

1971

*Present: Sirimane. J*

E. G. PODIAPPUHAMY, Appellant, and H. M. SENEVIRATNE,  
Respondent

*S. C. 395/70—M. C. Avissawella, 94442*

*Criminal Procedure Code—Section 411 (1)—Surety—Bond for appearances of  
accused in Court—Procedure on forfeiture.*

When a person has executed a bond standing surety for an accused person's appearance in Court, the absence of the accused without excuse is in itself sufficient prima facie proof that there has been a breach of the undertaking given in the bond. There are no further grounds that a Magistrate need record before the surety is called upon to show cause why his bond should not be forfeited.

**A**PPEAL from an order of the Magistrate's Court, Avissawella.

*L. W. Athulathmudali*, for the surety-appellant.

*Sunil de Silva*, Crown Counsel, for the Attorney-General.

August 3, 1971. SIRIMANE, J.—

The appellant in this case stood surety for the accused in a sum of Rs. 2,000/-. The accused was consistently absent on the trial dates, and the Court then issued notice on the appellant, on whom such notice was served not without some difficulty.

The appellant was given an opportunity of producing the accused. He failed to do so, and the Magistrate then called upon him to show cause why his bond should not be forfeited for failure to produce the accused.

The appellant stated that he had no cause to show. The Magistrate then ordered him to pay the penalty, and in default to undergo simple imprisonment for six months.

Counsel for the surety-appellant submits that under section 411 (1) of the Criminal Procedure Code, the Magistrate should first have recorded

the grounds of proof that the bond has been forfeited before calling on the appellant to show cause why he should not be penalised. He relies on the case of *de Silva v. S. I. Police, Kandy* (63 C. L. W. 109).

Section 411 (1) really deals with two types of bonds—

(a) bonds which are taken for the performance or observance of certain specified conditions, e.g., bonds to be of good behaviour, under section 325 of the Code, or to keep the peace, under section 81, and

(b) bonds which are purely for the appearance of an accused person before Court on the trial dates.

In the former case there must be proof to the satisfaction of the Court that there has been a breach of the conditions of the bond by the accused and/or his surety.

When the bond is for appearance before Court, the absence of the accused without excuse is in itself sufficient *prima facie* proof that there has been a breach of the undertaking given in the bond. There are no further grounds that a Magistrate need record. In my opinion, that is all that the section requires in the case of bonds for appearances in Court before a surety is called upon to show cause.

With great respect, I am unable to agree with the decision in *de Silva v. S. I. Police, Kandy*, in so far as it applies to bonds purely for an accused's appearance in Court.

The appeal is dismissed.

I would like to make it clear, however, that before the default sentence is carried out, a distress warrant should be issued in an effort to recover the amount of the penalty.

*Appeal dismissed.*

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