

In the High Court of Punjab and Haryana at Chandigarh

**CRR No. 11772 of 2022
Date of Decision: 23.3.2022**

Chanpreet Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Abdul Aziz, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner becomes aggrieved by the order, comprised in Annexure P-4, wherethrough the learned Additional Sessions Judge, Sangrur, upon becoming seized of Criminal Appeal bearing title M/s New Deep Agriculture Works versus M/s Jai Durga Machinery Store, proceeded to, on 10.1.2022, make an order for revoking the earlier thereto order, comprised in Annexure P-3. Annexure P-3 embodies an order recorded by the learned ASJ, Sangrur, upon the application cast under Section 389 Cr.P.C, wherein, the applicant claimed relief for suspending the execution of the substantive term of imprisonment, extending upto a period of less than three years, as became imposed, upon the applicant, by the learned trial Magistrate concerned, subsequent to a verdict of conviction, being made upon him, by the learned Magistrate concerned, qua a notice of accusation drawn against him, for an offence comprised in Section 138 of the Negotiable Instruments Act, 1881. Upon the afore application, the learned Appellate Judge concerned, proceeded to order for suspending the execution of the substantive term of imprisonment, extending upto a period less than

surety bonds in the sum of Rs. 75,000/- each, to the satisfaction of the trial Court/Duty Magistrate, within a period of 15 days from 09.11.2021. Moreover, the learned Appellate Judge concerned, also proceeded to impose a further condition, upon the applicant, inasmuch as, his being directed to deposit 20% of the compensation amount, within 60 days from 09.11.2021. Furthermore, a direction was also made therein, that in case the applicant fails to pay 20% of the compensation amount, within the stipulated period, thereupon, the order suspending the execution of sentence of imprisonment, would become automatically vacated.

2. It appears that though, the applicant-petitioner proceeded to furnish personal, and, surety bonds, comprised in a sum of Rs. 75,000/- each within a period of 15 days, hence before the learned trial Court/Duty Magistrate concerned, yet, he failed to, within a period of 60 days, commencing from 09.11.2021, deposit 20% of the compensation amount. Consequently, it appears that the rigour of the order made on 09.11.2021, inasmuch as, upon the afore default or failure occurring, rather the order suspending the execution of sentence of imprisonment, imposed upon the convict-petitioner, becoming *ipso facto*, and, automatically vacated, becoming aroused, and, obviously, upon its breach, it resulting in the making of the impugned order.

3. Reiteratedly, on 10.1.2022, when the afore lis, titled as M/s New Deep Agriculture Works versus M/s Jai Durga Machinery Store, became taken up by the learned Appellate Court concerned, the latter proceeded to, in view of the afore default, revoke the order, embodied in Anneuxre P-3. Resultantly also, the learned Appellate Court concerned, ordered for the bail, and, surety bonds, as becomes furnished by the

applicant-petitioner, before the learned Magistrate concerned, to become forfeited to the State of Punjab. Moreover, the learned Appellate Judge concerned, also proceeded to make an order for procuring the presence of the petitioner, on 08.3.2022, through non-bailable warrants, becoming executed upon him.

4. As above stated, the above diktat of the mandate, as carried in the order embodied in Annexure P-3, is absolute, and, was not amenable for any relaxation, unless an application seeking extension of time, for making the requisite deposit become preferred, by the petitioner, before the learned Magistrate concerned, imperatively before the period of 60 days elapsing, from the drawing of the order, as embodied in Annexure P-3. It is stated at the bar, by the learned counsel for the petitioner, that the latter did not prefer an application, before the learned Magistrate concerned, seeking extension of time, to mete compliance with the apposite mandate, as carried in Annexure P-3, as, appertaining to his depositing 20% of the compensation amount, within the mandated period of 60 days, rather to become reckoned from 09.11.2021. Therefore, upon failure thereof, and, given as stated (*supra*), it being also mandated in Annexure P-3, that thereupon, the order suspending the execution of the substantive sentence of imprisonment extending upto a period of less than three years, shall become automatically vacated or annulled, thereupon, the default consequences obviously also becoming aroused, and, also ensuing.

