

Neutral Citation No. - 2024:AHC-LKO:11523

Reserved on 31.01.2024

Delivered on 08.02.2024

A.F.R.

Court No. - 16

Case :- CRIMINAL APPEAL No. - 1951 of 2008

Appellant :- Dharmendra Kumar Singh

Respondent :- State of U.P.

Counsel for Appellant :- Ajay Pratap Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

1. Heard Sri Ajay Pratap Singh, learned counsel for the appellant and Sri Ashok Kumar Srivastava, learned A.G.A. for the State and perused the material available on record.

2. This is an appeal under Section 449 Cr.P.C. against the judgment and order dated 18.08.2008 in Criminal Misc. Case No. 03/08 (State Vs. Dharmendra Kumar Singh), under Section 446 Cr.P.C., Police Station Kotwali Ayodhya and against the judgment and order dated 17.03.2008 passed by learned Additional Session Judge/F.T.C.-5th, Faizabad in Sessions Trial No. 114/97, arising out of Case Crime No. 1497/97 : State Vs. Radhey Shyam and others, under Sections 147, 148, 149 and 302 I.P.C., Police Station Kotwali Ayodhya, Faizabad.

3. Learned counsel for appellant has submitted that on 07.07.2005 the appellant had taken surety of accused Radhey Shayam in Sessions Trial No. 114/97, arising out of Case Crime No. 1497/97 : State Vs. Radhey Shyam and others, under Sections 147, 148, 149 and 302 I.P.C., Police Station Kotwali Ayodhya, Faizabad and regarding this bond of surety of Rs. 20,000/- was submitted before the court concerned.

4. Learned counsel for appellant has further submitted that when accused Radheshyam did not appear before the court, notice was issued to appellant (surety) Dharmendra Kumar Singh under Section 446 Cr.P.C., thereafter the court below vide order dated 17.03.2008 forfeited the surety of Rs.20000/- and issued recovery warrant and in default of payment, the trial court also imposed six months imprisonment.

5. Learned counsel for appellant has further submitted that the appellant filed representation for quashing of the proceedings initiated against him vide order dated 17.03.2008 stating therein that on 24.07.2008 the appellant produced the accused Radhey Shyam before the Court and the accused was sent to jail.

6. Learned counsel for appellant has further submitted that without considering the averments of the appellant and considering that the accused has already been surrendered before the court below and sent to jail, the trial court vide order dated 18.08.2008 disposed of the representation of the appellant and send the appellant to jail for six months, in default of payment of surety, with the observation that if the surety deposited the surety amount, he shall be released from jail.

7. Learned counsel for the appellant has further submitted that thereafter the appellant filed the instant Criminal Appeal for quashing of the impugned orders and prayed for bail and this Court vide order dated 29.08.2008 allowed the bail application of appellant, thus the appellant was in jail about eleven days.

8. Learned counsel for the appellant has further submitted that the appellant is 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. I 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.”

9. Learned counsel for appellant has further submitted that since the appellant was surety of accused Radhey Shayam in Sessions Trial No. 114/97, arising out of Case Crime No. 1497/97 : State Vs. Radhey

Shyam and others, under Sections 147, 148, 149 and 302 I.P.C., Police Station Kotwali Ayodhya, Faizabad and accused Radhey Shyam appeared and surrendered before the court concerned on 24.07.2008 and he is facing trial, therefore, the sentence of surety appellant Dharmendra Kumar Singh be reduced to the period already undergone by him.

10. Learned A.G.A. submits that it was the duty of the surety to ensure that accused was appearing in the Court on each and every date. Sureties have failed to ensure it because accused did not appear in Court, hence the court below had no option but to pass the impugned orders, thus the learned court below had rightly passed the impugned orders dated 18.08.2008 and 17.03.2008, but did not dispute this fact that appellant was surety of accused Radhey Shyam in Sessions Trial No. 114/97, arising out of Case Crime No. 1497/97 : State Vs. Radhey Shyam and others, under Sections 147, 148, 149 and 302 I.P.C., Police Station Kotwali Ayodhya, Faizabad and accused Radhey Shyam appeared and surrendered before the court concerned, therefore, the sentence of surety appellant Dharmendra Kumar Singh may be reduced to the period already undergone by him.

11. After considering the arguments advanced by learned counsel for the parties and after perusal of record, this Court finds that the appellant is the surety of accused Radheshyam, when accused Radheshyam did not appear before the court, the court below had no option but to pass the impugned orders, thus the learned court below had rightly passed the impugned orders dated 18.08.2008 and 17.03.2008, which do not require any interference by this Court, thus the conviction of the appellant is maintained.

So far as the sentence of the appellant is concerned, as the accused Radhey Shyam had appeared and surrendered before the court concerned and the appellant had already undergone sentence for

eleven days in compliance of the order dated 18.08.2008 and 17.03.2008 passed by the court below, considering the entire facts and circumstances of the case, in the interest of justice, this Court is of the view that the sentence is modified for the period which is already undergone by the appellant.

12. With the above modification, the instant criminal appeal is **partly allowed.**

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

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

15. Lower court record, if any, shall also be sent back to the district court concerned.

Order Date :- 08.02.2024

Arvind

(Shamim Ahmed,J.)