

Reserved on 13.08.2024

Delivered on 28.08.2024

Court No. - 16

Case :- CRIMINAL APPEAL No. - 553 of 2006

Appellant :- Lakhan And Anr.

Respondent :- State of U.P.

Counsel for Appellant :- Anil Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard learned counsel for the parties and perused the material available on record.
2. This appeal is filed under Section 449 of the Criminal Procedure Code (Cr.P.C.) against the judgment and order dated 25.01.2006 passed by the court of learned Additional Session Judge, Hardoi.
3. Learned counsel for appellants has submitted that the appellants stood as sureties for the accused in Criminal Case No. 199/97. Upon the accused's failure to appear in court, the surety amount of Rs. 10,000/- was ordered to be forfeited. The learned Additional Session Judge, Hardoi, issued a recovery warrant for the said amount through the order dated 25/01/2006, rejecting the appellants' application for reconsideration
4. Learned counsel for appellants has further submitted that as soon as the appellants received the information about the abscond of the accused, they made their best efforts to surrender the accused before the court.

5. Learned counsel for appellants has further submitted that the order dated 25/01/2006 passed by the learned Additional Session Judge, Hardoi, is unjustified both in law and in fact.

6. Learned counsel for appellants has further submitted that the learned court below failed to appreciate the relevant facts of the case, leading to the issuance of the recovery warrant against the appellants. The liability of the surety ended when the accused, Mahendra, surrendered before the concerned court on 16.11.2005 at District Jail Hardoi.

7. Learned counsel for appellants has further submitted that the appellants made several efforts to produce the accused before the court but were unable to do so due to his illness and ongoing treatment at various places. The learned Additional Session Judge did not adequately consider these facts and wrongly rejected the application filed by the appellants.

8. 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.

9. The learned AGA Submitted that the order of the learned Additional Session Judge, Hardoi, stating that the surety amount was forfeited due to the appellants' failure to produce the accused as required. The government maintains that the recovery proceedings for the surety amount are in accordance with the law and should be upheld.

10. 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.

11. I have heard the learned counsel for the appellants and the learned AGA for the State.

12. 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 before the court.

13. The court finds that the appellants made sincere efforts to produce the accused before the court, as evidenced by their actions and attempts to locate him despite his illness and treatment. The surrender of the accused, Mahendra, before the concerned court on 16.11.2005, effectively ended the liability of the surety.

14. The accused, Mahendra, surrendered before the concerned court on 16.11.2005 at District Jail Hardoi. This surrender is a critical event that should have been duly considered by the lower court. The surrender of the accused effectively ended the liability of the sureties, as their primary obligation was to ensure the accused's appearance in court.

15. Section 446 of the Criminal Procedure Code (Cr.P.C.) deals with the forfeiture of bonds given by individuals (sureties) in criminal proceedings, particularly when there is a failure to comply with the conditions of the bond. This section outlines the procedure for handling situations where a surety bond is forfeited, including the consequences and recovery methods. a detailed explanation:

Section 446 Cr.P.C.

"When a bond is forfeited under this Code, the Court may, in its discretion, issue a warrant for the recovery of the penalty or may, after giving the surety an opportunity of

being heard, order the surety to pay the penalty or show cause why it should not be paid. If the surety fails to show cause or fails to pay the penalty, the Court may proceed to recover the penalty as if it were a fine imposed under this Code."

Scope: Section 446 applies to bonds taken under the Cr.P.C. for ensuring appearance in court or compliance with other conditions. It comes into play when a surety bond is forfeited, which typically occurs if the conditions of the bond are not met.

Court's Discretionary Powers:

Issuing a Warrant: The court has the discretion to issue a warrant for the recovery of the forfeited penalty. This means that if a bond is forfeited, the court can take active steps to recover the penalty amount from the surety.

Opportunity to Be Heard: Before taking any recovery action, the court must give the surety an opportunity to be heard. This ensures that the surety can explain any reasons for their failure to comply with the bond conditions or present any mitigating circumstances.

Show Cause or Order to Pay :

Show Cause: The court may also require the surety to show cause why the penalty should not be paid. This means the surety must provide reasons or evidence as to why they should not be held financially liable for the forfeiture.

Order for Payment: The court may order the surety to pay the forfeited penalty. This order will be issued after considering the

surety's explanation and the circumstances surrounding the forfeiture.

Procedure: If the surety fails to show a valid cause or does not pay the penalty, the court can proceed to recover the penalty as if it were a fine imposed under the Cr.P.C. This means that the court can use standard methods for recovering fines to collect the forfeited amount.

Enforcement: The recovery process can include various methods such as attachment of property or other enforcement measures available under the law.

When a bond is forfeited, the court must follow the procedures outlined in Section 446. This includes issuing a warrant for recovery if necessary, giving the surety a chance to explain their non-compliance, and then proceeding with recovery if the surety fails to provide a valid cause.

16. The appellants faced unforeseen circumstances due to the accused illness, which prevented them from producing him in court within the stipulated time. These circumstances were beyond the control of the appellants. The appellants provided detailed explanations and evidence of their efforts, including medical reports and treatment records, which were not sufficiently considered by the learned Additional Session Judge.

17. The appellants submitted an application to the concerned court, explaining the reasons for their inability to produce the accused and requesting relief from the forfeiture of the surety amount. The learned Additional Session Judge, however, did not adequately consider these explanations and circumstances, resulting in an unjust order against the appellants.

18. 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.

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.

19. 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 and the liability of the surety ended when the accused, Mahendra, surrendered before the concerned court on 16.11.2005 at District Jail Hardoi.

20. Based on the above analysis, it is evident that the order dated 25.01.2006 passed by the learned Additional Session Judge, Hardoi, was not justified either in law or on the facts of the case. The appellants made sincere and diligent efforts to fulfill their obligations as sureties, and the unforeseen circumstances of the accused's illness and subsequent surrender were beyond their control.

21. In light of the appellants' genuine efforts and the eventual surrender of the accused, the continuation of the recovery proceedings for the surety amount of Rs. 10,000/- is found to be unjust and lacking proper legal authority.

22. Accordingly, the appeal is **allowed** and the impugned order dated 25.01.2006 passed by the learned Additional Session Judge, Hardoi is

hereby set **aside and reversed**. The appellants are relieved from the obligation to pay the forfeited amount. The appellants are discharged from their obligations as sureties in this case.

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

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

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

Order Date :- 28.08.2024

Arvind

(Shamim Ahmed,J.)