

IN THE COURT OF THE SPECIAL JUDGE (NDPS ACT CASES), VATAKARA

Present:-Sri. Biju V G, Addl. District & Sessions Judge

Wednesday, the 29th day of April, 2026

Criminal Appeal No. 342/2025

(Filed to District Court, Kozhikode and made over to this Court on 08.09.2025)

From which court the appeal is preferred : Judicial First Class Magistrate -II, Vatakara

Number of case in that court : MC 3/2016 in CC 293/2014

Number of the appeal : CrI.A.No. 342/2025

Name and Description of the Appellants : 1. Kasim S/o Kunhabdulla, Palorammal House, Thodannur PO, Vatakara Taluk, Kozhikode
2. Kunhabdulla, S/o Ammed, Kuneemmal House, Cheruvannur PO, Koyilandy Taluk, Kozhikoide

Name & description of Respondent : State of Kerala, Represented by Public Prosecutor, Kozhikode

The sentence and law under which it was imposed in the lower court . : As respondents failed to show reason for non-imposition of penalty on the forfeited bond, a penalty of Rs.25,000/- each (Rupees Twenty Five Thousand only) is hereby imposed. Issue distress warrant against R1 and R2 for the bond amount of Rs. 25,000/- (Rupees Twenty Five Thousand only)

Whether confirmed, reversed or modified and if modified, the modification. : Appeal is allowed

Date of

Presentation	Filing	Issuance of notice to the respondent	Appearance of respondent	Appellant ordered to appear	Release on execution of bail bond	Final hearing	Judgment
08.09.2025	08.09.25	10.09.2025	10.10.2025	10.10.25	--	27.4.26	29.4.2026

This Appeal coming on 27th day of April, 2026 for final hearing before me upon perusing the petition of appeal and records of evidence and proceedings and upon hearing the arguments of Sri. Ali Siyad Advocate for the Appellants and of Addl. Public Prosecutor on behalf of the State and having stood over to this day for consideration, the Court delivered the following:

JUDGMENT

The appeal has been filed under Section 495 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) against the order dated 12.05.2016 in M.C. No.3/2016 in C.C.293/2014 on the file of the Judicial First Class Magistrate Court-II, Vatakara.

2. Brief narration of the proceedings suo motu initiated by the trial court: - The respondents stood as sureties for the accused in C.C.293/2014 on the file of the Judicial First Class Magistrate Court-II, Vatakara and executed bond for ₹25,000/- each. Subsequently, the accused failed to appear before the trial court, and the bond executed by the accused and the respondents stood forfeited. Show cause notices were issued to the respondents directing them to appear and explain why penalty should not be imposed. As the respondents failed to show any sufficient cause, the trial court imposed a penalty of ₹25,000/- each.

3. Aggrieved by the order imposing penalty, the present appeal has been preferred by the respondents.

4. The case of the appellants is as follows: - The appellants did not receive any notice from the trial court and were unaware of the cancellation and forfeiture of the bail bond executed by them. Consequently, they were unable to

appear before the trial court, produce the accused, or show sufficient cause for non-production. The trial court, without affording them an opportunity of being heard or granting a proper chance to place the relevant facts, passed the impugned order imposing penalty. The appellants later came to know that the accused had surrendered before the trial court, bail was granted to him, and the case was re-filed as S.T. No.272/2013. In these circumstances, the impugned order is unsustainable and pray that it be set aside, absolving them from the liability to pay the penalty amount.

5. The appeal was filed along with C.M.P. No.32/2025 seeking condonation of a delay of 3370 days in filing the appeal. The delay was condoned as per order dated 19.11.2025, and the appeal was accordingly admitted. Notice was issued to the respondent, who entered appearance through counsel. The trial court records were called for and duly received.

6. The arguments of the learned counsel for the appellants and the respondent were heard. The appeal memorandum, trial court records, and other materials on record were carefully perused.

