

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45868-2017 (O&M)

Date of decision: 10.07.2018

Rahul

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.S. Randhawa, Advocate
for the petitioner.

Mr. Sidakmeet Sandhu, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

On 08.12.2017, the following order was passed by this Court: -

“Prayer in this petition is for setting aside the order dated 27.04.2016 vide which the bail bond and surety bond were cancelled and forfeited to the State as well as the order dated 27.07.2017 vide which the warrants of recovery were issued against the petitioner and subsequent order dated 30.10.2017 vide which the petitioner was declared as proclaimed offender.

Learned counsel for the petitioner submits that the petitioner stood as surety to one Rajan Bai, who was an accused in FIR No.169 dated 30.08.2013 under Sections 22/61/85 of NDPS Act, registered at Police Station Sadar,

Patiala. The said accused person absented herself from the Court proceedings on 27.04.2016 and vide order (Annexure P-3), her bail bond and surety bond were cancelled and forfeited and proceedings under Section 446 Cr.P.C. were initiated against the petitioner being a surety. It is further submitted that later on, the trial Court, vide order dated 27.07.2017, issued the warrants of recovery of surety amount of Rs.1 lac by way of sale of property of the petitioner. Thereafter, vide order dated 30.10.2017, the petitioner was declared as proclaimed offender, as he has failed to appear before the trial Court in pursuance to the notice issued under Section 446 Cr.P.C. Counsel for the petitioner further submits that while issuing proclamation under Section 82(1) Cr.P.C., the same was not done at the ordinary place of residence of the petitioner and no specific time and place was given in the proclamation. It is further submitted that requirement under Section 446 Cr.P.C. is to issue a show cause notice. Counsel for the petitioner has further submitted that before a surety becomes liable to pay the forfeited surety amount, it is necessary to give a notice to show cause why the amount should not be paid and after holding that the surety has failed to show sufficient cause, the Court can proceed further to recover the money.

Counsel for the petitioner further submits that the trial Court, before issuing any show cause notice, has straightway

resorted to the remedy of recovery of the amount as arrears of land revenue by way of sale of property of the petitioner. It is further submitted that since the petitioner was not aware of the proceedings pending before the trial Court, he is now ready to appear before the trial Court and furnish his explanation in order to show bonafide that he is ready to deposit the amount of Rs.50,000/- within a period of two months from today.

Notice of motion for 26.02.2018.

In the meantime, petitioner is directed to appear before the trial Court within a period of one week and the trial Court will release the petitioner on interim bail subject to his furnishing bail/surety bond. The petitioner will deposit the amount of Rs.50,000/- with the trial Court on or before 31.01.2018.

Meanwhile, the sale of property of the petitioner by way of auction shall remain stayed.”

Learned counsel for the petitioner submits that the petitioner has already complied with the aforesaid order dated 08.12.2017.

Since there is no dispute that the proceedings initiated against the petitioner under Section 446 Cr.P.C., in pursuance to the impugned order dated 27.04.2016 (Annexure P-3), without issuing a show cause notice to him and subsequently, vide impugned order dated 27.07.2017 (Annexure P-4), the recovery proceedings have been initiated against the petitioner for recovery of the surety amount of Rs.1.00 lac by way of sale of his property,

considering the fact that the petitioner has already deposited an amount of Rs.50,000/- and he not being an accused and only a surety, the trial Court was not justified in declaring him a proclaimed offender vide impugned order dated 30.10.2017 (Annexure P-8), this petition is allowed and the impugned orders dated 27.04.2016 (Annexure P-3) qua initiation of proceedings under Section 446 Cr.P.C. against the petitioner, dated 27.07.2017 (Annexure P-4) and dated 30.10.2017 (Annexure P-8) are set aside and the recovery amount ordered by the trial Court in pursuance to the proceedings under Section 446 Cr.P.C. is reduced to Rs.50,000/-, the amount deposited by the petitioner.

However, it is clarified that it will be open for the trial Court to proceed against the main accused in accordance with law.

[ARVIND SINGH SANGWAN]
JUDGE

10.07.2018
vishnu

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