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**(2010) 09 KL CK 0175**

**In the High Court Of Kerala**

**Case No : Criminal MC. No. 3908 of 2010**

Shylesh, Rajeeesh @ Kuttappu and Arjun @ Kichu

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision : 23-09-2010**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482

**Citation : (2010) 09 KL CK 0175**

**Hon'ble Judges : Sasidharan Nambiar, J**

**Bench : Single Bench**

**Advocate : Latha Prabhakaran, for the Appellant; No Appearance, for the Respondent**

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## **Judgement**

M. Sasidharan Nambiar, J.—Petitioners are the accused in C.C. No. 540/2008 on the file of Judicial First Class Magistrate's Court-IV, Kozhikode, This petition is filed u/s 482 of Code of Criminal Procedure to quash Annexure-A order passed by the learned Magistrate, directing petitioners to pay cost to the witnesses, who were present in court, but could not be examined for the failure of the petitioners to appear. It is submitted that an application for adjournment was moved by the counsel on behalf of the petitioners.

2. Learned Counsel appearing for the petitioners was heard.

3. Argument of the learned Counsel is that though CWs 1 to 4 were present earlier, the case was adjourned not on account of the petitioners but due to non-availability of Assistant Public Prosecutor and on 6.7.2010, adjournment was granted on valid grounds and hence, cost should not have been awarded and in any case, the cost awarded is excessive.

4. Annexure-A order of the learned Magistrate shows that on the previous posting day also, CWs 1, 3 and 4 were present and petitioners were absent and witnesses could not be examined and they were directed to appear on the next posting day and on which day also, petitioners were absent and sought

adjournment. It is in such circumstances, learned Magistrate granted adjournment directing petitioners to pay cost at the rate of Rupees One thousand each to the four witnesses in addition to imposition of a cost of Rupees One thousand to the State.

5. When prosecution witnesses were present in court and the case was adjourned due to the failure of the accused to appear and later, when the witnesses again appeared and the accused failed to appear and adjournment was sought for, learned Magistrate was justified in granting cost to the witnesses as it was not due to the failure of the witnesses that they could not be examined. In such circumstances, I find no reason to interfere with the cost awarded to the witnesses. But, there is no justification for awarding cost to the State. Hence, Annexure-A order is modified to the extent of quashing the cost of Rupees One thousand to the State.

Petition is disposed.