7. The point that arises for consideration in this appeal is: -
“Whether the impugned order dated 12.05.2016 in M.C. No. 3/2016 in C.C. 293/2014 on the file of the Judicial First Class Magistrate Court-II, Vatakara, imposing penalty on the appellants, is liable to be confirmed, varied, or set aside?

8. **The Point:** - The appellants stood as sureties for the accused in C.C. No.293/2014 on the file of the Judicial First Class Magistrate Court-II, Vadakara. The appellants, along with the accused, executed bail bond for ₹25,000/- each on 06.05.2015. Subsequently, the accused failed to appear before the court, and the bail bond was forfeited and cancelled.

9. The trial court, finding that the appellants had failed to appear and show cause against the imposition of penalty despite service of notice, imposed a penalty of ₹25,000/- each on them.

10. It is an admitted fact that the appellants stood as sureties for the accused in C.C. No.293/2014 on the file of the Judicial First Class Magistrate Court-II, Vadakara. It is also undisputed that the accused failed to appear before the court, resulting in forfeiture of the bail bond executed by the accused and the appellants.

11. The first contention raised by the appellants is that they did not receive any notice from the trial court and were not aware of the fact that the bail bond was cancelled and forfeited. The trial court records indicate that notice was issued to the sureties in C.C. No.293/2014 to appear on 30.04.2016.

12. The notice issued to the first respondent was returned with a report stating that it was served through a relative of the respondent. It is true that when the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates with an adult male

member of his family residing with him. However, in the present case, the report does not contain the name or signature of the relative who allegedly received the notice. Moreover, there is nothing in the report to show that the notice was served on an adult male member of the first respondent's family residing with him. Therefore, there is nothing on record to establish that the notice was properly served on the first respondent.

13. The notice issued to the second respondent was returned with a report that it was served by affixure on his house in the presence of his wife. It is true that notice may be served by affixing a copy to some conspicuous part of the house or homestead in which the person summoned ordinarily resides. However, such a course can be adopted only when service of notice cannot, by the exercise of due diligence, be effected in the manner provided under Sections 62 or 64 Cr.P.C.

14. In the present case, no reason has been stated for resorting to service by affixure without first taking efforts to serve the notice personally on the second respondent or on an adult male member of his family residing with him. Moreover, the report of the serving officer does not contain any details to show that the notice was actually affixed on the house of the second respondent. Therefore, there is no proper service of notice to the second respondent.

15. In view of the aforesaid facts, I find force in the contention of the appellants that the notice was not duly served on the respondents. The records reveal that the service of notice was not effected in the manner prescribed under

law, and the prosecution has failed to establish proper service. This demonstrates that the penalty was imposed upon the appellants without affording them a proper opportunity to show cause. Such denial of opportunity amounts to violation of the principles of natural justice, thereby vitiating the impugned order.

16. The next contention raised by the appellants is that the accused had already surrendered before the trial court, whereupon the case was re-filed as S.T. No.272/2013, and subsequently the accused was convicted. This fact is not disputed by the respondent.

17. Taking the aforesaid facts into consideration, I am of the view that the order in M.C. No.3/2016 in C.C. No.293/2014 imposing penalty on the appellants is liable to be set aside. The point is found accordingly.

In the result, the appeal is allowed. The impugned order dated 12.05.2016 in M.C. No.3/2016 in C.C. No.293/2014 on the file of the Judicial First Class Magistrate Court-II, Vadakara is set aside. The appellants are entitled to refund of ₹2,500/- deposited before the trial court for stay of execution of the impugned order as per the order in appeal. Communicate a copy of this judgment forthwith to the trial court.

(Dictated to the Confidential Assistant, typed by her directly in the computer, corrected and pronounced by me in open Court, this the 29th day of April, 2026).

Sd/-
Addl. District & Sessions Judge

Witnesses examined and Exhibits marked: Nil.

Sd/-

Addl. District & Sessions Judge

//True Copy//

SHERISTADAR

Copied By : Soumya E V, U.D Typist
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