

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. 1075 of 2015

JUDGMENT DATED 01-07-2015 IN CRL.A 148/2015 OF SESSIONS COURT, KASARAGOD

**ORDER DATED 10-03-2015 IN MC 67/2015 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT - II, HOSDRUG**

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REVISION PETITIONER(S)/APPELLANTS/COUNTER PETITIONERS:

- 1. P.K.HUSSAIN, AGED 58 YEARS,
S/O.HUSSAINKUTTY,
RESIDING AT PATTERIKUNNATHU 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,
BEKAL 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:**

msv/

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1075 of 2015

Dated this the 22nd day of September, 2015

ORDER

The revision petitioners are the counter petitioners in MC 67/2015 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 bond on 21.11.2014 for the release of the accused namely, Abdul Salam, 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 condition of the bail order by the accused. 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 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. It appears from the records that the

notice directing the revision petitioners to appear before the learned Magistrate on 10.03.2015, had been returned with the endorsement that the said notice could not be served on the revision petitioners due to shortage of time. In the said circumstances, the Station House Officer sought for further time for the service of notice. However, the learned Magistrate recorded that the notice was served by affixture. The said observation of the learned Magistrate is not correct in view of the specific endorsement on the notice issued to the sureties, who are the revision petitioners. It is settled law that it is mandatory that after forfeiting the bail bond, notice must be served on the sureties calling upon the sureties to pay the penalty or to show cause why the penalty should not be imposed. However, before effecting the service of notice, the learned Magistrate passed the order impugned, directing the revision petitioners to pay the penalty. 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

//TRUE COPY//

P.A.TO JUDGE

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