

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.353 OF 2008

-
JUDGMENT:

-
This Criminal Appeal is preferred by the sureties challenging the order of the I Additional Sessions Judge, East Godavari at Rajahmundry, dated 05.03.2008 in CrI.M.P.No.312 of 2007 in NDPS S.C.No.21 of 2007.

The impugned order reads as under:

“S1 S2 Both the sureties are present. They have not paid the bail amounts. Hence the entire bail bond amount is confiscated to State and each surety is sentenced to pay a fine of Rs.10,000/- (rupees ten thousand) I/d SI for a period of six months.”

Heard and perused the material available on record.

The learned counsel for the appellants raised the following grounds:

“1. The learned judge failed to see that proceedings under Section 446 Cr.P.C. are meant only to coerce the sureties to produce the accused. The sureties cannot be punished after the accused is arrested and brought before the Court, especially within two days after the sureties sought time to effect the production of the accused.

2. The learned judge ought to have seen that proceedings under Section 446 Cr.P.C. cannot be used to punish the sureties for the default of the accused but only to pressurise the sureties to procure the presence of the accused. As such the proceedings do not survive after the accused has surrendered/been arrested and remanded to jail by cancelling the bail.

3. Even otherwise, the learned judge failed to follow the procedure in Section 446 Cr.P.C. by directly ordering imprisonment when the sureties expressed inability to pay the surety amount. He ought to have proceeded to recover the money from the property offered as surety on the direction of the Court in the bail order.”

It is brought to the notice of this Court that after issuance of N.B.Ws., the person concerned was already arrested on 01.11.2007 in execution of the warrants.

Admittedly, the Court below has not followed any of the procedure prescribed under Section 446 Cr.P.C. while considering the forfeiture of the bonds executed by the sureties-appellants herein. Hence, the order under challenge is liable to be set aside.

In the result, the order of the trial Court dated 05.03.2008 in CrI.M.P.No.312 of 2007 in NDPS SC No.21 of 2007 is hereby set aside and the trial Court is directed to proceed with the case in accordance with law.

The Criminal Appeal is disposed of accordingly.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE RAJA ELANGO

02.08.2016

Tsr