5. The legal issue, which requires becoming determined by this Court, appertains to the legality of the imposition of a strict mandate, upon the applicant, by the learned Appellate Court concerned, to make deposit of the 20% of the compensation amount, within 60 days to be reckoned from

09.11.2021. The legality, and, validity of the afore made mandate or condition, as became imposed upon the applicant, by the learned Appellate Court concerned, cannot *prima facie* be construed to be suffering from any taint or blemish, as it was within the discretion of the learned Court concerned to make the afore made direction.

6. Be that as it may, the legality yet of the learned Appellate Judge concerned, thereafter making an order, that upon the afore failure, the order suspending the execution of the substantive sentence of imprisonment, becoming ipso facto vacated, is yet to be tested. Initially, the effect of the afore order, is that, it obviously resulted in the automatic cancellation, and, forfeiture of the personal, and, surety bonds, as became furnished by the applicant, before the learned trial Court/Duty Magistrate concerned, rather in terms of the order conferred in Annexure P-3. The cascading ill effects of the afore rigorous mandate, as carried in Annexure P-3, became cast, upon personal, and, surety bonds, as became furnished rather, by the petitioner, rather within the specified period, before the learned Illaqa Magistrate concerned, thereupon, the legal the effect thereof, has to be tested, on the touchstone of the mandate, as carried in Section 446 Cr.P.C. For analyzing the provisions, as carried in Section 446 Cr.P.C., it is deemed fit, and, appropriate to extract hereinafter, the relevant portion.

446. Procedure when bond has been forfeited.

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty

*thereof or to show cause why it should not be paid. **Explanation.**- A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.*

x x x x''

7. The provisions, carried in Sub-section (1) of Section 446 Cr.P.C., appertain to furnishing of bonds, relating to personal appearances of the aggrieved accused-convict, before the learned Court concerned, or to production of property before the Court of law, and, upon the afore condition, appertaining to either appearances, and/or for production of property by the accused, before the Court concerned, becoming breached, thereupon, the learned trial Judge concerned, becomes encumbered with a statutory obligation, to make an objective satisfaction, that the bonds have been forfeited. Therefore, in the instant case, the personal, and, surety bonds, as became furnished by the petitioner, can be construed to be tantamounting to the accused, undertaking to make his personal appearance, before the learned Court concerned. Consequently, in case there was any breach, on the part of the applicant, to make his regular personal appearances, before the learned Court concerned, and, that too without any valid exemptions being granted to him, from his making his personal appearances, thereupon it become an enjoined statutory duty of the learned Court concerned, to make an objective satisfaction, that the failure of personal appearances of the accused, before him, was neither intentional, nor deliberate, and/or, looking to the available attendant circumstances, to even if no valid exemptions became granted for the afore purposes, rather choose to take a view that the non-appearance concerned, were neither deliberate nor intentional.

8. The necessity of drawing of an objective conclusion, or satisfaction, by the Court with respect to any breach, is apparently a statutory duty cast upon the learned Court concerned, and, if so, the satisfaction has to be drawn not in a slipshod, and, arbitrary manner, but has to be drawn after ascertaining all the attending circumstances rather appertaining to the relevant breach, being either intentional, or deliberate or it being not deliberate, or intentional. The necessity of drawing of the afore objective satisfaction, becomes all the more imperative, as the resultant effect thereof, would be the estate of the applicant, and, also of the sureties concerned, would become encumbered, with the harsh legal consequences inasmuch as, the money(s) comprised in the personal, and, surety bonds becoming amenable for recovery(ies), through apposite recouring becoming made by the Collector of the District concerned, and, or of penalties becoming imposed.

9. Therefore, if the principles of natural justice are hence imperatively to be read, into the drawing(s) of the procedure contemplated in Section 446 of the Cr.P.C., and, when as afore stated, the consequences of any affirmative objection satisfaction drawn by the learned Court concerned, makes the estate of the petitioner, and, of his sureties to become beset with grave hardship. Consequently, and, moreso, when apart from the afore ill encumbrances accruing upon the estates concerned, penalties are also imposable, thereupon, prior thereto a show cause notice is required to be issued to the accused. Therefore, though there is a discretion vested in the Court concerned, to not without issuance of a show cause notice upon the accused, make the afore encumbrances, yet the afore statutory discretion though becomes cast in a directory coinage, rather it is to be strictly

construed reiteratedly, given in its absence the affirmative coercive steps drawn against the estates concerned, would become infected with the vice of arbitrariness.

