

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

Decided on: 08.11.2017

1. CRA-S No.721-SB of 2004 (O&M)

Bhagat Singh

....Appellant

Versus

State of Haryana

....Respondent

2. CRA-S No.722-SB of 2004 (O&M)

Suba Singh

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. K.P.S. Virk, Advocate
for Mr. K.S. Dhaliwal, Advocate
for the appellant (in both the appeals)

Mr. Naveen Sheoran, DAG, Haryana.
(in both the appeals)

ARVIND SINGH SANGWAN, J. (Oral)

Challenge in these two appeals i.e. CRA-S No.721-SB of 2004 and CRA-S No.722-SB of 2004, is to the order dated 02.03.2004 vide which in exercise of power under Section 446 Cr.P.C., the trial Court has imposed a penalty of Rs.2,00,000/- each to be paid by the appellants – Bhagat Singh (in CRA-S No.721-SB of 2004) and Suba Singh (in CRA-S No.722-SB of 2004).

Brief facts of the case are that an FIR No.197 of 1997 dated 12.07.1997 under Section 15/61/85 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (in short 'the NDPS Act') was registered at Police Station Jhansa against 04 accused persons namely Satnam Singh, Mukhtiar Singh, Nachhatar Singh and one Nirmal Singh. During the pendency of the trial, the registered owner of the tractor-trolley No.HR-070-2359 which was allegedly used in commission of the crime was obtained on superdari by the appellant – Bhagat Singh while the appellant – Suba Singh stood surety for the same and as per the directions issued by the trial Court, the appellant had furnished superdaginama in the sum of Rs.2,00,000/- each with a further condition that the superdari would produce the aforesaid tractor-trolley on each and every date of hearing. On 24.11.2003, the appellant – Bhagat Singh in whose favour the said tractor-trolley was released on superdari failed to produce the same being case property before the trial Court and, therefore, the trial Court forfeited the surety amount in favour of Bhagat Singh and issued a notice under Section 446 Cr.P.C. to both the appellants namely Bhagat Singh and Suba Singh. Vide impugned order dated 02.03.2004, a penalty of Rs.2,00,000/- was imposed to be paid equally by the appellants – Bhagat Singh and Suba Singh being superdar as well as surety.

The present appeals have been filed challenging the aforesaid order dated 02.03.2004.

Counsel for the appellants has submitted that the tractor-trolley was in the name of Bhagat Singh as well as one Harbans Kaur and Mukhtiar Singh as per the registration certificate (Mark A) placed on record and this tractor-trolley was purchased by 03 persons from one

Jaswant Singh as it was hypothecated by State Bank of India, Shahbad Branch. After the same was taken on superdari on 07.11.1997, on 21.09.1999, the said tractor-trolley was taken away by Harbans Kaur one of the registered owner and the appellant – Bhagat Singh has registered a DDR No.25 dated 21.09.1999 with the police regarding forcibly taking away his tractor-trolley by Harbans Kaur. The said rapat/DDR was produced before the trial Court as Mark B and the appellant – Bhagat Singh has also filed a civil suit No.229/2000/2003 praying for decree of handing over the possession of the tractor. It is, thus, submitted that on the date when the trial Court has directed the appellant to produce the tractor-trolley i.e. on 24.11.2003, the appellant – Bhagat Singh was not in a physical possession of the same and, therefore, he could not produce the tractor for a *bona fide* reason and as such, it is submitted that imposition of penalty by the trial Court for an amount of Rs.2,00,000/- is on higher side.

It is further submitted that out of 04 accused persons, 03 accused persons namely Mukhtiar Singh, Satnam Singh and Nachhatar Singh have already been convicted by the trial Court vide judgment dated 05.10.2005 and, therefore, no prejudice has been caused to the prosecution for non-production of the tractor-trolley on 24.11.2003.

Counsel for the appellants has relied upon the judgment passed by this Court “*Mohinder Singh vs The State of Punjab*”, 2008(22) RCR (Criminal) 704, “*Angrej Singh vs State of Punjab*”, 2010(4) RCR (Criminal) 580 and “*Gopal Kaur vs State of Punjab*”, 2011(6) RCR (Criminal) 1394, wherein this Court has while imposing

penalty under Section 446 Cr.P.C. has held that the amount of penalty may be reduced to 1/4th of the amount of surety bonds.

Counsel for the State, on instructions from ASI Randhir Singh, has not disputed the factual position that the main 03 accused persons have already been convicted by the trial Court on 05.10.2005.

Considering the fact that the present appeals are pending since 2004; the operation of the impugned order was stayed on 02.04.2004 and in view of the judgment cited hereinbefore, the present appeals are partly allowed and the penalty amount of Rs.2,00,000/- each imposed by the trial Court upon both the appellants i.e. Bhagat Singh and Suba Singh vide impugned order dated 02.03.2004 is reduced to Rs.20,000/- each, which will be paid by them. The penalty amount of Rs.20,000/- shall be deposited with the trial Court within a period of 03 months from today, failing which these appeals shall stand automatically dismissed without any further action.

(ARVIND SINGH SANGWAN)
JUDGE

08.11.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No