

CRA-S-1962-SB-2005

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision:03.03.2015

1. CRA-S-1962-SB-2005

Ranjit Singh

... Appellant

Versus

State of Punjab

... Respondent

AND

2. CRA-S-2095-SB-2006

Darshan Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. G.S.Toor, Advocate for
the appellant in CRA-S-1962-SB-2005.

Mr. B.S.Dhaliwal, Advocate,
for the appellant in CRA-S-2095-SB-2006.

Mr. K.S.Sidhu, DAG, Punjab.

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Paramjeet Singh, J.

This order shall dispose of CRA-S-1962-SB-2005 and CRA-S-2095-SB-2006 as common questions of fact and law are involved in both the appeals.

In CRA-S-1962-SB-2005, prayer has been made for setting aside the order dated 08.10.2005 passed by learned Additional Sessions Judge, Barnala in proceedings under Section 446 Cr.P.C. whereby he, after issuing notice under Section 446 Cr.P.C. forfeited the surety bonds of the appellant to the State and imposed a penalty of ₹ 30,000/- on him on the ground that, as undertaken by him in his surety bond, he failed to produce Harjinder Singh accused in the Court in case FIR No.03 dated 03.01.2004, registered at Police Station Bhadauri, District Sangrur, under Sections 399 and 402 of the Indian Penal Code.

In CRA-S-2095-SB-2006, a prayer has been made for setting aside the orders whereby warrant of attachment of property of surety-Darshan Singh and warrant of sale have been issued on the ground that, as undertaken by him in his surety bond, he failed to produce Gurtej Singh accused in the Court in case FIR No.03 dated 03.01.2004, registered at Police Station Bhadauri, District Sangrur, under Sections 399 and 402 of the Indian Penal Code.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant in CRA-S-1962-SB-2005 contended that due to non-appearance of accused-Harjinder Singh on

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20.04.2005, his bail was cancelled and notice to his surety-Ranjit Singh was issued for 05.07.2005. On 05.07.2005, warrants of arrest of accused-Harjinder Singh and Gurtej Singh were ordered to be issued for 08.08.2005. Sureties of accused-Harjinder Singh and Gurtej Singh were also summoned throughailable warrants for 08.08.2005. However, on 05.07.2005, the file was again taken up as accused-Harjinder Singh surrendered in the Court and he was sent to judicial custody till 08.08.2005. The trial Court seems to have missed the factum of surrender by accused-Harjinder Singh in Court on 05.07.2005. There was no connivance between the appellant and accused-Harjinder Singh. The impugned order is result of non-application of mind and the same may be set aside.

Learned counsel for the appellant in CRA-S-2095-SB-2006 contended that the appellant stood surety for accused-Gurtej Singh, who could not appear in Court on 20.04.2006 as he was in police custody in FIR no.29 dated 19.04.2005, registered at Police Station Phul. The absence of accused-Gurtej Singh before the trial Court on 20.04.2005 was not intentional. Learned counsel further contended that vide order dated 27.10.2006, the criminal appeal was admitted and property of appellant-Darshan Singh was ordered to be not sold subject to depositing an amount of ₹ 10,000/- in the Court of Additional Sessions Judge, Barnala within one week. Appellant-Darshan Singh has already deposited the amount of ₹ 10,000/- in the year 2006. There was no connivance between the appellant and accused-Gurtej Singh. The

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impugned orders have been passed by the courts below in a haste manner.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the appellants and supported the impugned orders. Learned State counsel further contended that since the conduct of the appellants is wholly irresponsible, they must suffer for the laxity on their part.

I have considered the rival contentions of learned counsel for the parties.

Admittedly, there is no allegation about the connivance between the appellants and accused-Harjinder Singh and Gurtej Singh. There is no allegation that the appellants instigated or helped the accused, in any manner, not to appear or surrender in time. The Hon'ble Supreme Court in **Mohammaed Kunju versus State of Karnataka 1994 (4) RCR (Criminal) 726** has held as under:

"13. Learned counsel then contended that as the bond was executed by the accused with two sureties the upper limit of the amount which the court can realise from both the sureties together cannot exceed the amount which the accused has stated in his bond. In other words, when the accused executed a bond for Rs. 25,000 the sureties can be made liable to pay the said amount either jointly or severally, according to the counsel. The acceptability of the aforesaid contention depends upon the wording of the bond executed by the appellants. There was a controversy earlier as to whether the bond is a single one

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supported by two sureties or the bond executed by a surety is different from that of the accused. The controversy stands settled now by the decision of this Court in Ram Lal v. State of U.P., AIR (1979) SC 1498. Their Lordships, after referring to the wording contained in Form No. 42 of Schedule V of the old Code of Criminal Procedure, 1898, have held thus :

"The undertaking to be given by the surety was to secure the attendance of the accused on every day of hearing and his appearance before the Court whenever called upon. The undertaking to be given by the surety was not that he would secure the attendance and appearance of the accused in accordance with the terms of the bond executed by the accused. The undertaking of the surety to secure the attendance and presence of the accused was quite independent of the undertaking given by the accused to appear before the Court whenever called upon even if both the undertakings happened to be executed in the same document for the sake of convenience. Each undertaking being distinct could be separately enforced."

14. We have noticed that the wording in the corresponding Form in the new Code is Identical (vide Form No. 45 in the second Schedule to the Code) and hence the same principle must follow in the present case also. Thus forfeiture of a bond would entail the penalty against each surety for the amount which he has undertaken in the bond executed by him. Both the sureties cannot claim to share the amount by half and half as each can be made liable to pay the amount of Rs. 25,000,

15. Lastly, learned counsel made a plea for remission of the penalty. No doubt Section 446(3) of the Code empowers the court to grant such remission. It is within the discretion of the court to grant remission and to decide the extent of the remission. Such a discretion must

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be exercised judicially and for good reasons. Learned counsel cited the decisions of this Court in Madhu Limaye v. Metropolitan Magistrate and Ors., [1984] Suppl. SCC 699, A three Judge Bench of this Court considered the plea advanced by a surety who was proceeded against as the accused-some foreign nationals – escaped from India. They were students charged with offences of "trivial nature" in 16 cases altogether. This Court held that in such circumstances "the ends of justice will be met by imposing a token penalty of Rs. 100". In the present case, though the offences charged against the foreign national are not trivial they are nevertheless not very serious comparatively. The accused slipped out of the country without anybody's knowledge and thereby rendered himself beyond the reach of the appellant. The court could have imposed the condition to surrender his passport as a measure to prevent him to escape out of India. There is no allegation that the appellant had any remote scent that the accused was preparing to escape from India, nor that he had connived with the accused jumping out the bail."

In Criminal Misc. No M-4941 of 2012, titled 'Surender Versus State of Haryana through District Magistrate, Gurgaon', decided on 30.04.2012, a Coordinate Bench of this Court has held as under:

“Coming to the facts of the present case, the impugned order dated 24.11.2010, passed by the learned District Magistrate, Gurgaon, would show that there was no allegation against the petitioner that he, as a matter of fact, instigated or helped the convict, in any manner, not to surrender in time. Once any such allegation is

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conspicuously missing, the impugned order is not sustainable in law, as it is.

In the totality of the facts and circumstances of the present case, noted above, couple with reasons aforementioned and to secure the ends of justice, the impugned order dated 24.11.2010 (Annexure P-1), passed by the learned District Magistrate, Gurgaon, is ordered to be modified to the extent that instead of ₹ 2,00,000/- (Rupees two lacs only) to be forfeited to the State, the petitioner would pay ₹ 20,000/- (Rupees twenty thousand only). Resultantly, striking a balance and also keeping in view the peculiar facts and circumstances of the present case, the instant petition is partly allowed. The impugned order is modified, accordingly.

The instant petition stands disposed of.”

Coming to the facts of the case, it is needless to mention here that on 05.07.2005, accused-Harjinder Singh was ordered to be summoned through warrant of arrest for 08.08.2005. However, on 05.07.2005, the file was taken up as accused-Harjinder Singh had surrendered before the Court. The trial Court ignored the factum of surrender by accused-Harjinder for whom appellant-Ranjit Singh had stood surety. It is also pertinent to mention here that accused-Gurtej Singh could not appear in Court on 20.04.2005 due to his arrest in another criminal case and it was beyond the control of appellant-Darshan Singh to produce him in Court on 20.04.2005. Appellant-Darshan Singh has also deposited the amount of ₹ 10,000/- in the year 2006 in compliance of order dated 27.10.2006 passed by a Coordinate

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Bench of this Court. Keeping in view the totality of facts and circumstances of the case, this Court should have otherwise remanded the matter to the lower Court, but in the light of fact that matter has been still pending since 2006 and appellant-Darshan Singh has deposited the amount of ₹ 10,000/- as aforesaid, this Court has proceeded with the matter. In view of above, the impugned orders in both the appeals are not sustainable in the eyes of law. Accordingly, the impugned order dated 08.10.2005 passed in CRA-S-1962-SB-2005 is ordered to be modified to the extent that instead of ₹ 30,000/- (₹ Thirty Thousand Only) to be forfeited to the State, appellant-Ranjit Singh would pay ₹ 10,000/- (₹ Ten Thousand Only).

Similarly, in CRA-S-2095-SB-2006, the impugned orders are modified to the extent that instead of sale of property of appellant to the extent of ₹ 25,000/- being surety amount, the petitioner would pay ₹ 10,000/- (₹ Ten Thousand Only) which he has already stated to be deposited in compliance of order dated 27.10.2006 passed by a Coordinate Bench of this Court. The land of appellant-Darshan Singh, if any attached, be released forthwith.

Disposed of in the aforementioned terms.

03.03.2015
parveen kumar

(Paramjeet Singh)
Judge