

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

Crl. Appeal No.S-400-SB of 2015 (O&M)

Date of Decision: 22.12.2015

Ashok

....Appellant

Versus

State of Haryana

....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. Raman Chawla, Advocate
for the appellant.

Mr. S.K. Yadav, D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

Crl. Misc. No.2788 of 2015

There is delay of 203 days in filing of the present appeal.

Notice in the application for condonation of delay was issued.

For the reasons mentioned in the application, the delay of 203 days in filing of the present appeal is condoned.

Criminal Misc. Application is accordingly disposed of.

Crl. Appeal No.S-400-SB of 2015

Brief facts of the case are that one Balwan son of Hans Raj was accused in FIR No.829 dated 04.07.2013 under Sections 398 and 401 IPC registered at Police Station City Hisar. The said accused was released on bail on furnishign bail bond in the sum of ₹ 50,000/- with one surety in the like amount. The present appellant stood surety for him on

23.10.2013 with an undertaking to produce the said accused on each and every date of hearing. The accused-Balwan remained absent on 10.03.2014, thus, his bail was cancelled and surety bonds were forfeited to the State. A notice was issued to the present appellant under Section 446 Cr.P.C to appear in person in the Court of Additional Sessions Judge, Hisar on 04.04.2014 but he could not appear on that day and subsequently, impugned order of cancellation of surety was passed.

Learned counsel for the appellant submits that the appellant could not appear before the trial Court due to misunderstanding of date. Thereafter, an application was moved for producing the accused before the trial Court. Learned counsel also submits that the impugned order has been passed without appreciation of fact that only on one date, he could not appear before the trial Court as the order was not conveyed to him and penalty of ₹ 50,000/- was imposed vide order dated 04.04.2014 passed by the Additional Sessions Judge, Hisar. Learned counsel also submits that accused-Balwan has been acquitted of the charge vide order dated 10.10.2014. The appellant is a poor person and is not having good financial condition. He further submits that the appellant has also been terminated from his services. A notice was received by the appellant on 07.01.2015 and the order of recovery is still pending. At the end, learned counsel for the appellant submits that keeping in view the financial condition of the appellant, a lenient view may be taken and the amount of penalty be reduced to the minimum.

Learned counsel for the respondent-State has not disputed the acquittal of the main accused.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents 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,

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,

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.

(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.

(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.”

Undisputedly, only one date was given to the appellant to appear before the Court and he made all efforts to search out the accused and thereafter, the accused appeared before the trial Court and has also been acquitted of the charge.

Keeping in view the facts and circumstances and considering the financial condition of the appellant, the appeal is allowed and the order passed by the trial Court is modified to the extent that the amount of penalty ₹ 50,000/- is reduced to ₹ 5,000/-. The appellant is directed to deposit the said amount before the trial Court within a period of two weeks from the date of receipt of copy of the order.

22.12.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE