

229.

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

**CRA-S-824-SB-2017 (O&M)**

Date of decision:11.08.2017.

**RAJESH KUMAR**

... Appellant

versus

**STATE OF PUNJAB**

.... Respondent

**CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA**

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Present: Mr. Bikramjeet Singh Jatana, Advocate,  
for the appellant.

Ms. Simranjeet Kaur, AAG, Punjab.

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**HARI PAL VERMA, J.**

Appellant-Rajesh Kumar has filed the present appeal against the order dated 19.01.2017 passed by learned Sessions Judge, Mansa, imposing a penalty of ₹1 lakh for non-production of the accused, namely, Vicky Kumar for whom the appellant stood surety.

Briefly stated, an FIR No.86 dated 02.09.2013 under Sections 22 and 25 of NDPS Act, 1985 was registered at Police Station City Mansa, against the accused-Vicky Kumar and three other accused persons. The accused-Vicky Kumar was granted bail by the trial court and the appellant stood surety for him and furnished surety-cum-bail bonds of ₹1 lakh. The trial in the case commenced in the year 2016. However, when the said accused-Vicky Kumar did not appear before the trial Court, proceedings under Section 82 Cr.P.C. were initiated

against him and thereafter, he was declared as proclaimed offender. Since the appellant was surety to said accused-Vicky Kumar, a notice was given to him to appear before the trial Court. Accordingly, on 03.12.2016, the appellant appeared before the trial Court and sought time to produce the accused in court. Since the appellant failed to produce the said accused before the trial Court, an order dated 19.01.2017 was passed imposing a penalty of ₹1 lakh upon the appellant being surety to the accused-Vicky Kumar.

Learned counsel for the appellant has argued that the trial Court has passed the impugned order without following the procedure as mentioned in Section 446(1) Cr.P.C. The trial Court, vide impugned order, has imposed the penalty amount of ₹1 lakh upon the appellant. Before passing the impugned order, the trial Court has not issued any show cause notice to the appellant to deposit the amount or to show cause why it should not be paid as specifically mentioned in sub-section (1) of Section 446 Cr.P.C. The provisions of Section 446 (1) Cr.P.C. reads as under:-

“446. Procedure when bond has been forfeited.

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.- A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.”

Learned counsel for the appellant has further argued that the appellant has already appeared before the trial Court and had requested for time so as to produce the accused in court, but despite his sincere efforts, he could not trace the accused. The appellant is still tracing the accused. The appellant is a very poor person. He is mentally ill and is getting his treatment from the hospital. He is also a patient of cancer.

Learned counsel for the appellant has referred to a judgment of Hon'ble Supreme Court rendered in **Ghulam Mehdi Versus State of Rajasthan-1960 AIR (SC) 1185** to contend that in order to forfeit the surety bond, notice to show cause is necessary to the surety and in the absence of notice, proceedings cannot be said to be in accordance with law. Reliance has also been placed on the judgments rendered in **Surjit Singh Versus State of Punjab-1986(1) R.C.R. (Criminal) 605** and **Jitendra Versus State of U.P. & another-2010(7) R.C.R. (Criminal) 78.**

On the other hand, learned State counsel has argued that the impugned order does not suffer from any illegality. The order of warrant of attachment of property of the appellant was issued in order to recover the surety amount of ₹ 1 lakh. There is no illegality in the order dated 19.01.2017.

I have heard learned counsel for the parties.

So far as the judgments referred by the learned counsel for the appellant in **Ghulam Mehdi's case** (supra) and **Surjit Singh's case** (supra) are concerned, they are not applicable to the facts of present case. As per these judgments, before a surety becomes liable to pay the amount of a bond forfeited, it is necessary to give notice why the amount should not be paid and if he fails to show sufficient cause, only then the court can proceed to recover the money. Whereas in the case in hand, the appellant appeared before the trial Court and suffered a statement that he may be given one more opportunity to produce the accused Vicky Kumar. Therefore, once he himself put in appearance before the court and had sought an opportunity to produce the accused, no such notice is required to be served.

Taking into consideration the fact that the appellant has appeared before the trial Court and has suffered a statement that he may be given one more opportunity to produce the accused Vicky Kumar in the court, but has failed to locate him, his sincerity cannot be doubted. Since the appellant claimed himself to be mentally ill and is suffering from cancer, this Court finds that the ends of justice would be met if the penalty amount is reduced.

Accordingly, present petition is disposed of with a modification in the impugned order dated 19.01.2017 passed by learned Sessions Judge, Mansa, to the extent that an amount of penalty of ₹25,000/- be recovered from the appellant instead of ₹1 lakh.

However, the appellant shall deposit the said amount within two months from today. In case, the appellant fails to deposit the said amount within the stipulated time, the instant appeal shall be deemed to have been dismissed.

**(HARI PAL VERMA)**  
**JUDGE**

11.08.2017  
sanjeev

Whether speaking/reasoned? Yes/No  
Whether reportable? Yes/No