IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Appeal No.S-1970-SB of 2003
Date of Decision: 14.10.2015

Jangir Singh and others ....Appellants

Versus

State of Punjab ....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
2. **To be referred to reporters or not ? (Yes/No)**
3. **Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. N.D. Achint, Advocate
for the petitioners.

Mr. Rupam Aggarwal, D.A.G., Punjab
for the respondent-State.

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DAYA CHAUDHARY, J.

Briefly, the facts of the case are that FIR No.48 dated 10.05.1999 was registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as `the Act') at Police Station Budhlada. Canter No.PB-13C-9741 owned by Bhola Singh was taken into possession by the police and the same was released on *superdari* in the sum of ₹ 5,00,000/- and consequently, the petitioners executed *superdari nama* and *superdari bond* undertaking to produce the canter in the Court as and when required. The said canter was hypothecated to B.K.. Finance, Sangrur and the hypothecation deed was executed in the month of September, 1998.

As per statement of the appellants, the said canter was forcibly taken into possession by the Tour Finance Company and the same could not be produced in the Court. Proceedings under Section 446 of the Cr.P.C were initiated against the appellants by issuing notice to them. Since the vehicle was not produced and the *superdari bonds* were cancelled and were forfeited to the State, show cause notices were issued to the appellants to show cause as to why an amount of ₹ 5 lacs be not recovered from them on violation of terms and conditions of the *Superdari Bond* dated 21.07.1999. Proceedings under Section 446 of the Cr.P.C were initiated and ultimately vide judgment dated 09.09.2003, the appellants, namely, Jangir Singh, Balla Singh and Kartar Singh were imposed penalty of ₹ 15,000/- each for not producing the canter in the Court during proceedings of the case. They were also ordered to undergo civil imprisonment for a period of six months in default of payment of penalty. The amount of penalty was ordered to be paid within a period of one month, failing which, the penalty was ordered to be recovered as land revenue vide judgment dated 09.09.2003 passed by the Special Court, Mansa.

The judgment dated 09.09.2003 passed by Judge, Special Court, Mansa is subject matter of challenge in the present appeal.

The appeal was admitted on 23.10.2003 and operation of impugned order was stayed.

Learned counsel for the appellants submits that the said canter was owned by Bhola Singh, which was taken into possession by the police and subsequently, it was ordered to be released on *superdari*. Learned counsel also submits that the *Superdari Bond* was executed on 21.07.1999 and as per statement of AW-1, the canter, in dispute, was hypothecated to B.K. Finance, Sangrur and thereafter, it was taken into possession forcibly by the Tour Finance Company, Sangrur. The appellants were not at fault as the vehicle, in dispute, was in possession of the Finance Company and the same could not be produced in the Court. Learned counsel also submits that the circumstances for non-production of the vehicle in the Court were beyond the control of the appellants and it was a reasonable and sufficient cause but in spite of that, the impugned order has been passed without considering the explanation of the appellants being reasonable. Learned counsel also submits that as per provisions of Section 446 Cr.P.C., in case, sufficient cause is there and it is not considered, then the penalty of fine should not be imposed. Even in the Show Cause Notice, it was not mentioned that the Court was satisfied with the forfeiture of bonds and as such, the impugned order is liable to be set aside. Learned counsel also submits that the accused in the case were acquitted of the charge and there was no intention of the appellants for not producing the canter in the Court as the circumstances were beyond their control. Learned counsel also submits that totally a non-speaking order of forfeiture of bond has been passed before initiation of proceedings against the appellants. At the end, learned counsel for the appellants submits that the appellants are poor persons and the amount of penalty imposed upon them is on the excessive side.

Learned counsel for the respondent-State submits that a detailed order has been passed by giving specific finding and it cannot be said that it is a non-speaking order. The appellants were at fault as they have violated the terms and conditions of the bond and the amount of penalty cannot be said to be un-reasonable.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on the file.

For resolving the controversy, in the case, in hand, Section 446 of the Cr.P.C, is relevant, which is reproduced as under :-

> 446. Procedure when bond has been forfeited. -
> (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,
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> 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,
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> 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.
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> (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.
>
> 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.
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> (3) The Court may, after recording its reasons for doing so, 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."

Admittedly, the vehicle, in dispute, was taken into possession by the Finance Company and the same has been admitted by Ashok Kumar, while appearing as AW-1. He has stated that the canter, in dispute was financed by the Company and it was purchased by Balla Singh. He took finance from B.K. Finance, Sangrur in September, 1998 but he did not pay the instalments. It has also been admitted that the possession of the vehicle was with the Finance Company as it was surrendered by owner of the vehicle. It is also not disputed by learned counsel for the State that the vehicle was with the Finance Company and the appellants were not in a position to produce the same as the circumstances were beyond the control of the appellants. Moreover, the accused were acquitted of the charge by the trial Court. The amount of penalty is on the higher side and the same could be reduced, when the circumstances were beyond the control of the appellants, by exercising the powers under Section 446 Cr.P.C.

No doubt, Section 446(3) of the code of Criminal Procedure empowers the Court to grant remission and to even decide the extent of the remission but such discretion is to be exercised judiciously and for good reasons as has been held in ***Madhu Limaye v. Metropolitan Magistrate and others 1984 Supple. SCC 699***, wherein, a three Judges Bench of Hon'ble the Supreme Court considered the plea of the surety who was proceeded against as the accused who were foreign nationals have escaped from India. The Hon'ble Apex Court held " the ends of justice will be met by imposing a token penalty of ₹100/-.

In the present case also, the appellants have made out a case for remission of the penalty being poor persons as they are not having any source of income but a large family to support. The Hon'ble apex Court has also supported the same view in the judgment reported in ***Mohammed Kunju v. State of Karnataka 1999(4) RCR (Crl.) 726,*** whereby while reducing the penalty, remission was granted. In that case it was also directed that even if the appellants had already paid any amount in excess thereof, they can get refund of the excess amount.

Keeping in view the observations made herein above, the appeal is allowed and the order passed by the trial Court is modified to the extent that amount of ₹ 15,000/- as penalty is reduced to ₹ 5,000/-. The appellants are directed to deposit the said amount in the trial Court within a period of one week from the date of receipt of copy of the order.

(DAYA CHAUDHARY)
JUDGE

14.10.2015
gurpreet