

A.F.R.**Reserved on 12.02.2024****Delivered on 06.03.2024****Court No. - 16****Case :- CRIMINAL APPEAL No. - 134 of 2004****Appellant :-** Ram Sanahi And Another**Respondent :-** State of U.P.**Counsel for Appellant :-** M.P.Yadav,Ajay Madhavan**Counsel for Respondent :-** Govt.Advocate**Hon'ble Shamim Ahmed,J.**

1. Heard Sri M.P.Yadav, learned counsel for the appellants 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 5.6.2003 passed by Additional Session Judge, District Barabanki (FTC Court No.29) in Criminal Misc. Case No. 5/2023:State Vs. Ram Sanahi and another sentencing the appellants under Section 446 Cr.P.C. to pay Rs. 15,000/- each with default stipulation by means of which the surety bonds of the appellants have been forfeited.

3. Learned counsel for the appellants submits that in compliance the order dated 21.08.2023, the appellants have already filed the Supplementary affidavit dated 05.01.2024, which is available on record.

4. Learned counsel for appellants has submitted that the appellants were sureties of Rs. 15000/- each in S.T. No. 200/1994, under Section 394/412 I.P.C. of accused Dinesh Yadav but he jumped the bail.

5. Learned counsel for appellants has further submitted that when accused Dinesh Yadav did not appear before the court, notice was issued to appellants (sureties) Ram Sanahi and Parsu Ram under

Section 446 Cr.P.C., thereafter the court below vide order dated 05.06.2003 forfeited the sureties of Rs.15,000/- and issued recovery warrant and in default of payment, the trial court also imposed six months imprisonment.

6. Learned counsel for appellants has further submitted that the appellants preferred the instant criminal appeal before this Hon'ble Court and this Hon'ble Court vide order dated 23.01.2004 while staying the operation of the impugned order dated 05.06.2003 directed the appellants to deposit Rs. 4000/- towards the bond amount in the court concerned, within fifteen days from the date of order.

7. Learned counsel for appellants has further submitted that in compliance of the order dated 23.01.2004 the appellants have deposited the amount.

8. Learned counsel for appellants has further submitted that the accused Dinesh Yadav has already surrendered before the court concerned on 05.11.2003 in another case S.T. No. 356/2002: State of U.P. Vs. Dinesh Yadav, arising out of Crime No. 244/1997, under Section 395/412 I.P.C. pending in the Court of ADJ (Fast Track Court) Court No.32 and since then he is in jail.

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. 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.”

10. Learned A.G.A. for the State submits that as it was the duty of the sureties 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 order, thus the learned court below had rightly passed the impugned order dated 05.06.2003, but did not dispute this fact that appellants were surety of accused Dinesh Yadav in S.T. No. 200/1994, under Section 394/412 I.P.C. of accused Dinesh Yadav and accused Dinesh Yadav appeared and surrendered before the court

concerned on 05.11.2003 in another case S.T. No. 356/2002: State of U.P. Vs. Dinesh Yadav, arising out of Crime No. 244/1997, under Section 395/412 I.P.C. pending in the Court of ADJ (Fast Track Court) Court No.32 and since then he is in jail. He further submits that under Section 446 Cr.P.C. the Court has discretion to remit a portion of penalty imposed upon the appellants.

11. Considering the overall facts and circumstances of the case and also the argument of learned counsel for the appellants that the accused of the instant case has surrendered before the court concerned, in my view, interest of justice would be sub-served if the penalty amount imposed upon the appellants is reduced to the tune of Rs. 4,000/-, in light of the order dated 23.01.2004 of this Court in place of surety amount of Rs. 15,000/- and appeal may be allowed in part.

12. Accordingly, the appeal is **partly allowed**. The penalty amount imposed by the court below is reduced to the tune of Rs. 4000/-. If the penalty amount has not already been deposited, the same be deposited within one month from today positively. On account of failure, the penalty amount fixed in this appeal be realized by the court below in accordance with law.

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

Order Date :- 06.03.2024

Arvind

(Shamim Ahmed,J.)