

(1981) 11 KL CK 0003
In the High Court Of Kerala

Kunju Mohammed and Another

APPELLANT

Vs

Court of Judicial 1st Class Magistrate and Another

RESPONDENT

Date of Decision : 13-11-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 441

Citation : (1982) CriLJ 475

Hon'ble Judges : P. Janaki Amma, J

Bench : Single Bench

Judgement

Ku. P. Janaki Amma, J.—The petitioners stood sureties for accused 11 and 30 in P. E. No. 9 of 1978 on the file of the Judicial Magistrate. Second Class, Parur. They executed a bond agreeing to make good an amount of Rs. 1,500/- each in case of default of appearance of the accused in that case. The case was in due course committed for trial to the Court of Session, Ernakulam and was made over to the Assistant Sessions Judge, Parur. Summons to accused 11 and 30 were returned unserved. The two accused did not appear before the Assistant Sessions Judge. While so, the Court of the Second Class Magistrate, parur, was upgraded into a first class court. The Assistant Sessions Judge directed the Judicial Magistrate. First Class, Parur, to take steps for forfeiture of the surety bond. The Judicial Magistrate, First Class, initiated separate proceedings in respect of the two accused and issued notices to the two sureties to show cause why an amount of Rs, 1,500/- should not be realised from each of them in respect of each of the accused. The sureties objected. The Magistrate overruled their objections and directed them to pay the amount covered by the bond. The petitioners filed appeals before the Sessions Court, Ernakulam. The Additional Sessions Judge, to whom the appeals were made over, dismissed the appeals. The revision petitions are filed challenging the orders passed by the Additional Sessions Judge, Parur.

2. There is no case for the petitioners that accused 11 and 30 appeared before Court as per the undertaking in the bond. The evidence is to the effect that the

accused left the country and are away in the middle east. Though there is a contention that no formal orders stating the grounds of forfeiture have been passed, this is belied by the records available in the case. In fact, the Court has considered the matter in detail in the two orders passed on 23rd Nov. 1979. The sureties-petitioners then contended that there was no willful laches on their part in the matter of non-appearance of the accused. But the contention is of no avail in the light of the terms of the bond.

3. Another ground of objection is that the bond, which has been forfeited, is not in Form No. 45 in the second schedule to the Criminal P. C. 1973 and that it is Form No. 47 which was prescribed under the Code of 1898. The main difference in Form No. 45 under the new Code and Form No. 47 under the old Code is that while Form No. 45 does not contain any undertaking to the effect that the accused concerned should present himself before the Court of Session in Form No. 47 under the old Code such an undertaking is also incorporated. The argument is that it was incumbent on the Court to take the bond in the form prescribed under the new Code and in view of the omission the petitioners are not to be called upon to abide by the terms. The contention has no weight. It is noted in this connection that Section 441, which deals with the bond of accused and sureties, mentions in Sub-section (3) that if the case so requires the bond shall also bind the person released on bail to appear when called upon at the High Court, a Court of Session or other Court to answer the charge. The bond that has been executed by the petitioners is in conformity with the above provision and as such nothing stands in the way of its enforcement.

4. There is however one irregularity that is patent on the face of the bond executed. When two or more persons are released on bail on their executing bonds for particular amounts with sureties for each of them what is expected under the Code is that each one of them should execute a separate bond with sureties. Form No. 45 of the new Code and Form No. 47 of the old Code are designed with this principle in view. Form No. 45 reads:

I (name) of (place), having been arrested or detained without warrant by the Officer in charge of police station (or having been brought before the Court of charged with the offence of and required to give security for by attendance before such Officer or Court on condition that I shall attend such Officer or Court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default herein, I bind myself to forfeit to Government the sum of rupees.

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the above said (name) that he shall attend the Officer in charge of police station or the Court of on every day on which any investigation into the charge is made or any trial on such charge is held, that he shall be, and appear, before such officer or Court for the purposes of such investigation or to answer the charge against him (as the case may be), in case of his making default herein, I hereby bind myself (or we hereby bind ourselves)

to forfeit to Government the sum of rupees

In the instant case what has been done is that all the 35 accused in C. P. No. 9 of 1978 executed a joint or consolidated bond undertaking to appear before the Court as and when required. Following that the two petitioners jointly and severally declared themselves and each of them sureties for the said accused and ensured their appearance in Court as and when required during the preliminary enquiry, that if the case be transferred to any other Court or sent for trial by the Court of Session or sent to superior Court u/s 349 of the Criminal P. C. 1898 the accused would appear before the said Court and that in case of default they bound themselves to forfeit to Government the sum of Rs 1,500/- each.

5. From the language of the bond it is clear that the undertaking by the sureties was only to make good Rs. 1,500/- each on default of appearance of the accused. An undertaking to pay Rs. 1,500/- on default of each of the accused cannot be spelt out from the bond executed in the case, it is a well accepted principle that a surety bond should be strictly construed. If that be so, the order made by the Magistrate that each of the petitioners should deposit Rs. 1,500/- for each of the defaulting accused, viz., accused 11 and 30, cannot be sustained. The terms of the bond executed by the petitioners would be satisfied if they pay Rs. 1,500/- each as penalty for forfeiture of the bond. The order directing the revision petitioners to pay Rs. 1,500/- each separately for the default of appearance of each of the accused (accused 11 and 30) is set aside and they are called upon to pay Rs. 1,500/- each in both the proceedings together.

6. It is only apt to point out that a grave irregularity has been committed by the Court of the Second Class Magistrate, Parur, in getting the surety bond executed. What Section 441 of the Criminal P. C. directs is that before any person is released on bail, a bond should be executed by such person and by one or more sufficient sureties to ensure his attendance. It follows that when more than one accused are released on bail, Court should insist on separate bonds being executed by each of the accused with sureties. Form No. 45 in Schedule II of the Code is designed for a single accused. It is therefore incumbent that the Court should get separate bonds executed by individual accused and the concerned sureties. The Criminal P. C. does not contemplate a consolidated bond being executed either by the persons directed to be released or by the sureties. If the same sureties are to execute bonds, then sufficiency as contemplated by Section 441 of the Code should be considered with reference to all the persons taken together and the undertaking should be that they would be liable for the amount specified in respect of each of the accused.