

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

Criminal Appeal S-1464-SB of 2004

Date of Decision : February 05, 2019

Balbir Singh and another

....Appellants

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vivek Goel, Advocate
for the appellants.

Mr. Sidakmeet Sandhu, Assistant Advocate General, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer made in this appeal is for setting aside the judgment dated 06.05.2004 passed by Special Judge, Moga vide which while imposing the penalty under Section 446 Cr.P.C., the trial Court has held that the appellants, namely, Balbir Singh and Daljit Kaur are liable to pay penalty of Rs.4,00,000/- each.

Brief facts of the case are that FIR No.31 dated 18.06.2001 was registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station, Badhni Kalan, District Moga. After the arrest of the accused persons Gumukh Singh and others, truck No.PB-29A/9627 was taken into possession by the police. Thereafter, appellant No.1-Balbir Singh filed an application dated 06.07.2001 for releasing the truck on superdari and vide order dated 27.07.2001, after receiving the report from the Station House Officer, Police Station Badhni Kalan, the truck was released. Thereafter, the police completed the investigation and submitted report under Section 173 Cr.P.C. The trial

Court framed charges against the accused persons and after the prosecution recorded one of its witnesses, an application under Section 319 Cr.P.C. was filed and one Charanjit Singh was summoned as an additional accused. However, he filed a petition before this Court challenging his order of summoning. Later on, the said Criminal Revision No.557 of 2004 was allowed vide order dated 20.10.2008 and summoning of aforesaid Charanjit Singh under Section 319 Cr.P.C. was set aside.

During the recording of the evidence on 03.09.2003, when the accused could not produce the truck, the trial Court forfeited the Superdari and surety bond of the truck and issued notice to the Superdar as well as the surety. However, thereafter, the truck was not produced either by the Superdar or by the surety and the trial Court separated the proceedings in this regard and issued notice under Section 446 Cr.P.C. of both the appellants, i.e. Superdar as well as the surety.

In reply to the show cause notice, it was stated that the truck was financed by one Deep Finvest Company and on account of non-payment of the installments, the same was re-possessed by the said Company. They were not in possession of the truck and for the said reason the same could not be produced before the trial Court.

After hearing the Superdar and the surety and going through the reply to the show cause notice, the trial Court vide impugned order dated 06.05.2004 held that since both the Superdar and the surety had executed bonds for a sum of Rs.4,00,000/- each for producing the truck on each and every date of hearing and have failed to produce the truck before

the trial Court and have taken a view that the same has been taken away by the finance company, imposed the penalty of Rs.4,00,000/- each on Balbir Singh, Superdar as well Daljit Kaur, surety.

The present appeal has been filed challenging the aforementioned judgment dated 06.05.2004.

Vide order dated 07.12.2004, recovery of penalty was stayed by this Court. Thereafter, the said order was withdrawn on 06.04.2006. However, on 06.04.2006 again on request made by the counsel for the appellant, the order dated 07.12.2004 was ordered to remain in force. Thereafter, this appeal was admitted on 18.01.2007.

Counsel for the appellant has argued that it was beyond the control of the appellants being Superdar and the surety to produce the truck as it was re-possessioned by the Insurance Company. It is, thus, submitted that despite best efforts made by the appellants the truck could not be produced.

Counsel for the appellant has further submitted that vide order dated 21.02.2005 passed in the present appeal, the trial Court was directed to take further steps for production of the truck for the purpose of the trial. In compliance thereto, the trial Court has conducted an enquiry. During enquiry, one Rajinder Singh of the Finvest Company Limited appeared as PW1 and stated that the truck was taken from Balbir Singh. However, later on, it was handed over to him on furnishing affidavit that he will make the payment in installments. PW2 Balbir Singh, the real owner stated that he had obtained the truck on superdari by furnishing surety of one Daljit Kaur and, thereafter, the Deep Finance Company has taken the truck in

possession due to default in payment of installments. ASI Jasbir Singh deposed that he was informed that the truck was parked in the premises of the finance company. Rajinder Singh from the Deep Finance Company was again summoned and he deposed that the possession of the truck was taken on default of payment. On the basis of the evidence, the Enquiry Officer-cum-Special Judge, Moga, held that there was utter callousness on the part of the police as despite having knowledge that the truck has been taken by the Finance Company, no action was taken and even the police has not raided the house of the owner of the truck Balbir Singh to produce the same before the Court, and, therefore, the truck could not be produced. In the enquiry, it was held that the Special Judge has already imposed a penalty of Rs.4,00,000/- each on the appellants, namely, Balbir Singh and Daljit Kaur.

Counsel for the appellant has further argued that the appellants were never given the possession of the truck by the finance company and, therefore, they were not in a position to produce the same before the trial Court and, thus, pleaded that they had *bonafide* reasons for which the truck could not be produced before the trial Court at the appropriate time.

Counsel for the appellant has relied upon the judgment passed by this Court “Mohinder Singh Vs. The State of Punjab”, 2008(22) RCR (Criminal) 704, “Angrej Singh Vs. State of Punjab”, 2010(4) RCR (Criminal) 580 and “Gopal Kaur Vs. State of Punjab”, 2011(6) RCR (Criminal) 1934, wherein this Court, while imposing penalty under Section 446 Cr.P.C. has held that the amount of penalty may be reduced to 1/4th of the amount of surety bonds.

In reply, the learned State counsel has not disputed the factual position and submitted that the accused persons stand convicted.

After hearing counsel for the parties, I find merit in the present petition.

Considering the fact that the truck was given on superdari on 27.07.2001 and, thereafter, it could not be produced before the Court for the reason that the Deep Finvest Company has taken the possession of the truck. It is also relevant to note that the impugned order passed on 06.05.2004 and this appeal is pending for the last about fourteen years and the operation of the impugned order imposing the penalty was stayed by this Court,

Considering the explanation given by the appellants, also in view of the fact that the proceedings are pending since long and in view of the judgment passed by this Court in Mohinder Singh's case (supra), the impugned order dated 06.05.2004 passed by the trial Court is modified and the amount of penalty is reduced to Rs.50,000/- each. The amount of penalty shall be deposited with the trial Court within a period of three months from today, failing which this appeal shall stand automatically dismissed without any further action.

February 05, 2019
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO