

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

CRA-S-3769-SB-2016

Date of decision:-25.1.2018

Mohinder Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.H.S. Dhandi, Advocate
for the appellant.

Mr.Saurav Khurana, DAG, Punjab.

H.S. MADAAN, J.

This appeal has been filed against the order dated 16.9.2016 passed by learned Additional Sessions Judge, Ludhiana directing the surety Mohinder Singh (appellant) to deposit a sum of Rs.2 lakhs.

Briefly stated, the facts of the case are that Sukhdev Singh, an accused in FIR No.46 dated 10.4.2009, under Section 18 of NDPS Act, Police Station Division No.8, Ludhiana had taken Alto car No.PB-29E-5897 involved in the incident on *superdari* and appellant Mohinder Singh had furnished surety bond in the sum of Rs.3 lakhs on 15.5.2009. During the course of trial, Sukhdev Singh was directed to produce the vehicle taken by him on *superdari* but he did not do so despite availing of ample opportunities. Therefore, a notice was issued to the surety for 14.7.2016. On 16.9.2016, the appellant appeared in the trial Court and submitted that he had no knowledge about the whereabouts of the car, therefore, a penalty of Rs.2 lakhs was imposed upon him.

Feeling aggrieved by the said order, the appellant has filed the present appeal, notice of which was given to the respondent – State, which put in appearance through counsel.

According to the appellant, the vehicle in question was taken on *superdari* by accused Sukhdev Singh since lodged in jail and he was not able to produce the vehicle. The appellant being surety for the owner of the vehicle cannot be held to have any knowledge about whereabouts of the vehicle and cannot be penalized in any manner. The vehicle in question was very old, therefore, imposition of penalty of Rs.2 lakhs is excessively harsh and unjust. The appellant was not given any opportunity to explain the circumstances due to which the vehicle could not be produced, therefore, the appeal be allowed and order under appeal be set aside.

In the written reply filed by the State, it has been contended that appellant had sought setting aside of order dated 16.9.2016 passed by the trial Court imposing penalty of Rs.2 lakhs, however, there is nothing wrong with the said order; that the car in question had been released on *superdari* to Sukhdev Singh on his furnishing necessary bond with one surety in the sum of Rs.3 lakhs, subject to the condition that car would not be disposed of and would be produced in the trial Court on each and every date of hearing but owner of the car failed to do so and had rather disposed that of, therefore, the trial Court vide order dated 16.9.2016 had imposed the penalty of Rs.2 lakhs upon the appellant; that the order is neither perverse nor improper. A prayer was made to dismiss the appeal.

I have heard learned counsel for the parties besides going

through the record and I do not find any illegality or infirmity in the impugned order.

As per the case of the appellant, he has furnished surety bond in the sum of Rs.3 lakhs for release of car on *superdari* to Sukhdev Singh. It is not in dispute that the car in question was not produced in the Court as required. The *superdar* happened to be behind bars. The surety was duty bound to ensure the production of the car in the Court as and when directed or to pay the surety amount. The impugned order passed by the trial Court reads as follows:

Referred surety Mohinder Singh has appeared and has suffered separate statement that involved Alto car No.PB-29E-5897 was taken on superdari by accused-respondent Sukhdev Singh to which this Mohinder Singh stood surety. He had submitted surety bonds but he has no knowledge about the whereabouts of said car and he is unable to produce the same in Court regarding which he had sought some time on 31.3.2015 when he had suffered a statement in this regard in this case.

*Above detailed circumstances speak on the face of it that referred car either has already been disposed of or has been lost custody off by present surety Mohinder Singh. He has shown inability to produce the same. Consequently, by virtue of Section 446 Cr.P.C., and when he had given surety of Rs.3 lacs regarding this vehicle on 15.5.2009, a penalty of **Rs.2 lacs is imposed upon this surety** Mohinder Singh. He has sought time to pay the same or to produce the vehicle.*

*Let accused/respondent Sukhdev Singh be summoned again through production warrants from Faridkot Jail for 1.0.2016. **Surety Mohinder Singh to deposit Rs.2 lacs** under Section 446 Cr.P.C. in court or to produce said vehicle in Court on that day.*

Thus it goes to show that appellant himself had stated that he had no knowledge about the whereabouts of said car and he was unable to produce the same in Court. It further comes out that the appellant had appeared in the Court on 31.3.2015 and made a statement seeking time for production of the car. Therefore, the contention that adequate time was not afforded to him to do so is obviously wrong. The appellant had shown inability to produce the car. The trial Court was justified in imposing a penalty of Rs.2 lakhs upon the surety. He cannot cry foul now and trying to find faults with the order. He should have been vigilant enough at the time of furnishing the surety bond. If he was not in a position to exercise adequate control over the owner so as to make him produce the car on each and every date of hearing, then he should not have stood surety at all. As regards the authority referred to by learned counsel for the appellant i.e. **Anand Versus N.C.T. Of Delhi, 2004(3) CCR 474** for reduction of penalty by High Court of Delhi, the same does not find application due to different facts and circumstances. Here, I do not see any reason to accept the appeal and to interfere with the order passed by the trial Court.

Finding no merit in the appeal, the same stands dismissed.

Necessary intimation be sent to the quarter concerned.

25.1.2018
Brij

(H.S.MADAAN)
JUDGE

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