

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 30332 of 2022

Date of Decision: 18.7.2022

Gujjar Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Dinesh Trehan, Advocate
for the petitioner.

Mr. M.S.Nagra, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioners are accused in FIR No. 162 of 20.11.2020, registered at Police Station Mallanwala, District Ferozepur. The FIR (supra) has progressed to the stage of recording of prosecution evidence, qua the charges drawn against the accused.

2. A reading of Annexure P-2 reveals, that the present petitioners had hence engaged a counsel for defending them, before the learned trial Judge concerned, in respect of the petition offences. However, subsequent to the drawings of Annexure P-2, despite the trial progressing to the stage of recording of the depositions of the PWs, the present petitioners did not ensure theirs, making their personal appearances, before the learned trial Judge concerned. Therefore, through an order rendered on 23.5.2022, to which Annexure P-3 is assigned, the learned trial Judge concerned, straightway ordered for the cancellation of their personal, and, surety bonds, and, thereafter ordered for the issuance of non-bailable warrants, and, made them returnable for 7.6.2022.

Annexure P-4 is assigned, that the learned trial Judge concerned, proceeded to also forfeit the personal, and, surety bonds, as became executed for the relevant purposes by the sureties concerned. Moreover, he also imposed a penalty of Rs. 40,000/-, upon the surety. In addition, he also made direction, upon the Collector, Ferozepur, to make all the recoveries, and, thereafter to deposit the said recoveries in the government treasury.

4. A reading of Annexure P-3 reveals, that the learned trial Judge concerned, without any notice to the absenting petitioners, had ordered for cancellation of their apposite personal, and, surety bonds to the State, and, he also proceeded to issue notice, upon the sureties, and, made it returnable on 7.6.2022.

5. The stark, and, noticeable breach becoming caused qua the principles of *audi alteram partem*, does imminently surface from the factum, as echoed by Annexure P-2, qua the present petitioners engaging a counsel, to defend them, thereupon, before proceeding to draw any coercive process, for the relevant purpose, against the present petitioners, it became incumbent, upon the learned trial Judge concerned, to ask the counsel defending the present petitioners, the reason with respect to their non-appearance, and, in case he conveyed to the learned trial Judge concerned, that he has no intimation from them, and/or, that they are non-communicative to his correspondences, either written or through cell phones, thereupon, it was permissible for the learned trial Judge concerned, to assume that yet there was a willful, and, deliberate omission on the part of the present petitioners, to cause their personal appearances, before him, otherwise not. The reason being that may be, hence in the face of the counsel engaged by the petitioners to defend them, in the apposite trial, omitting to communicate the relevant dates to them, rather prevented the present petitioners to record their personal appearances, for the

relevant purposes, before the learned trial Judge concerned. It appears that in a most slipshod, and, with the completest non-application of judicial mind, qua the above factum, the learned trial Judge concerned, has proceeded to, in a post-haste manner, cause breach to the principle(s) of natural justice, especially when the ill consequence thereof, despite prior thereto no valid service of any notice being caused, upon them, rather would definitely encumber their respective estates with an untenable ill consequence, inasmuch as, theirs' becoming amenable for realisations therefrom, of the amounts carried respectively in the personal bond(s), and, in the surety bond(s).

6. In consequence, the impugned order, does not withstand, the solemn canon of *audi alteram partem*, which is imperatively to be read into the empowerment bestowed, upon the learned trial Judge concerned, to through the provisions, as contained in Section 446 of the Cr.P.C., hence order on well legally founded speaking reasons, rather for the apposite forfeitures, and, also order qua imposition of the relevant penalty, upon the provenly errant concerned. Necessarily, the above would occur only when an opportunity to explain the absention becomes purveyed to the concerned.

7. In sequel, the impugned order is quashed, and, set aside. However, the petitioners herein are directed to record their regular personal appearances, for the relevant purposes, before the learned trial Judge concerned, unless they become validly exempted.

8. The petition stands disposed of.

(SURESHWAR THAKUR)
JUDGE

July 18, 2022
Gurpreet

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