

Neutral Citation No. - 2024:AHC-LKO:58164

Reserved on 01.08.2024

Delivered on 28.08.2024

Court No. - 16

Case :- CRIMINAL APPEAL No. - 2493 of 2006

Appellant :- Udai Raj

Respondent :- State of U.P.

Counsel for Appellant :- Shashank Bhushan Singh

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 order dated 28/4/2006 passed by Additional Session Judge Fast Track Court No. 32, Barabanki, District Barabanki, in Criminal Trial No. 110/2003 arising out of Crime No. 30/2003, Under Section 8/21 N.D.P.S. Act, Police Station Badosrai, District Barabanki.
3. Learned counsel for appellant has submitted that the appellant had taken surety of accused Kallu Yadav @ Ramakant in S.T. No. 110 of 2003 arising out of Case Crime No. 30/2003, under Section 8/21 N.D.P.S. Act Police Station Thana Badosarai, District Barabanki.
4. Learned counsel for appellant has further submitted that as soon as the appellant received the information about the abscond of the accused, He made best efforts to surrender the accused before the court.
5. It is further submitted that the Four months after the issuance of the order, the appellant discovered that the accused was in Kanpur. Without delay, He traveled to Kanpur with the intent to produce the

accused before the Hon'ble Court. This demonstrates the appellant sincere efforts and commitment to fulfilling his obligations as surety.

6. Learned counsel for appellant has further submitted that On 02/08/2006, while bringing the accused from Kanpur, the appellant faced an unforeseen complication. The Railway Police at Barabanki Railway Station arrested the accused under Section 4/25 I.P.C., leading to the registration of a new case (No. 60/06) against the accused.

7. Learned counsel for applicant has further submitted that Following the arrest, the appellant submitted the application before the concerned court with an affidavit stating therein that the accused Kallu @ Ramakant has been arrested by the Railway Police Barabanki under Section 4/25 and prayed with the court to order for producing the accused in Court.

8. Learned counsel for appellant has further submitted that Despite the appellant efforts and the intervening circumstances, the recovery proceedings for the surety amount of Rs. 20,000/- continue based on the order dated 28/04/2006. The learned counsel asserts that these proceedings are illegal and lack any authority of law. The appellant acted in good faith and made substantial efforts to ensure compliance with his obligations.

9. Learned counsel for appellant has further submitted that The learned counsel contends that the order dated 28/04/2006 is unjust and unwarranted given the appellant genuine efforts and the uncontrollable circumstances that impeded his actions.

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 appellant, as suretie, was legally obligated to ensure the presence of the accused in court. This responsibility is fundamental to the role of a surety. The failure of the accused to appear in court as required resulted in the forfeiture of the surety amount of Rs. 20,000/-

12. Learned AGA further submitted that Despite being aware of his obligation, the sureties failed to secure the presence of the accused in a timely manner. The appellant took action to locate and surrender the accused only after a significant delay, which was insufficient and was not fulfill his legal duties.

13. Learned AGA further submitted that The proceedings for the recovery of the surety amount are in strict accordance with the law, pursuant to the order dated 28/04/2006. The forfeiture of the surety amount is a legal consequence of the suretie' failure to produce the accused, and the appellant has not provided any valid legal grounds to invalidate his process.

14. I have heard the learned counsel for the appellant and the learned AGA for the State.

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 appellant, as surety, undertook prompt and diligent efforts to locate and surrender the accused upon learning of his absconding. Their actions, including traveling to Kanpur to bring the accused before the court, demonstrate a clear commitment to fulfilling his obligation as surety.

17. The arrest of the accused by Railway Police Barabanki under Section 4/25 I.P.C. was an unforeseen event beyond the control of the appellant. This arrest prevented the appellant from producing the accused before the court as planned, despite his best efforts. While the surety is indeed responsible for ensuring the presence of the accused, the unforeseen arrest and his subsequent efforts should be taken into consideration. The applicant has shown good faith and due diligence in attempting to comply with his obligations.

18. In the interest of justice and fair play, it is crucial to recognize that the appellant has complied with his obligations and has 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 appellant took all possible steps to rectify the situation after the accused failure to appear. He demonstrated his commitment by bringing the accused before the

court as soon as practically possible. This action reflects his sincere intention to uphold his surety obligation.

20. Given the applicant genuine effort to surrender the accused and the unforeseen circumstances that impeded his actions, it is evident that the continued recovery proceedings for the surety amount of Rs. 20,000/- are unjust and without proper legal authority. The appellant have acted in good faith and should not be penalized for circumstances beyond his control.

21. This court finds it just and equitable to allow the appeal. The order dated 28/04/2006, passed by the Additional Session Judge, Fast Track Court No. 32, Barabanki, is liable to be set aside and reversed.

22. Accordingly, the appeal is **allowed** and the impugned order dated 28/04/2006, passed by the Additional Session Judge, Fast Track Court No. 32, Barabanki is hereby set **aside and reversed** and consequential order of recovery is accordingly quashed.

23. The appellant is discharged from his obligation as sureties in this case.

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

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

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

Order Date :- 28.08.2024

Arvind

(Shamim Ahmed,J.)