

CRA-S-674-2022

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

**CRA-S-674-2022 (O & M)
Date of Decision: 11.05.2022**

Ramesh

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ravi Malik, Advocate,
for the appellant.

HARNARESH SINGH GILL, J.(Oral)

Challenge in the present appeal is to the order dated 03.02.2022 passed by the learned Addl. Sessions Judge, Hisar, whereby the appellant was directed to pay penalty of Rs.1 lakh under Section 446 Cr.P.C., which is the total amount of surety bonds furnished by him for accused-Devender Singh, in the proceedings under Section 138 of the Negotiable Instruments Act, 1881.

The facts giving rise to the present appeal are to the effect 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.

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CRA-698-2018 and vide order dated 21.12.2018 passed by the lower appellate Court, his sentence was suspended on furnishing bail bonds for a sum of Rs.1.00 lakh 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 was cancelled and the bonds were forfeited to the State. Devender Singh challenged the said order by filing the petition i.e. CRM-M-7365-2020 before this Court, in which, initially it was directed not to take any coercive steps, vide order dated 26.02.2020, but later on, the same was disposed of, 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 against him. Devender Singh was produced before the lower appellate Court on 25.02.2022. 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, was imposed upon the appellant. Thereafter, vide impugned order dated 03.02.2022, the lower appellate Court directed the appellant to deposit Rs.1,00,000/- and also issued recovery warrants under Section 421 Cr.P.C.

Learned counsel for the appellant submits that there was no connivance between the appellant and the accused and that no sufficient time was given to the appellant in pursuance to the show cause notice. He further submits that 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. He further submits that the appellant is

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not in a position to pay the entire amount of Rs.1 lakh and if the amount is reduced, he can be pay the same within a period of two months from today. In support of his contentions, the learned counsel relies upon the 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

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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. Ashok Singh Chaudhary, Addl. A.

G. Haryana, accepts notice on behalf of the respondent-State and submits

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that the lower appellate Court has rightly directed the appellant to deposit the entire surety amount of Rs.1,00,000/-. The conduct of the appellant was wholly irresponsible and, therefore, he must suffer for the laxity on his part.

I have heard the learned counsel for the parties.

Admittedly, there is no allegation about the connivance between the appellant and accused-Devender Singh. There is no allegation that the appellant instigated or helped the accused, in any manner, not to appear or surrender in time. The Hon'ble Supreme Court in Mohammaed Kunju versus State of Karnataka 1994 (4) RCR (Criminal) 726 has held as under:

"13. Learned counsel then contended that as the bond was executed by the accused with two sureties the upper limit of the amount which the court can realize from both the sureties together cannot exceed the amount which the accused has stated in his bond. In other words, when the accused executed a bond for Rs. 25,000 the sureties can be made liable to pay the said amount either jointly or severally, according to the counsel. The acceptability of the aforesaid contention depends upon the wording of the bond executed by the appellants. There was a controversy earlier as to whether the bond is a single one supported by two sureties or the bond executed by a surety is different from that of the accused. The controversy stands settled now by the decision of this Court in Ram Lal v. State of U.P., AIR (1979) SC 1498. Their Lordships, after referring to the wording contained in Form No. 42 of Schedule V of the old Code of Criminal Procedure, 1898, have held thus:

"The undertaking to be given by the surety was to secure the attendance of the accused on every day of hearing and his appearance before the Court whenever called upon. The undertaking to be given by the surety was not that he would secure the attendance and appearance of

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the accused in accordance with the terms of the bond executed by the accused. The undertaking of the surety to secure the attendance and presence of the accused was quite independent of the undertaking given by the accused to appear before the Court whenever called upon even if both the undertakings happened to be executed in the same document for the sake of convenience. Each undertaking being distinct could be separately enforced."

14. *We have noticed that the wording in the corresponding Form in the new Code is Identical (vide Form No. 45 in the second Schedule to the Code) and hence the same principle must follow in the present case also. Thus forfeiture of a bond would entail the penalty against each surety for the amount which he has undertaken in the bond executed by him. Both the sureties cannot claim to share the amount by half and half as each can be made liable to pay the amount of Rs. 25,000/-.*

15. *Lastly, learned counsel made a plea for remission of the penalty. No doubt Section 446(3) of the Code empowers the court to grant such remission. It is within the discretion of the court to grant remission and to decide the extent of the remission. Such a discretion must be exercised judicially and for good reasons. Learned counsel cited the decisions of this Court in Madhu Limaye v. Metropolitan Magistrate and Ors., [1984] Suppl. SCC 699, A three Judge Bench of this Court considered the plea advanced by a surety who was proceeded against as the accused-some foreign nationals—escaped from India. They were students charged with offences of "trivial nature" in 16 cases altogether. This Court held that in such circumstances "the ends of justice will be met by imposing a token penalty of Rs. 100". In the present case, though the offences charged against the foreign national are not trivial they are nevertheless not very serious comparatively. The accused slipped out of the country without anybody's knowledge and thereby rendered himself beyond the reach of the appellant. The court could have imposed the condition to*

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surrender his passport as a measure to prevent him to escape out of India. There is no allegation that the appellant had any remote scent that the accused was preparing to escape from India, nor that he had connived with the accused jumping out the bail."

In Criminal Misc. No M-4941 of 2012, titled 'Surender Versus State of Haryana through District Magistrate, Gurgaon', decided on 30.04.2012, a Coordinate Bench of this Court has held as under:

"Coming to the facts of the present case, the impugned order dated 24.11.2010, passed by the learned District Magistrate, Gurgaon, would show that there was no allegation against the petitioner that he, as a matter of fact, instigated or helped the convict, in any manner, not to surrender in time. Once any such allegation is conspicuously missing, the impugned order is not sustainable in law, as it is.

In the totality of the facts and circumstances of the present case, noted above, couple with reasons aforementioned and to secure the ends of justice, the impugned order dated 24.11.2010 (Annexure P-1), passed by the learned District Magistrate, Gurgaon, is ordered to be modified to the extent that instead of ` 2,00,000/- (Rupees two lacs only) to be forfeited to the State, the petitioner would pay `20,000/- (Rupees twenty thousand only). Resultantly, striking a balance and also keeping in view the peculiar facts and circumstances of the present case, the instant petition is partly allowed. The impugned order is modified, accordingly. The instant petition stands disposed of."

Considering the fact that accused-Devender Singh, for whom the appellant stood surety, has already appeared before the lower appellate

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Court, coupled with the fact that absence of the accused was beyond the control of the appellant, the impugned order is modified to the extent that penalty of Rs.1 lakh imposed upon the appellant, is reduced to Rs.10,000/-.

The reduced penalty amount of Rs.10,000/- shall be deposited by the appellant with the lower Appellate Court within a period of two months from today.

However, it is made clear that in case, the amount of penalty is not deposited on or before 11.07.2022, the present appeal shall be deemed to be dismissed without any further orders.

Disposed of in the aforementioned terms.

11.05.2022

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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