

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

121

CRA-S-1297-2021 (O & M)

Date of decision:25.01.2022

Tara Chand

...Appellant

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sunil Saharan Chaudhary, Advocate
for the applicant/appellant.

Ms. Mahima Yashpal, DAG, Haryana,
for the respondent-State.

SUVIR SEHGAL J.

Heard through video conferencing.

CRM-38145-2021.

Application is allowed as prayed for.

Zimni order dated 21.09.2021 passed by the learned Additional Sessions Judge, Fast Track, Special Court, Hisar is taken on record as Annexure A-1.

Main Appeal

Challenge in the instant appeal filed under Section 449 of the Code of Criminal Procedure, 1973, (hereinafter referred to as “the Code”) is to the order dated 26.08.2021 passed by the learned Additional Sessions Judge, Hisar whereby a fine of Rs.1 lac has been imposed upon the appellant.

Brief factual background leading to the filing of the appeal is that Anoop Singh is an accused in FIR No.236 dated 31.08.2019 lodged for commission of offence under Section 323, 363, 366-A, 376 (2) (m), 506 of IPC and Section 6 of the Protection of Children from Sexual

Offences Act, 2012, at Police Station Uklana, District Hisar, who was granted the concession of bail and released on furnishing of surety of Rs.1 lac. The appellant stood as surety for the accused and on furnishing of bail bonds and surety given by the appellant, the accused was released on bail. Charge has been framed by the trial Court and the prosecution evidence started in February, 2020. On 16.08.2021, the prosecutrix was summoned for recording of her statement, which was partly recorded. In the post lunch session, however, neither the prosecutrix appeared nor did the accused. Consequently, the bail bond of the accused was cancelled and forfeited to the State. On the subsequent date, notice was issued to the appellant, who was the surety, he appeared and was bound down for 26.08.2021 and when he failed to produce the accused, impugned order was passed, whereby fine of Rs.1 lac, equivalent to the surety amount, was imposed upon him.

Counsel for the appellant has urged that within one month of the passing of the impugned order, the appellant has surrendered and joined the proceedings. He submits that the petition seeking regular bail filed on behalf of the accused has been rejected by the trial Court as well as by the High Court. He submits that considering the fact that the accused had appeared on his own and no expense had to be entailed by the State nor did the trial suffer as the prosecutrix also did not appear, the penalty amount imposed vide the impugned order deserves to be remitted.

Appeal has been opposed by the State counsel by submitting that the penalty cannot be reduced in appeal and in any case, the seriousness of the allegation and the nature of offence does not call for

any leniency in the matter.

I have heard rival submissions of the counsel for the parties.

Question arises as to whether in an appeal the Court can waive or reduce the penalty or fine imposed by the Trial Court. The answer lies in Sub Section (3) of Section 446 of the Code which reads as under:-

“The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only. ”

Sub Section (3) of Section 446 of the Code vests power in the Court to remit any portion of the penalty and enforce payment in part only after recording its reasons for doing so. When a surety undertakes to produce the accused on all the hearing dates of the trial or till its disposal, he exposes himself to the penalty of forfeiture of the surety bond on account of non-appearance of the accused. In such matters, a rigid adherence or haste in ordering forfeiture is not called for. The Court is required to see that whether any good or sufficient cause has been given for the non-appearance of the accused or for his non-production by the surety on the given date. The penalty or fine imposed by the Court must have a correlation with the circumstances of the case, inconvenience caused to the Court and the expense and time taken by the State in reapprehending the accused. The power vested in the Court by virtue of Sub Section (3) of Section 446 of the Code can be exercised by the Appellate or Revisional Court, if the order is challenged as provided under the Code. The Appellate or the Revisional Court, where the order has been challenged can always consider, even at a later stage, whether there are circumstances warranting remission or reduction of the penalty.

When examined in the light of the facts of the present case, the

accused absented from the proceedings in the post-lunch session on 16.08.2021, when even the prosecutrix did not appear for recording of her statement. On 26.08.2021, the appellant, who is the surety of the accused, appeared and made a statement that he is unable to produce the accused. Show cause notice was served upon him in terms of Section 446 of the Code to which he pleaded guilty and requested for a lenient view. By the impugned order, the trial Court imposed a fine of Rs.1 lac. Subsequently, proceeding was initiated to declare the accused, a proclaimed offender, but before declaration would be made, the accused surrendered before the trial Court on 21.09.2021 as is apparent from Annexure A-1, and the proclamation issued vide order dated 13.09.2021 was recalled.

There is no allegation against the appellant that he has connived with the accused, who had jumped out of the bail or that he had any inclination that the accused was planning to absent himself from the proceedings.

In the above factual background and the position in law as enumerated above, this Court is of the view that ends of justice would be met, if the amount of penalty is reduced by half and the balance Rs.50,000/- is ordered to be remitted.

Impugned order is modified in the above terms.

Appeal is disposed of.

25.01.2022

(SUVIR SEHGAL)
JUDGE

sheetal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No