

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1164-SB of 2004
Date of Decision: February 11, 2016

Teja Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravi Gakhar, Advocate
for the appellant.

Mr.T.N.Sarup, Addl. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the order dated 28.04.2004 passed by learned Judge, Special Court, Patiala, whereby penalty of ₹25,000/- was imposed upon the appellant-surety.

From the record, I find that in the present case, learned Judge, Special Court, Patiala vide impugned order dated 28.04.2004 imposed the penalty of ₹25,000/- under Section 446 Cr.P.C. upon the surety Teja Singh-appellant. Learned counsel for the appellant argued that Teja Singh-appellant had filed application, which is Annexure P-1, on 21.11.2003 for withdrawing the surety bonds furnished by him and the impugned order has been passed on 28.04.2004 by imposing penalty upon the appellant and his application already given on

21.11.2003 in the Court has not been taken into consideration nor the application has ever been rejected. He further argued that the impugned order passed by the trial Court is illegal and against the evidence and law.

After hearing learned counsel for the appellant as well as learned State counsel, I find that as per the trial Court record, an application, copy of which is Annexure P-1, has been given by the surety-Teja Singh son of Hukam Singh on 21.11.2003 for withdrawing surety bonds furnished by him. It has been stated in the application that applicant furnished surety bonds for the accused Mandeep Kaur in this case but the accused is now threatening to misuse the surety furnished by the applicant and going to put the applicant in trouble. It is also stated in the application that now the applicant has no faith upon the accused and therefore, wants to withdraw the surety bonds furnished by him and it is also prayed that surety bonds furnished by the applicant be withdrawn and accused present in the Court be taken into custody.

Learned trial Court, after receiving this application on 21.11.2003, passed the order that surety of accused namely Teja Singh has also moved an application for cancellation of surety bond. Accused was directed to bring some other surety on the date already fixed and Teja Singh surety also to come present on that day and the case was fixed for 06.12.2003. On 06.12.2003, learned Judge, Special Court, Patiala passed the order exempting appearance of the accused for that date but no order has been passed regarding the

application in question. Then, the case was adjourned to 23.02.2004, on which date, the accused absented and her bail bonds were forfeited to the State.

The perusal of the record shows that the application given by the surety has not been considered before forfeiting the surety bonds nor the application has been accepted or rejected or dealt with at any time by the Court below. As the accused did not appear, then notice was given to surety and when the surety appeared, then notice under section 446 Cr.P.C. was given and vide impugned order dated 28.04.2004, learned Judge, Special Court, passed the following order while imposing the penalty of ₹25,000/- on the surety:-

“The warrants of arrest of Mandeep Kaur have been received back unserved with the report that she is missing from her residence for the last 6/7 months. From the report on the warrants I am satisfied that the presence of Mandeep Kaur cannot be procured in an ordinary manner and she, as such, is ordered to be summoned through proclamation on 25.05.04. Surety of Mandeep Kaur namely Teja Singh is also present and states that Mandeep Kaur could not be traced-out. He seeks more time to trace Mandeep Kaur. Notice to surety was served on 24.03.04 u/s 446 Cr.P.C. and on his request he was allowed time till today to produce Mandeep Kaur. As whereabouts of Mandeep Kaur are not known to the surety, as such, no purpose will be served by giving him more time. The amount of Rs.25,000/- is ordered to be recovered from Teja Singh by way of penalty. The recovery warrant of this amount from the property of the surety i.e. land bearing khasra No.43//2(8-0) situated in village Dwarkapur Tehsil Samana, as per jamabandi for the year 2001-2002 be sent to the Chief Judicial Magistrate, who will further send the same to the Collector, Patiala. Copy of this order alongwith necessary performa be sent by the Reader.”

The perusal of the impugned order nowhere shows that

learned Judge, Special Court, Patiala, while imposing the penalty has discussed the application given by Teja Singh surety on 21.11.2003. The surety already brought to the notice of the Court that he wants to withdraw the surety bonds as accused is threatening him to misuse the surety and going to put the applicant in trouble. In that application, the surety has also requested the Court to take the accused into custody. If the accused was not taken into custody or the Court itself given the adjournment and then personal exemption of the accused was allowed, there is no fault of the surety.

In view of the above discussion, I find that the impugned order dated 28.04.2004 is not as per law. Therefore, finding merit in the present appeal, the same is allowed.

The impugned order dated 28.04.2004 passed by learned Judge, Special Court, Patiala is set aside to the extent of imposing penalty of ₹25,000/- on the surety-Teja Singh appellant.

February 11, 2016
Vgulati

(INDERJIT SINGH)
JUDGE