

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1332 of 2015**

Ramlagan S/o Gujeram Sori, aged about 58 years, R/o village Makundi Khapri, Tehsil and Police Station Khairgarh, District Rajnandgaon (CG).

----- **Appellant**

Versus

State of Chhattisgarh through the Police Station Gatapar, District Rajnandgaon (CG).

---- **Respondent**

For Appellant	:	Shri Rakesh Pandey, Advocate.
For respondent	:	Shri Vaibhav A Gowardhan, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

28/09/2016

1. The instant appeal has been preferred under Section 449 CrPC assailing the order dated 14.10.2015 passed by the Additional Sessions Judge, Khairagarh, Distt. Rajnandgaon in MJC case No.02/2015.
2. The brief facts relevant for adjudication of the present appeal is that, one Jivan @ Jitu and Guleshwar were tried for the offence under Sections 363 and 364 read with Section 34 IPC in connection with Crime No.13/2012 registered at Police Station, Gatapar, Distt. Rajnandgaon. The above referred two accused were convicted for the said offence and sentenced to undergo RI for four years and 5 years with fine of Rs.100/- each respectively. Against the said order of conviction, both the accused persons preferred appeal before this

court which was registered as Criminal Appeal No.37 of 2014. The High Court vide its order dated 29.08.2014 granted bail to both the accused persons by suspending the sentence subject to appellant's furnishing a personal bond of Rs.25,000/- each with one surety of same amount.

3. The present appellant is said to have furnished the surety for and on behalf of the accused-Jivan. It is stated that the said accused Jivan subsequently had defaulted in appearing before the Registry of this High Court on couple of dates and this High Court on 02.07.2015 cancelled the bail granted to accused-Jivan and had directed to issue warrant of arrest against Jivan. Since the warrant of arrest also could not be made effective upon the said accused-Jivan, the High Court hearing the Criminal Appeal No.37 of 2014, on 28.08.2015 is said to have asked the trial court for proceedings under Section 446 CrPC against the surety i.e. the appellant herein who had furnished the bond in favour of accused Jivan.
4. Accordingly, a case was registered against the present appellant as MJC case No.02/2015 and the trial court had issued a show cause notice on 07.09.2015 seeking an explanation from the appellant as to why the amount of which the appellant has stood as surety be not recovered from him.
5. The appellant is said to have replied the said show cause notice before the court below explaining the fact that the person for whom he stood surety could not appear before the court on account of the fact that he was arrested by the police in another case and was languishing in jail

and as such he was not in a position to keep the accused Jivan present before the court on the date of appearance provided by the High Court. Thus, prayed for exonerating him from the proceedings drawn for forfeiture of surety. However, the court below vide order dated 14.10.2015 refused to accept the contention and reply submitted by the appellant and had ordered for forfeiture of the surety.

6. Learned counsel for the appellant assailing the said order dated 14.10.2015 states that the order passed by the Additional Sessions Judge, Khairagarh, is bad in law, improper and deserves to be set aside on the ground that the court below has not appreciated the facts of the case in its proper perspective. According to him, the court below ought to have appreciated the fact that the default in fact was on the part of the accused-Jivan and that it was beyond the control of the present appellant to produce the said person before the court for the reason of his being arrested in a different case. It was categorically brought before the court below that the accused Jivan for whom the appellant stood as surety got involved in another case i.e. Sessions Trial No.18 of 2015 before the court of Additional Sessions Judge, Khairagarh. According to Appellant, the said accused-Jivan is said to have got implicated in a Crime No. 11 of 2015 registered at Police Station Gandai, Distt. Rajnandgaon for the offence under Section 364,366 and 323 IPC as also under Sections 8 & 10 of Prevention of Children from Sexual Offences Act. According to him, the said accused Jivan was arrested in connection with that case on 24.01.2015 and since then he is not able to put his appearance before the Registry of

this Court.

7. It was lastly contended by the appellant that the fact that accused Jivan got arrested in connection with another criminal case, the present appellant loses control of getting him present before the court. However, he undertakes that the moment the accused Jivan is released on bail in the offence for which he is in jail, he shall make arrangement for keeping the said accused Jivan present before the court. According to him since the said accused Jivan is in jail, as of now the appellant cannot in any manner make him present and this facts should have been realized and visualized by the court below in its correct perspective and should not have passed the order for forfeiture of the surety amount. Thus, prayed for the quashing of the order impugned.
8. On the other hand, learned counsel for the State opposes the appeal and submits that the very fact that the present appellant has stood surety is sufficient and justified on the part of the court below in initiating the forfeiture proceeding and subsequently passing the impugned order dated 14.10.2015. The reason, the accused Jivan has been in jail can not be a good ground for the surety to be discharged as it is expected that whenever there is default on the part of the accused person and the accused person fails to make good the default within the time provided by the court, then as a natural consequence it would be the surety who would be compelled to either ensure presence of the accused or face forfeiture of the surety amount. Thus, the order dated 14.10.2015 does not call for any interference.

9. Having heard the rival contentions put forth by either side, if we consider the total facts and circumstances of the case, what clearly reflects is the fact that admittedly the accused Jivan for whom the present appellant is said to have stood as surety has been put in jail on 24.01.2015 and since then the said accused is in the judicial custody, and therefore, it is beyond the control of the present appellant to have been able to produce the said accused before the court. Likewise, it is also not a case where the accused Jivan is said to be deliberately avoiding appearance before the Registry of this Court and is enjoying the liberty of bail granted by the court. At this juncture, it is also necessary to take note of the undertaking given by the present appellant during the arguments that he shall ensure presence of the accused-Jivan before Registry of this court immediately on his being released from judicial custody.
10. Considering the aforesaid facts and circumstances of the case, particularly the fact that the accused Jivan, for whom the present appellant is stood as surety, cannot be held responsible for not keeping the accused Jivan present before the court. Another aspect would be the proceeding dated 16.11.2015 in Criminal Appeal No. 37 of 2014 i.e. the case in which the accused Jivan is said to have defaulted in making appearance. In the said case, on 16.11.2015, this court considered the fact that the accused-Jivan could not appear before the Registry of this court on account of his being in jail in connection with some other offence, the High Court has granted further six months time to enter appearance before Registry of this court. For

ready reference, the relevant portion of order dated 16.11.2015 passed by this High Court is reproduced as under :

“Counsel for the appellants submits that as appellant No.1 is in jail in connection with some other offence, he is unable to appear before the Registry of this Court. He submits that six months' time may be given to him for recording appearance of appellant No.1 before the Registry.

Time, as prayed for, is allowed.....”

11. This observation of the High Court itself shows that the High Court has also condoned the non appearance of the accused-Jivan before the court in Criminal Appeal No. 37 of 2014 for a period of six months.
12. Under all these facts and circumstances of the case, this court is of the opinion that order dated 14.10.2015 passed by the 1st Additional Sessions Judge, Khairagarh, in MJC Case No.02/2015 ordering for forfeiture of the surety bond and also ordering for depositing the amount for which he had stood as surety deserves to be quashed.
13. Accordingly, the appeal is allowed. Order dated 14.10.2015 passed by the 1st Additional Sessions Judge, Khairagarh, in MJC Case No.02/2015 stands quashed. No order as to costs.

SD/-
(P. Sam Koshy)
Judge