

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

CRA-S-493-SB of 2005

Date of decision : 09.02.2015

Vinod

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sandeep Jasuja, Advocate
learned counsel for the appellant.

Mr. Mukesh Kaushik, learned DAG, Haryana.

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

DARSHAN SINGH,J

1. The present appeal has been preferred against the order dated 04.02.2005 arising out of the proceedings under Section 446 Code of Criminal Procedure, 1973(for short Cr.P.C) against the appellant Vinod directing him to pay a penalty of Rs. 25,000/-.

2. Appellant Vinod had stood surety for accused Tashbir @ Lathar in case FIR No. 23, dated 09.01.2004,

under Sections 399, 402 and 411 Indian Penal Code, Police Station Sadar Gurgaon. Accused Tashbir @ Lathar had absented from the proceedings on 29.08.2004. The bonds furnished by the appellant were ordered to be forfeited. The show cause notice under Section 446 Cr.P.C was served upon the appellant. He sought time for the production of the accused and ultimately vide impugned order, he was ordered to pay a penalty of Rs. 25,000/-.

3. Aggrieved with the aforesaid order, the present appeal has been preferred.

4. I have heard Mr. Sandeep Jasuja, Advocate, learned counsel for the appellant and Mr. Mukesh Kaushik, learned Deputy Advocate General, for the State of Haryana.

5. Learned counsel for the appellant contended that accused Tashbir @ Lathar was in jail in some other case. Due to this reason, the appellant could not produce the accused in the Court. So, he was not at any fault. He further contended that the penalty imposed by the learned trial Court is highly excessive keeping in view the facts of the case.

6. On the other hand, learned State counsel contended that the penalty imposed by learned trial Court is fully justified as the accused has absconded and appellant did not produce him before the learned trial Court.

7. I have duly considered the aforesaid contentions.

8. From the perusal of the learned trial Court record, it comes out that accused Tashbir @ Lathar had absented from the proceedings of case bearing FIR No. 23 dated 09.01.2004 under Sections 399, 402 and 411 Indian Penal Code, Police Station, Sadar Gurgaon, for whom the present appellant has stood surety. Appellant has appeared before the trial Court on 18.12.2004 and sought time for production of the accused on the next date of hearing. But, on the next date, he did not appear and ultimately, he appeared on the date when the impugned order was passed.

9. The accused had absented from the proceedings of the case on 19.08.2004. This fact is not disputed that he was confined in jail in case FIR no. 36 dated 23.1.2005, Police Station, Kaithal w.e.f. 23.1.2005. So, he was confined in jail after about five months when he absented from the proceedings of the case. So, the appellant can not take the excuse that he could not produce the accused as he was confined in jail.

10. However, I found substance in the plea raised by learned counsel for the appellant that the penalty imposed by the learned trial Court is excessive. It is not disputed that later on, the appellant had informed the Court that the accused was confined in jail. So, his presence must have

been procured. In these circumstances, even the reduction in the penalty amount will suffice the ends of the justice. Thus, the amount of penalty imposed by the learned trial Court is hereby reduced from Rs.25,000/- to Rs. 10,000/- only.

11. With this modification in the amount of penalty, there is no merit in the appeal and the same is hereby dismissed.

February 09, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**