

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

CRA-S No.2332 of 2022 (O&M)
Date of decision: 15.11.2022

Rajender

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Grewal, Advocate
for the appellant.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this appeal is for setting-aside the impugned order dated 05.09.2022 passed by the Additional Sessions Judge, Jagadhri, vide which the appellant, who stood surety for the accused Piyush Kumar, is directed to pay the penalty amount of Rs.1,00,000/- under Section 446 Cr.P.C., in case FIR No.187 dated 14.03.2020 registered under Sections 148, 149, 279, 323, 337, 338, 506 IPC and Sections 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, at Police Station City Yamuna Nagar.

Counsel for the appellant has argued that on the complaint given by one Raman, the aforementioned FIR No.187 dated 04.03.2022 was registered against Piyush Kumar and other co-accused and thereafter, the accused Piyush Kumar was released on bail by the trial Court and the present appellant stood surety for the accused Piyush Kumar. It is further submitted that later, the accused Piyush Kumar absented from the Court proceedings.

Counsel for the appellant has further submitted on 05.09.2022, the accused Piyush Kumar appeared before the trial Court through his counsel, however, the trial Court without issuing any show cause notice under Section 446 Cr.P.C., to the appellant (who stood surety for accused Piyush Kumar), imposed the penalty of Rs.1,00,000/- upon the appellant vide impugned order.

Counsel for the appellant has further argued that since the accused Piyush Kumar along with his co-accused Sumit Rana, was confined in District Jail in another case i.e. FIR No.164 of 2022 registered at Police Station Sector 17, HUDA, Jagadhri, the trial Court has wrongly passed the impugned order imposing the penalty amount upon the appellant as absence of accused was not intentional.

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 application for issuance of production warrants of accused Piyush Kumar and his co-accused Sumit Rana was filed stating therein that both of them are confined in District Jail, Jagadhri in another case, which shows that the appellant was not in a position to produce Piyush Kumar and that the trial Court has taken a very harsh view in directing the appellant to deposit the entire surety amount.

Counsel for the appellant has relied upon order dated 28.01.2020 passed by this Court in CRA-S No.3428-SB of 2017, wherein in similar circumstances, an amount of Rs.1,00,000/- imposed

as penalty was reduced. 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, nonbailable 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 coaccused 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.

Counsel for the State, who is present in the Court accepts notice on behalf of the respondent – State and argued that the trial/Special Court has rightly directed the appellant to deposit the entire surety amount of Rs.1,00,000/-.

In reply, the counsel for the appellant has submitted that the appellant is a poor person and not in a position to pay the entire amount of Rs.1,00,000/- and if the amount is reduced, he can pay the amount within a period of 02 months from today.

After hearing the counsel for the parties and considering the fact that Piyush Kumar, for whom the appellant stood surety, was confined in another case i.e. FIR No.164 of 2022 and therefore, the absence of Piyush Kumar was beyond the control of the appellant, thus, without any further delay in the disposal of the present appeal, the same is partly allowed and the penalty amount of Rs.1,00,000/- imposed by the trial Court on the appellant vide impugned order dated 05.09.2022 is reduced to Rs.5,000/-, which will be paid by the appellant.

The penalty amount of Rs.5,000/- 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 16.01.2023, the present appeal shall be deemed to be dismissed without any further orders.

(ARVIND SINGH SANGWAN)
JUDGE

15.11.2022
yakub

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