22nd day of September, 2015

ORDER

The revision petitioners are the counter petitioners in MC 72/2015 on the files of the court of the Judicial Magistrate of First Class-II, Hosdurg.

2. The learned Magistrate directed the revision petitioners to pay a penalty of Rs.20,000/- each, under Section 446 Cr.PC. In the appeal filed against the said order, the penalty was modified to an amount of Rs.10,000/- each as per judgment in Crl.Appeal No.148/2015. Aggrieved by the said judgment, this revision petition has been filed.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. It appears from the records that the revision petitioners executed a bond on 21.11.2014 for the release of the accused namely, Zainudin, on bail in Crime

No.789/2014 of Bekal Police Station. However, the accused did not appear before the Investigating Officer as directed by the Investigating Officer. In the said circumstances, an application was filed before the learned Magistrate, informing the learned Magistrate about the violation of the condition of the order granting bail. The learned Magistrate issued notice to the revision petitioners on being satisfied that the bail bond had been forfeiture. The revision petitioners did not appear before the learned Magistrate in response to the notice issued by the court of the learned Magistrate. In the said circumstances, the learned Magistrate directed each of the revision petitioners to pay a penalty of Rs.20,000/- each, under Section 446 Cr.PC.

5. The learned counsel for the revision petitioners has argued that the revision petitioners were not served with any notice before passing the order impugned and in the said circumstances, the order impugned cannot be said to be legal, proper and correct and consequently, the same

cannot be sustained.

6. It appears from the records that the learned Magistrate issued notice to the revision petitioners on 12.01.2015, directing the revision petitioners to appear before the learned Magistrate on 10.02.2015. The said notice was served by affixture. The learned Magistrate thereafter issued notice on 27.02.2015, directing the revision petitioners to appear before the learned Magistrate on 10.03.2015. The said notice does not contain any endorsement that the said notice had been served on the revision petitioners. Since notice had been issued on 27.02.2015, it has to be presumed that the learned Magistrate did not incline to accept the service of the earlier notice by affixture. However, the court below passed the order impugned on 10.03.2015 itself, which was the date on which the revision petitioners were directed to appear before the learned Magistrate. Since there is nothing on record to indicate that the notice was served on the revision petitioners, it has to be held that the order was

passed by the court below without serving notice on the revision petitioners. It is settled law that it is mandatory that after forfeiting the bail bond, notice must be served on the sureties under Section 446(1) of the Code calling upon the sureties to pay the penalty or to show cause why the penalty should not be imposed. Since the learned Magistrate passed the order impugned without serving notice on the revision petitioners, the order impugned cannot be said to be legal, proper and correct and consequently, I set aside the same.

In the result, this revision petition stands allowed and the order impugned stands set aside.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

sm/