

IOIN Crl. Appeal D-915-DB of 2008

Pappu @ Kanwar Vs. State of Haryana

Order:

The present appeal was filed by Pappu @ Kanwar Pal for challenging the judgment and order dated 12/13.9.2008 passed by learned Additional Sessions Judge-III, Bhiwani whereby he was convicted under Sections 302/34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/-.

The appeal was admitted on 22.12.2008. Subsequently vide order dated 16.2.2009, a co-ordinate Bench of this Court ordered for his release on bail on furnishing of requisite bonds to the satisfaction of the Chief Judicial Magistrate, Bhiwani.

The appeal was, however, dismissed by the Division Bench on 23.10.2013. Copy of the judgment was forwarded to the trial Court as well as to the Chief Judicial Magistrate, Bhiwani for strict compliance and necessary action by re-arresting the appellant and committing him to jail to undergo the remaining portion of his sentence.

The Chief Judicial Magistrate, Bhiwani vide letter dated 21.2.2018 and addressed to the District and Sessions Judge, Bhiwani which also stands forwarded to this Court for information and necessary action, has stated that though the High

Court had ordered re-arrest of the appellant in the year 2013 yet the arrest warrants remained unexecuted despite the fact that a period of almost four years has passed by now. More than once the re-arrest warrants of the appellant have been received back unexecuted with the report of his unavailability at the address. Despite the same, the report on re-arrest warrants continues to be the same. There was no indication of the police having attempting to trace the appellant beyond his given address or where ever the appellant was likely to be found. The police machinery appeared to have virtually colluded with the appellant to ensure his non-apprehension as well as non-appearance and, thus, negligent in the matter beyond legal tolerance.

Once the re-arrest warrants stand issued, it is the duty of the Chief Judicial Magistrate concerned to ensure that the convict like the appellant in the present case be re-arrested and committed to jail for undergoing the remaining portion of his sentence. The appellant was granted bail during the pendency of the appeal subject to furnishing of the bonds to the satisfaction of the Chief Judicial Magistrate and, therefore, it is expected from the Chief Judicial Magistrate to secure the re-arrest of the appellant and if that is not possible, then to call upon the surety(s) to produce the appellant so that he may be re-arrested and committed to jail. Whatever procedure is to be adopted in securing the re-arrest of the appellant after the decision of his

appeal is provided in the Code of Criminal Procedure and the Chief Judicial Magistrate is to follow the same.

In view of the above, the Chief Judicial Magistrate, Bhiwani shall proceed in accordance with law to secure the re-arrest of the appellant and commit him to jail to undergo the remaining portion of his sentence.

Disposed of.

**(T.P.S. MANN)
JUDGE**

March 16, 2018
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**(DEEPAK SIBAL)
JUDGE**