

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

**CRA-S No.4576-SB of 2016 (O&M)
Decided on: 06.11.2017**

Ramphal

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ashish Gupta, Advocate
for the appellant.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this appeal is for setting-aside the order dated 15.09.2016 passed by the Sessions Judge, Mewat in FIR No. 298 dated 17.08.2015 registered under Sections 395, 216, 397 and 412 IPC and 25 of the Arms Act at Police Station Tauru, vide which a penalty of Rs.40,000/- has been imposed on the appellant under Section 446 Cr.P.C.

Counsel for the appellant has submitted that the appellant stood surety for one accused – Suraj Pal in the case and on 17.08.2016, Suraj Pal was not present before the trial Court as he was lodged in judicial custody in Kishangarh Jail at Rajasthan. The trial Court issued notice to the appellant under Section 446 Cr.P.C. for 12.07.2016, however, the appellant did not appear and, therefore, the trial Court vide impugned order dated 15.09.2016 imposed penalty of Rs.40,000/-. The appellant deposited the said amount on the same day when the impugned order dated 15.09.2016 was passed and has challenged the

said order in the present appeal. It is further submitted on behalf of the appellant that the appellant stood surety for accused – Suraj Pal and he did not remain absent voluntarily and rather was on police remand in connection with a case pertaining to Police Station Phoolbagh, District Alwar, Rajasthan and, therefore, the non-appearance of accused – Suraj Pal was not intentional and rather was on account of his police remand in some other FIR and, therefore, the trial Court was not justified while imposing a huge penalty of Rs.40,000/-. It is further submitted that non-appearance of the appellant on 12.07.2016 before the trial Court was not intentional as he was under a *bona fide* impression as informed by family members of accused – Suraj Pal that he has appeared. Counsel for the appellant has relied upon the judgment “**Gopal Kaur vs State of Punjab**”, 2011(6) RCR (Criminal) 1394 where this Court has held as under:-

“5. I have considered the facts and circumstances.

6. From the impugned order itself, it is gathered that Gurpreet Singh @ Gopi (accused) could not appear because he was lodged in jail in another case. In such circumstances, the Court was required to issue production warrant for summoning him. In regard to appearance of petitioner, her son had died and therefore, circumstances were such that compassion was required to be shown.

7. Be that as it may, Gopal Kaur was summoned in the context of non appearance of Gurpreet Singh @ Gopi for whom she stood surety. Gurpreet Singh himself having been lodged in jail, could not put in appearance and therefore malafide conduct of Gurpreet Singh @ Gopi or conduct showing intention to abscond cannot be gathered.

8. Considering the facts and circumstances, I am of the considered opinion that the Trial Court had no

occasion to impose penalty of Rs. 40,000/- on the person of the petitioner.

9. The petition is allowed. Impugned order dated 3.8.2009 is hereby set aside.”

It is, thus, submitted on behalf of the appellant that non-appearance of the appellant on 12.07.2016 was well explained as well as the non-appearance of accused – Suraj Pal was beyond the control of the appellant or Suraj Pal himself as he was lodged in Kishangarh Jail at Rajasthan.

It is also submitted that, later on, the appellant was taken in judicial custody on account of his non-appearance on 12.07.2016 and was released on 15.09.2016 when he deposited the amount of Rs.40,000/- and, therefore, for his non-appearance, he has undergone judicial custody as well as has paid penalty of Rs.40,000/- also.

After hearing counsel for the appellant, I find merit in the present appeal. Since, a plausible explanation has been given by the appellant and in view of the law laid down in **Gopal Kaur's case (supra)**, the impugned order dated 15.09.2016 imposing a penalty of Rs.40,000/- on the appellant is set-aside, the amount of Rs.40,000/- paid by the appellant shall be refunded to him, in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

06.11.2017
yakub

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