

116.

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

CRM-M-25254-2017

Date of decision: 31.10.2017.

RAJBIR

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Manoj Makkar, Advocate,
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J. (Oral)

Petitioner-Rajbir, who is aged about 57 years, has filed the present petition under Section 482 Cr.P.C. questioning the order dated 01.12.2016 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Bhiwani whereby notice was issued to the petitioner being a surety to the accused-Rahul, who did not appear before the trial Court in the case. Challenge has also been laid to the subsequent orders dated 03.02.2017 and 07.04.2017 (Annexures P-2 and P-3 respectively) issued by learned Magistrate whereby recovery warrants were issued against the petitioner.

Learned counsel for the petitioner states that the accused for whom the petitioner stood surety in the FIR No.628 dated 28.08.2013 under Section 375 IPC, Police Station Bhiwani City, has already been acquitted by the trial Court. Therefore, lenient view may be taken against the petitioner. Petitioner, who is aged and poor person, has stood surety of the accused-Rahul in good faith. He prays that the order dated 07.04.2017 passed by learned Magistrate whereby recovery warrants were issued against him, may be set aside.

On the other hand, learned State counsel has argued that once the petitioner has stood surety to the accused Rahul in the aforesaid FIR and accused had absented himself from the court, there is no illegality in the order passed by the learned Magistrate. Therefore, the proceedings under Section 446 Cr.P.C. has rightly been initiated by the learned Magistrate which led to issuance of warrant of recovery.

I have heard learned counsel for the parties.

There is no dispute that the petitioner was surety of Rahul, who did not surrender before the trial Court. Accordingly, learned Magistrate initiated the proceedings under Section 446 Cr.P.C. In the main case, the accused-Rahul is stated to have been acquitted.

Considering the fact that the accused-Rahul has been acquitted by the trial Court, this Court modifies the order passed by learned Magistrate to the extent that instead of recovering ₹40,000/- from the petitioner on account of failure to produce the accused on the date given before the Magistrate, an amount of ₹5,000/- be recovered from him.

With the aforesaid modification, present petition is disposed of.

(HARI PAL VERMA)
JUDGE

31.10.2017

sanjeev

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