

CRA-S-2198-SB of 2014
Date of decision: May 16, 2018

Shiv Mangal and anotherAppellants

Versus

State of HaryanaRespondent

CRA-S-1661-SB of 2015 (O&M)

Satish Kumar and othersAppellants

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Ravinder Malik, Advocate
for the appellants in CRA-S-2198-SB-2014.

Mr. K.D.S. Hooda, Advocate
for the appellants in CRA-S-1661-SB-2015.

Mr. Siddharth Sanwaria, DAG, Haryana.

A.B. CHAUDHARI, J.

Learned counsel for the appellants in CRA-S-1661-SB-2015

submits that he does not press the appeal qua respondents No.5 to 7 in

CRA-S-1661-SB-2015.

Hence, the appeal qua respondents No.5 to 7 in CRA-S-1661-SB-2015 is dismissed as not pressed.

This order shall dispose of both these appeals, i.e. CRA-S-2198-SB-2014 titled as Shiv Mangal and another vs. State of Haryana and CRA-S-1661-SB-2015 titled as Satish Kumar and others vs. State of Haryana.

In these appeals, challenge is to the order dated 05.04.2014 and 26.02.2015, passed by Sessions Judge, Rohtak penalizing the appellant(s) in both these appeals by imposing penalty of Rs.1,00,000/- each on the appellants in CRA-S-2198-SB-2014 and Rs.50,000/- and Rs.20,000/- in CRA-S-1661-SB-2015. It is common ground that the accused Vijay and Basant did not appear before the trial Court and thereby the trial was obstructed. Therefore the trial Court took serious view of the matter that the accused persons did not appear and the sureties were responsible. Trial Court therefore passed the orders imposing penalty on the sureties who have challenged these orders by filing the present appeals.

It is not in dispute that the trial is at the fag end and as stated by learned counsel for appellants that only one witness namely, the IO was to be examined and thereafter the trial would be completed. In other words, prosecution has almost completed the evidence in the trial.

We do not think that there is any fault on the part of trial Court in recording the finding that because of the conduct of the accused Vijay and Basant, the sureties, in not making the accused persons

present before the Court, the trial was obstructed and was not being held expeditiously. However, we find from the submissions made by learned counsel for the rival parties that in so far as Vijay is concerned, he was in custody on the date on which he did not appear before the trial Court and for which, sureties have been penalised. That is evident from the document at Page 17 of CRA-S-2198-SB of 2014 which is an order dated 06.03.2014, passed by JMIC, Bahadurgarh, in which, accused Vijay was ordered to be sent to judicial custody for 14 days on 06.03.2014, whereas, the date before the trial Court was 20.03.2014. Thus, it was beyond a control of the appellants/sureties in CRA-S-2198-SB-2014 to produce accused Vijay before the Court. However, this crucial fact has not been taken into consideration by the trial Court while recording the order of imposing penalty.

We therefore, set aside the said impugned order dated 05.04.2014 imposing penalty on the appellants Shiv Mangal and Surrender.

Insofar as, the other appeal i.e. CRA-S-1661-SB of 2015 is concerned, on behalf of appellants No.1 to 4, we find that the accused Basant was already arrested and had surrendered before the Court in other case. The trial Court itself observed in the order dated 26.02.2015 that it would not make much difference merely because he had surrendered, before imposition of penalty. The Court went by the fact that Basant did not appear and therefore the sureties were responsible taking harsh view of the matter. Admittedly, the accused Basant had already surrendered and

it is thereafter, the penalty has been imposed. Therefore, the action of imposing penalty by the trial Court, in our opinion, seems to be cumbersome since the ultimate object that was sought to be achieved was to secure attendance of accused Basant.

In that view of the matter, since this was the first kind of incident qua appellants No.1 to 4 (in CRA-S-1661-SB of 2015), we think pragmatic and lenient view is required to be taken. In the result, we set aside the said order dated 26.02.2015 also qua appellants No.1 to 4 in CRA-S-1661-SB of 2015.

Hence, both these appeals i.e. CRA-S-2198-SB-2014 titled as Shiv Mangal and another vs. State of Haryana and CRA-S-1661-SB-2015 titled as Satish Kumar and others vs. State of Haryana, are allowed and the impugned orders dated 05.04.2014 (in CRA-S-2198-SB of 2014) and 26.02.2015 (in CRA-S-1661-SB of 2015) are quashed and set aside.

**(A.B. CHAUDHARI)
JUDGE**

**(B.S. WALIA)
JUDGE**

May 16, 2018
anju rani

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No