

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRA-S-1707 -SB of 2009 (O&M)

Date of decision: 08.02.2016

Dharam Singh @ Dharma

.....Applicant

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Randeep Singh, Advocate for the appellant
Mr.Maheshinder Singh Sidhu, Addl.A.G. Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

I have heard learned counsel for the parties and have also carefully gone through the file.

Facts of the case are that one truck bearing registration no.HYW-3741 was released on superdari in favour of Ram Phal. The present appellant Dharam Singh @ Dharma son of Baga stood as surety in the sum of Rs.5 lacs undertaking that if the truck is not produced by superdar, he will pay the said amount to the State. Ultimately, the truck was not produced before the trial Court. Therefore, the learned Judge, Special Court, Kaithal vide order dated 22.1.2009 cancelled the superdari order and forfeited the superdarinama and surety bonds to the State.

It also comes out that when presence of the truck could

not be secured, Ram Phal was ultimately arrested and produced in the Court. The Court vide order dated 8.4.2009 also passed the following order:-

“..... a direction is issued to the SHO, P.S. Cheeka to ascertain the detail of properties owned and possessed by superdar Ram Phal so that the same be attached and recovery be effected as arrears of land revenue. The necessary report in this regard be furnished on or before 30.4.2009. The agricultural land standing in the name of surety of the superdarinama namely Dharma son of Baga resident of Malikpur, Tehsil Siwan, District Kaithal situated in the revenue estate of village Malikpur, Tehsil Siwan, District Kaithal as per the jamabandi for the year 1999-2000 which has been appended along with the superdarinama is ordered to be attached.”

On 9.7.2009, the learned Additional Sessions Judge, Kaithal, passed the following order, whereby the attached property of Dharam Singh was ordered to be put on sale for recovery of Rs.5 lacs:-

“3. Since superdar Ram Phal has failed to produce the truck in question i.e. HYW-3741 or to deposit the amount of superdari, in spite of specific orders passed by the court, therefore, this court is left with no other option except to recover the amount of superdarinama of the truck in question, i.e. Rs.5,00,000/-. As the land of the surety Dharam alias Dharma son of Bhaga resident of village Malikpur, has been attached, in view of the attachment report placed on record, hence, the amount of superdarinama i.e. Rs.5,00,000/- is ordered to be got

recovered by selling the attached land of the surety. Naib Tehsildar, Sewan is hereby appointed Court Auctioneer and he is hereby directed to put the attached land of surety Dharam alias Dharam on auction and sell part of it or total attached land, equivalent to the amount of superdarinama i.e. Rs.5,00,000/- and not more than that. Court Auctioneer is directed to submit report in the court of the undersigned on or before 8.8.2009. ”

The only contention of learned counsel for the appellant is that before forfeiting the surety bonds, ordering the attachment or ordering the sale, no notice under Section 446 Cr.P.C. was issued to the surety at any stage. Therefore, without seeking explanation of the surety, such order could not be passed.

I am in agreement with the contention of learned counsel for the appellant. Since the surety was present, therefore the surety should have been issued notice under Section 446 Cr.P.C., before ordering the sale of the attached property.

In the circumstances, the present appeal is allowed, the impugned order is set aside and the lower Court is directed to issue the show cause notice under Section 446 Cr.P.C. to the present appellant as to why the surety amount be not recovered from him by the sale of the attached property. It is only after obtaining the explanation and the evidence led by the appellant in support thereof that the sale of the property is to be ordered.

08.02.2016

gk

GOPAL KRISHAN
2016.02.12 12:25
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

**(Kuldip Singh)
Judge**