

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.951-SB of 2004
Date of decision:24.08.2015

Om Parkash

.....Appellant(s)

Versus

State of Haryana

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

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Present: Mr. R.S. Mamli, Advocate for the appellant(s).

Mr. Anil Mehta, DAG, Haryana.

DARSHAN SINGH, J.

- 1. The present appeal has been preferred against the order dated 29.3.2004 whereby the appellant has been ordered to pay a penalty of Rs.20,000/- in the proceedings under Section 446 of the Code of Criminal Procedure, 1973 (hereinafter called 'the Cr.P.C.').**
- 2. Appellant-Om Parkash stood surety for accused Parveen Kumar in case FIR No.90 dated 26.5.2003 under Section 326, 307 read with Section 34 of the Indian Penal Code (for short 'the IPC), Police Station Radaur, on 30.8.2003 and executed the surety bond for the sum of Rs.20,000/-. Said Parveen Kumar absented from the proceedings of the case on 16.2.2004. The show cause notice was issued to the present appellant which was served upon him through**

affixation of notice at his house but he did not appear in response to the said notice. So, the impugned order was passed by the learned trial Court imposing a penalty of Rs.20,000/-

3. Learned counsel for the appellant contended that the appellant is a poor person. Accused Parveen Kumar had surrendered before the trial Court within two months and was again admitted to bail vide order dated 4.6.2004. Thereafter, he faced the trial. The main case has already been disposed of vide judgment dated 2.3.2005. He pleaded that the penalty imposed by the learned trial Court is highly excessive and disproportionate to the default.

4. Learned State counsel pleaded that accused Parveen Kumar has absconded. So, the penalty imposed by the learned trial Court is fully justified.

5. I have duly considered the aforesaid contentions.

6. Learned counsel for the appellant has only pleaded that the penalty imposed by the learned trial Court is excessive and disproportionate to the fault on the part of the appellant. He has not otherwise challenged the legality of the impugned order.

7. This fact is not disputed that the present appellant stood surety for accused Parveen Kumar in case FIR No.90 dated 26.5.2003 under Section 326, 307 read with Section 34 IPC, Police Station Radaur and executed the surety bond for a sum of Rs.20,000/-. The trial Court record shows that on 16.2.2004, the case was fixed for recording the prosecution evidence when accused Parveen Kumar absented from the proceedings. Thereafter, the

warrants of arrest of accused were issued and notice to the present appellant was also issued. The trial Court record further shows that accused Parveen Kumar had surrendered before the learned trial Court on 6.4.2004. In this manner, accused Parveen Kumar had surrendered before the trial Court within two months from the date of his absence and he was admitted to fresh bail by the learned trial Court vide order dated 4.6.2004. Thereafter, the trial of the case was conducted and the main case has been disposed of by the learned trial Court vide judgment dated 2.3.2005. Thus, keeping in view the fact that the accused had himself surrendered before the learned trial Court within two months from the date of his absence and thereafter, during trial, he was also granted the concession of subsequent bail, so, in these circumstances, the forfeiture of the surety bond to the full amount of Rs.20,000/- is not justified. The appellant certainly deserves the reduction in the amount of penalty.

8. Thus, keeping in view my aforesaid discussion, the amount of penalty imposed by the learned trial Court is hereby reduced from Rs.20,000/- to Rs.10,000/-. Now, a sum of Rs.10,000/- shall be recoverable as a penalty from the appellant.

9. Consequently, except the aforesaid modification in the amount of penalty, there is no merit in the present appeal and the same is hereby dismissed.

August 24, 2015
ps

(DARSHAN SINGH)
JUDGE

