

Neutral Citation No. - 2024:AHC-LKO:56013

Reserved on 31.07.2024

Delivered on 14.08.2024

Court No. - 16

Case :- CRIMINAL APPEAL No. - 2803 of 2007

Appellant :- Sultan Singh And Another

Respondent :- State of U.P.

Counsel for Appellant :- Trishita Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

1. Heard Ms. Trishita Singh, learned counsel for the appellant no.2 and Sri Ashok Kumar Singh, learned A.G.A.-I 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 19.02.2007 passed by learned Additional Sessions Judge / F.T.C.-I, Hardoi in Criminal Misc. Case No.25 of 2006, directing the appellants to deposit Rs.20,000/- each as surety amount in pursuance of Sessions Trial No.1297 of 2004 (State Vs. Ram Kishore), arising out of Case Crime No.226 of 1991, under Section 396 I.P.C., Police Station Mallawan, District Hardoi as well as impugned order dated 18.09.2007 passed by learned Additional Sessions Judge / F.T.C.-I, Hardoi whereby the application 45-Kha moved by the appellants was rejected.

3. Learned counsel for appellant No.2 has submitted that the appellant No.2 Ram Shanker had taken surety of accused Ram Kishore in Sessions Trial No.1297 of 2004 (State Vs. Ram Kishore), arising out of Case Crime No.226 of 1991, under Section 396 I.P.C., Police Station Mallawan, District Hardoi.

4. Learned counsel for appellant No.2 has further submitted that when accused Ram Kishore did not appear before the court, learned trial court ordered to register a case against the appellant No.2 (surety) Ram Shanker under Section 446 Cr.P.C., thereafter the learned trial court imposed penalty of Rs.20,000/- against the appellants and the appellant no.2 deposited the amount of Rs.20,000/- before the learned trial court.

5. Learned counsel for the appellant no.2 has further submitted that on 13.08.2007, the appellants have got the knowledge of accused Ram Kishore,

therefore, they filed an application before the learned trial court concerned that the accused Ram Kishore is detained in District Jail Unnao in Case Crime No.591 of 2002, under Section 3/25 of Arms Act, as such, he may kindly be summoned. He further submitted that on the aforesaid application, learned trial court has passed an order on 31.08.2007, wherein the accused Ram Kishore was summoned and he appeared before the learned trial court on 10.09.2007 from District Jail, Unnao.

6. Learned counsel for the appellant no.2 has further submitted that on 13.09.2007, the appellants have moved an application for passing a suitable order regarding the amount deposited by them in pursuance of the order dated 19.02.2007 on the ground that the accused Ram Kishore has been traced out due to efforts of the appellants, however, the learned trial court without applying its judicial mind has rejected the application of the appellants on 18.09.2007 in an illegal and arbitrary manner.

7. Learned counsel for the appellant No.2 has further submitted that the appellant No.2 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. 1 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.”

8. Learned counsel for appellant No.2 has further submitted that since the appellant No.2 was surety of accused Ram Kishore in Sessions Trial No.1297 of 2004 (State Vs. Ram Kishore), arising out of Case Crime No.226 of 1991, under Section 396 I.P.C., Police Station Mallawan, District Hardoi and accused Ram Kishore appeared before the learned trial court on 10.09.2007 from the District Jail, Unnao and he is facing trial, therefore, the order dated 19.02.2007 be set aside.

9. Learned A.G.A.-I 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 learned trial court had no option but to pass the impugned orders, thus, the learned trial court had rightly passed the impugned orders dated 19.02.2007 and 18.09.2007, however, he did not dispute this fact that appellant No.2 was surety of accused Ram Kishore in Sessions Trial No.1297 of 2004 (State Vs. Ram Kishore), arising out of Case Crime No.226 of 1991, under Section 396 I.P.C., Police Station Mallawan, District Hardoi and accused Ram Kishore appeared before the learned trial court after he was summoned from the District Jail, Unnao as he was in detention in pursuance to the Case Crime No.591 of 2002, under Section 3/25 of Arms Act, therefore, the order dated 19.02.2007 and 18.09.2007 be set aside.

10. After considering the arguments advanced by learned counsel for the parties and after perusal of record, this Court finds that the appellant No.2 Ram Shanker is the surety of accused Ram Kishore and when accused Ram Kishore did not appear before the court, the learned trial court had no option but to pass the impugned orders, thus the learned trial court had rightly passed the impugned orders dated 19.02.2007 and 18.09.2007.

11. So far as the amount deposited by the appellant no.2 is concerned, as the accused Ram Kishore had appeared before the learned trial court after being summoned from the District Jail, Unnao, therefore, considering the entire facts and circumstances of the case, in the interest of justice, this Court is of the view that the amount deposited by the appellant No.2 may be refunded back to him.

12. With the above observation, the instant criminal appeal is hereby **allowed**. The impugned order dated 19.02.2007 passed by learned Additional Sessions Judge / F.T.C.-I, Hardoi in Criminal Misc. Case No.25 of 2006, directing the appellants to deposit Rs.20,000/- each as surety amount in pursuance of Sessions Trial No.1297 of 2004 (State Vs. Ram Kishore), arising out of Case Crime No.226 of 1991, under Section 396 I.P.C., Police Station Mallawan, District Hardoi as well as impugned order dated 18.09.2007 passed by learned Additional Sessions Judge / F.T.C.-I, Hardoi whereby the application 45-Kha moved by the appellants was rejected are hereby **set aside and reversed**. The amount of Rs.20,000/- deposited by the appellant No.2 before the learned trial court shall be released forthwith in his favour. The appellant No.2 is discharged from his obligation as surety in this case.

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 :- 14.08.2024

Saurabh

(Shamim Ahmed,J.)