

(2022) 04 KL CK 0040
In the High Court Of Kerala
Case No : Writ Petition (C) No. 3690 Of 2022

Aboobacker

APPELLANT

Vs

District Collector Kasaragod, Civil Station, Vidyanagar,
Kasaragod 671123

RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 446

Indian Penal Code, 1860 — Section 354

Protection of Children from Sexual Offences Act, 2012 — Section 7, 8

Citation : (2022) 04 KL CK 0040

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : P.P.Biju, S.R.Sreejith, Kabir U,. Parvathy Kottol

Final Decision : Disposed Of

Judgement

N. Nagaresh, J.

1. The petitioner, who was one of the sureties for the accused in SC No.533/2016 on the file of the Court of the Additional Sessions Judge-I, Kasaragod, has approached this Court seeking to stay all further proceedings in Ext.P1 demand notice issued by the 2nd respondent.

2. The petitioner states that he stood as a surety for the accused in SC No.533/2016 which was registered for an offence punishable under Section 354 IPC and Sections 7 and 8 of the Protection of Children from Sexual Offences Act. The Additional Sessions Judge-I, Kasaragod registered MC No.48/2018 against the petitioner and another for realising an amount of ₹ 35,000/- each for the non-appearance of the accused before the court. Ext.P1 demand notice dated 07.08.2020 has been issued to the petitioner.

3. The petitioner states that neither the petitioner nor the accused has received any summons or intimation from the Additional Sessions Judge-I, Kasaragod

warranting their appearance before the court. The petitioner came to know about the proceedings only when demand for revenue recovery was received. The petitioner states that he is suffering from mental issues for the past several years and has kidney related problems also. The petitioner is having 23 Cents of land and a small residential building. His family consists of wife and six children. If Ext.P1 notice is executed, the petitioner and his family will be thrown to streets.

4. I have heard the learned counsel for the petitioner and the learned Government Pleader representing the respondents.

5. The petitioner, subsequent to the filing of the writ petition, has produced Ext.P6 judgment of this Court in Criminal Appeal No.148 of 2022. The said Criminal Appeal is one filed by the petitioner herein challenging the order passed in MC No.48/2018 on the files of the Additional Sessions Judge-I, Kasaragod.

6. By the said Ext.P6 judgment, this Court disposed of the Appeal holding as follows:

4. Admittedly, the appellant stood as one of the surety for the accused in S.C. No.533/2016 by executing a bond for Rs.50,000/-. It is also not in dispute that the accused failed to appear at the court below and non bailable warrant was issued against him. The mere failure on the part of the accused to appear at the court below on the date of hearing would result in automatic forfeiture of the bond. Hence, the court below was absolutely justified in initiating proceedings under Section 446 of Cr.P.C and treating the bond executed by the appellant as forfeited.

5. The next point to be considered is the quantum of penalty imposed. The court below imposed Rs.35,000/- as penalty. The learned counsel for the petitioner submits that the petitioner is working as a supplier in a hotel and now he is suffering from kidney disease. The counsel submitted that the petitioner's one kidney is to be replaced. He further submitted that, at present, he is not having a job or source of income. In these circumstances, I am of the view that the penalty imposed can be reduced to Rs.10,000/- (Rupees ten thousand).

This Court considered the legality of the penalty imposed by the court below. This Court reduced the penalty from ₹ 35,000/- to ₹ 10,000/-. In the circumstances of the case, Ext.P1 demand notice for ₹ 35,000/- would not be maintainable.

7. Ext.P1 demand notice is therefore set aside. The respondents will be free to proceed against the petitioner in accordance with law invoking the provisions of the Kerala Revenue Recovery Act for recovery of the amount of ₹ 10,000/-, if the petitioner does not pay the said amount within a reasonable time.

The writ petition is disposed of as above.