

Court No. - 16

Case :- CRIMINAL APPEAL No. - 1849 of 2004

Appellant :- Basant Lal And Another

Respondent :- State of U.P.

Counsel for Appellant :- Anurag Shukla

Counsel for Respondent :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

1. Heard learned counsel for the parties and perused the material available on record.
2. This is an appeal under Section 449 Cr.P.C. against the judgment and order dated 16.08.2004 passed by the court of Additional Sessions Judge, Court No.6, Hardoi, in Misc. Case No. 7/2004, under Section 446 Cr.P.C. arising out of N.D.P.S. Case No. 105/99, under Section 20 of N.D.P.S. Act, Case Crime No. 155/99, Police Station Arval, District Hardoi, whereby the trial court rejected the application of the appellants and directed the Station House Officer, Police Station Arval to sale the attached property of the appellants and deposit the sum in the court immediately.
3. Learned counsel for appellants has submitted that the appellants were sureties of Rs. 15000/- each in N.D.P.S. Case No. 105/99, under Section 20 N.D.P.S. Act of accused Man Singh.
4. Learned counsel for appellants has further submitted that as soon as the appellants received the information about the abscond of the accused Man Singh, they made their best efforts to surrender the accused before the court.
5. Learned counsel for appellants has further submitted that the accused Man Singh did not actually abscond but failed to attend court due to personal difficulties. On 10.05.2004, the Additional Sessions Judge issued a show cause notice to the appellants. After knowing of the accused absence, the appellants, through their dedicated efforts,

presented Man Singh before the Sessions Judge on 07.07.2004, seeking cancellation of the warrant issued against him. The learned Additional Sessions Judge then took the accused into custody and remanded him to jail.

6. Learned counsel for appellants has further submitted that following the production of the accused before the court, the appellants filed an application on 16.08.2004 requesting the recall of the order dated 10.05.2004 (regarding the attachment of their property) and the discharge of the sureties.

7. Learned counsel for appellants has further submitted that the trial court however, rejected the appellants' application. The next day, i.e., on 17.08.2004, the appellants filed another application with the same request, which was also rejected by the learned Additional Sessions Judge, Court No. 6, Hardoi.

8. Learned counsel for appellants has further submitted that the appellants contends that since the accused Man Singh has been in jail since 07.07.2004, there was no justification for maintaining the order of attachment of the appellants' property.

9. Learned counsel for the appellants has further submitted that the appellants are not the accused in this case. He stood surety and proceeding under Section 446 Cr.P.C. is as follows:

“(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. Explanation.- A condition in a bond for appearance, or for production of property, before a Court shall be

construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code. It provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and,; if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.”

10. Learned AGA submitted that the purpose of Section 446 Cr.P.C. is to ensure compliance with court orders and secure the presence of the accused. The attachment of property serves as a deterrent against non-compliance and a mechanism to enforce the surety's obligation.

11. Learned AGA further submitted that the appellants' application for recall of the attachment order was made only after the accused was produced in court. The timeliness and nature of their efforts should be evaluated in light of their original obligation and the necessity of the attachment order.

12. Learned AGA further submitted that the trial court took the correct approach in rejecting the appellants' application, considering the procedural requirement for enforcing surety obligations and ensuring justice is upheld. The trial court exercised discretion based

on the existing circumstances, and there was no manifest error in its decision-making process.

13. Learned AGA further submitted that the appeal lacks merit. The trial court's decision to reject the appellants' application and continue with the attachment order was both justified and necessary under the circumstances.

14. After hearing learned counsel for the appellants and the learned AGA for the State and after carefully considering the facts of the case, the arguments presented by both parties, and the materials on record, this court find that the core issue in this appeal is whether the trial court erred in rejecting the appellants' application to recall the order of attachment of their property and discharge them from their obligations as sureties.

15. In light of the arguments presented and the facts established, it is evident that the appellants acted diligently to comply with their surety obligations and took all possible steps to ensure the presence of the accused Man Singh before the court.

16. The appellants have demonstrated that they acted in good faith by making diligent efforts to produce the accused before the court. The accused was ultimately brought before the court on 07.07.2004 and has been in custody since that date.

17. Primary purpose of the attachment order was to ensure the presence of the accused, and that this objective has been achieved, the continued attachment of the appellants' property is no longer warranted. The appellants' property was initially attached to secure compliance, but the subsequent developments have made the continued attachment unnecessary.

18. The attachment of the appellants' property, as ordered by the trial court, was predicated on the initial non-compliance. However, given

that the accused has been in custody since 07.07.2004 and the appellants' earnest efforts to address the court's concerns, the continued attachment of their property no longer serves its intended purpose.

19. The trial court's decision to reject the appellants' application on 16.08.2004, and their subsequent application on 17.08.2004, did not fully consider the changed circumstances following the accused surrender. This oversight has resulted in undue hardship to the appellants.

20. In the interest of justice and fair play, it is crucial to recognize that the appellants have complied with their obligations and have made sincere efforts to correct the situation. The continued attachment of their property is disproportionate to the intended purpose of ensuring compliance.

21. Justice is not merely the application of law but a reflection of its spirit, which seeks to balance legal mandates with human realities. In this case, we confront the tension between strict adherence to procedural requirements and the equitable treatment of individuals who act in good faith.

22. The law's primary function is to ensure fairness and uphold the integrity of judicial processes. However, it must also recognize the human elements at play—empathy, genuine effort, and the capacity for rectification. The appellants' situation exemplifies this interplay. They acted as sureties, fulfilling their roles until circumstances beyond their control led to a procedural breach.

23. The attachment of property under Section 446 Cr.P.C. serves as a mechanism to enforce compliance and secure the presence of an accused. Yet, this enforcement should not become an instrument of undue hardship. It must be applied judiciously, considering the

evolving dynamics of each case. The essence of justice lies in its adaptability to the circumstances and the genuine efforts made by individuals to comply law, rule, regulation and order of court.

24. In the present matter, the appellants took all possible steps to rectify the situation after the accused failure to appear. They demonstrated their commitment by bringing the accused before the court as soon as practically possible. This action reflects their sincere intention to uphold their surety obligations.

25. In the interests of justice and equity, it is appropriate to **set aside** the impugned order and address the appellants' situation fairly.

26. Accordingly, the appeal is **allowed** and the impugned order dated 16.08.2004 passed by Additional Sessions Judge, Court No.6, Hardoi, in Misc. Case No. 7/2004, under Section 446 Cr.P.C. arising out of N.D.P.S. Case No. 105/99, under Section 20 of N.D.P.S. Act, Case Crime No. 155/99, Police Station Arval, District Hardoi is **set aside and reversed**. The attachment of the appellants' property is hereby recalled. The attached property of the appellants shall be released forthwith in his favour. The appellants are discharged from their obligations as sureties in this case.

27. A certified copy of the order be also sent to the court concerned for compliance.

28. Office is directed to communicate this order to the court concerned for necessary compliance.

29. Record of trial court, if any, shall also be sent back to the district court concerned.

Order Date :- 30.07.2024

Arvind

(Shamim Ahmed,J.)