

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

**CRA-S-753-2022 (O&M)
Date of decision: 09.05.2022**

Ramesh

... Appellant

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Sunita Nain, Advocate
for the appellant.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this appeal is for setting aside the impugned order dated 03.02.2022 passed by the Additional Sessions Judge, Hisar, whereby the appellant is directed to pay penalty of Rs.1,00,000/- under Section 446 Cr.P.C., which is the total amount of surety bonds furnished by the appellant for accused-Devender Singh, in the proceedings under Section 138 of the Negotiable Instruments Act.

Learned ounsel for the appellant submits that four complaints were filed by HAFED against Devender Singh, brother of the appellant, who is proprietor of M/s Saharan Fertilizers and Commission Agent. All the four complaints under Section 138 of the Negotiable Instruments Act were tried

together and Devender Singh was convicted and sentenced to undergo imprisonment for a period of 01 year, vide judgment of conviction dated 22.11.2018 and order of sentence dated 28.11.2018 passed by the trial Court. Thereafter, Devender Singh filed an appeal, i.e. CRA-S-700-2018 and vide order dated 21.12.2018 passed by the lower appellate Court, his sentence was suspended on furnishing bail bonds in a sum of Rs.1.00 lac with one surety of the like amount. The appellant, being the brother of Devender Singh, furnished the surety bonds. Later on, Devender Singh absented himself on 17.10.2019 and his bail/surety bonds were cancelled and forfeited. Devender Singh challenged the said order by filing a petition i.e. CRM-M-7365-2020 before this Court, in which, initially it was directed not to take any coercive steps as per order dated 26.02.2020 and later on, disposed of the same, directing the lower Appellate Court to decide the appeal at the earliest. Later on, when notice was issued to Devender Singh, he did not appear and arrest warrants were issued through police and Devender Singh was produced before the lower appellate Court on 25.02.2022.

Learned counsel for the appellant further submits that in the meantime, proceedings were initiated under Section 446 Cr.P.C. against the appellant and a show cause notice was issued, vide which penalty of Rs.1,00,000/- each in the four cases, be not imposed upon the appellant. Thereafter, vide order dated 03.02.2022, the lower appellate Court directed him to deposit Rs.1,00,000/- each in all the four cases and has also issued recovery

warrants under Section 421 Cr.P.C.

Learned counsel for the appellant has challenged the impugned order on the ground that no sufficient time was given to the appellant in pursuance to the show cause notice; the accused was produced by the police, which shows that the appellant was not in a position to produce him and the lower appellate Court has taken a very harsh view in directing the appellant to deposit the entire surety amount in all the four cases. Learned counsel has relied upon order dated 28.01.2020 passed in CRA-S-3428-SB-2017, wherein in similar circumstances, an amount of Rs.1,00,000/- imposed as penalty, was reduced to Rs.20,000/-. The operative part of the said order reads as under:-

“Prayer in this appeal is for setting-aside the order dated 03.11.2015 passed by the Additional Sessions Judge, Faridabad vide which in a proceedings initiated against the appellant under Section 446 of the Code of Criminal Procedure, an amount of Rs.1 lac was imposed as a penalty on account of the fact that the appellant stood surety of one Umar Mohammad in FIR No.903 dated 14.12.2013 registered under Sections 148, 149, 307, 420, 420-B IPC and 4A/8, 2/80 of C.S. Act at Police Station Sector 7 Faridabad, District Faridabad. Counsel for the appellant has argued that as per the order dated 03.11.2015, Umar Mohammad absented from the Court proceedings on a previous date and thereafter, non-bailable warrants were issued against him and

even, the proceedings to declare him a proclaimed offender were also initiated. It is further submitted that later on, Umar Mohammad surrendered before the trial Court and he faced the trial and vide judgment dated 24.10.2016 (Annexure P1), he was acquitted, however, some of his co-accused were convicted. Counsel for the appellant has, thus, argued that the non-appearance of Umar Mohammad was not intentional as he on a subsequent date had surrendered before the trial Court and faced the trial. Counsel for the appellant has further submitted that no proper opportunity of hearing was given to the appellant as on the date when the case was fixed for appearance of Umar Mohammad, the impugned order dated 03.11.2015 was passed. 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) 1394, 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. Counsel for the State on the basis of the judgment of acquittal of Umar Mohammad dated 24.10.2016 has not disputed the fact that subsequent to passing of the impugned order dated 03.11.2015, he

has already appeared before the trial Court and faced the trial. After hearing the counsel for the parties, I find merit in the present appeal considering the law laid down in the aforesaid judgments and also in view of the fact that the impugned order dated 03.11.2015 was passed on the same day when the presence of Umar Mohammad was required and without awaiting for his appearance and granting further time, the total amount of the surety bonds of Rs.1 lac was imposed as a penalty on the appellant, the present appeal is partly allowed and the penalty amount of Rs.1 lac imposed by the trial Court upon the appellant vide impugned order dated 03.11.2015 is reduced to Rs.20,000/-, which will be paid by him.”

Notice of motion.

On asking of the Court, Mr. Chetan Sharma, AAG, Haryana accepts notice on behalf of the respondent-State and submits that the lower appellate Court has rightly directed the appellant to deposit the entire surety amount of Rs.1,00,000/- in each case.

In reply, learned counsel for the appellant has submitted that the appellant is a poor person and is not in a position to pay the entire amount of Rs.1,00,000/- each in the four similar appeals and if the amount is reduced, he can pay the amount within a period of two months from today.

After hearing the counsel for the parties and considering the fact

that Devender Singh, for whom the appellant stood surety, has already appeared before the lower appellate Court and also in view of the fact that there are four appeals and the appellant stood surety for him, in all the four appeals, for Rs.1,00,000/- each and absence of Devender Singh was beyond the control of the appellant, therefore, without any further delay in the disposal of the present appeal, the same is partly allowed and the penalty of an amount of Rs.1,00,000/- imposed by the lower appellate Court upon the appellant vide impugned order dated 03.02.2022, is reduced to Rs.10,000/-, which will be paid by the appellant.

The penalty amount of Rs.10,000/- will be deposited with the lower appellate Court within a period of two months from today.

However, it is made clear that if the amount of penalty is not deposited on or before 10.07.2022, present appeal shall be deemed to be dismissed without any further orders.

[ARVIND SINGH SANGWAN]
JUDGE

09.05.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No