

CRA-S-1968-SB-2016

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

CRA-S-1968-SB-2016

Date of Decision: 09.02.2017

Balkar Singh

... Appellant

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Sanjeev Kumar Bawa, Advocate,
for the appellant.

Mr. Deep Singh, AAG, Punjab.

INDERJIT SINGH, J.

Appellant-Balkar Singh has filed this appeal against respondents-State of Punjab and Deputy Commissioner of Police, Gurdaspur challenging the order dated 16.05.2015 passed by learned Additional Sessions Judge, Ferozepur in case FIR No.145 dated 23.12.2010, registered at Police Station Bhahav Wala, District Ferozepur, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 whereby conditional warrant of the appellant has been ordered to be issued under Section 421 (1) (b) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') for recovery of amount of ₹10,00,000/- being penalty as arrears of the land revenue.

CRA-S-1968-SB-2016

Notice of motion was issued. Learned State counsel put in appearance on behalf of the respondent-State and contested this appeal.

From the record, I find that during trial, *sapurdar*-Lovepreet did not produce the vehicle in the court and notices to *sapurdar*-Lovepreet and surety-Balkar Singh were issued. Perusal of the order passed by the lower court shows that surety-Balkar Singh was never served in the proceedings. Vide order dated 26.03.2015, learned Special Court-II, Ferozepur ordered that notice to *sapurdar* be sent for 16.05.2015 and note be given, if the *sapurdar* is not available, the notice be served through affixation at the door of the house of the *sapurdar*. On 16.05.2015, learned Additional Sessions Judge, Ferozepur passed the following impugned order:

“The perusal of the file goes to show that the notice is being issued to the surety for the last so many dates. As the present case is with regard to proceedings under Section 446 Cr.P.C. against surety Balkar Singh son of Harbhajan Singh, resident of village Aulakh, Tehsil Batala, District Gurdaspur, who stood surety of the Trailer make Tata 2515-TC bearing RC No.MH-04-BG-7056 in FIR No.145 dated 23.12.2010, U/S 18 NDPS Act, Police Station Bahav Wala, who made default in producing the vehicle in question. The conditional warrants are hereby ordered to be issued under Section 421(1) (b) Cr.P.C. for recovery of the said amount of Rs.1000000/- being penalty as arrears of land revenue. The conditional warrants is hereby ordered to be issued to the Collector of the District,

CRA-S-1968-SB-2016

authorizing him to realize the said amount as arrears of land revenue being penalty from his movable or immovable property, or both, of Balkar Singh-surety. The Collector shall intimate the court as and when the recovery is so effected. Papers be consigned to the Record Room.”

I have seen the notice issued for 16.05.2015 by learned Judge, Special Court, Ferozepur where a specific note is given that if the surety is not traceable, a copy of the notice be served by affixation at the door of his ordinary residence or on a common place in the locality. The report of Executing Constable nowhere shows that the said notice was affixed at the door of the present appellant-Balkar Singh nor it shows that it has been affixed at the common place in the locality. Rather, perusal of the report shows that Balkar Singh did not meet in his house and copy of the notice under Section 446 Cr.P.C. has been got noted to Sarpanch Gurnam Singh. There is nothing on record to show that Sarpanch Gurnam Singh has informed the present petitioner. Otherwise also, this is not the order of the court that notice be got noted to Sarpanch, rather direction was issued to affix the notice at the door of the appellant's house which has not been complied with.

Perusal of the lower court record shows that the present appellant never served in the proceedings personally or by affixation. Therefore, the impugned order dated 16.05.2015 has been passed by learned Additional Sessions Judge, Ferozepur without affording opportunity to the appellant to show cause. Hence, the impugned order

CRA-S-1968-SB-2016

dated 16.05.2015 is not as per law and is set aside accordingly. The matter is remanded to the trial Court to decide the proceedings under Section 446 Cr.P.C. afresh after giving opportunity of being heard to the present appellant. The parties through their counsel are directed to appear before the trial Court on 15.03.2017.

09.02.2017

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes
Whether reportable	:	No