10. Therefore, even if no application for extension of time was made before the learned ASJ concerned, by the applicant, he could not have yet proceeded to, in the operative portion of the order, make an order with a peremptory mandate therein, and, with a rigid absolute diktat, inasmuch as, the afore failure ipso facto resulting in the order suspending the execution of the substantive sentence of imprisonment, rather becoming ipso facto vacated. The absolute diktat of the above has breached the principles of natural justice, whereas, they are for the reasons afore, to be read into Section 446 Cr.P.C., and/or, are impliedly engrafted in Section 446 Cr.P.C., inasmuch as, they become aroused from a statutory necessity becoming cast, upon the learned Court concerned, to make or draw an objective satisfaction, qua the relevant forfeiture, empowerment whereof extends to testing the validity of any forfeiture as proposed to be made or already made.

11. Consequently, the afore made diktat was beyond the ambit of the above statutory provisions, and, was not amenable to be carried in the impugned order, and, requires to being quashed, and, set aside. Moreover, the subsequent order thereto, as comprised in Annexure P-4, ordering for cancellation of personal, and, surety bonds, as became furnished by the applicant, to the State of Punjab, is also amenable for being quashed, and, set aside, besides the order, as made for summoning the accused, through non-bailable warrants, and, made returnable on 08.3.2021, too becomes amenable for being quashed, and, set aside. Moreso, when on the above

date, the accused became represented by his validly engaged counsel, and, the learned ASJ concerned, failed to notice the afore fact, and, also failed to elicit any explanation, from him, with respect to the good, and, valid reason, for his omitting to make his personal appearances before him, dehors no exemption application for his personal appearance, becoming preferred before him. Conspicuously, also when it is not clear from the order made in Annexure P-4, that the *lis* titled as M/s New Deep Agriculture Works versus M/s Jai Durga Machinery Store, became listed on the relevant date, rather for any purpose imperatively requiring the personal appearance of the accused. Therefore also the order embodied in Annexure P-4, requires its being quashed, and, set aside.

12. Be that as it may, the learned counsel for the petitioner has placed on record the order passed on 28.04.2021, by this Court, in a *lis* titled as 'Court on its own motion versus Union of India and others', the relevant paragraph clause-1, whereof stands extracted hereinafter.

(i) *that all the interim orders/directions issued or protection granted including any order requiring any compliance by the parties to such proceedings, passed by this Court or any other Court subordinate to it or any Family Court or Labour Court or any Tribunal or any other Judicial or Quasi Judicial forum, over which this Court has power of superintendence, which are subsisting today shall stand extended till 30th June, 2021.*”

13. Thereins a clear mandate is carried, that all interim orders/directions issued or protection granted, including any order requiring any compliance by the parties to such proceedings, taken up by the Courts of law, becoming directed to be extended till 30.6.2021. On 30.6.2021, this Court had not vacated the afore made direction, rather had extended the afore made directions, as made on 28th April, 2021. In addition, when the *lis*

directions were ordered to be continued. In sequel, since the imperative condition of apposite compliance(s) being made at the instance of the applicant, through an order embodied in Annexure P-3, rather became extended, and, thereupon, there was no necessity for the learned ASJ concerned, to, for the afore stated reasons, impose the afore rigid conditions, upon the applicant, nor there was any necessity for the applicant, to even without moving an application seeking apposite extension(s) for his making the apposite compliances, hence get any affirmative orders thereons, nor the learned ASJ concerned, could suo moto, and, without bearing in mind, the afore made orders, could draw proceedings under Section 446 Cr.P.C., rather against the applicant, merely on account of the afore rigid conditions becoming untenably imposed upon the petitioner.

14. Accordingly, the petition is allowed, and, the impugned orders are quashed, and, set aside.

15. The warrants of arrest, if not issued, be not issued, and, if already issued, they are ordered to be forthwith recalled. Personal, and, surety bonds, as already furnished by the petitioner, in pursuance to the order, carried in Annexure P-3, hence before the learned Illaqa Magistrate concerned, shall remain protected, and, may not be rescinded or forfeited to the State of Punjab.

March 23, 2022
Gurpreet

(SURESHWAR THAKUR)
JUDGE

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