

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(115)

CRA-S-2246-2022 (O&M)
Date of decision: - 15.11.2022

Gurpreet Kaur

....Appellant

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Laghuinder Singh Sekhon,
for the applicant-appellant.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

CRM-42252-2022

This is an application filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of 131 days in filing the present appeal.

For the reasons stated in the application, the delay of 131 days in filing the present appeal is condoned.

Application stands disposed of.

CRA-S-2246-2022

Challenge in the present appeal is to the impugned order dated 26.04.2022, vide which a penalty of Rs.50,000/- has been imposed on the present appellant Gurpreet Kaur, who had stood as surety for Gurpal Singh, for non-appearance of Gurpal Singh in the proceedings

with respect to FIR No.150 of 20.09.2019, registered under Sections 379-B and 34 IPC, at Police Station Bhikhi, District Mansa.

Learned counsel for the appellant has submitted that although, initially Gurpal Singh had not appeared and had been declared as proclaimed offender, vide order dated 15.02.2022, but on account of the efforts made by the present appellant, the said Gurpal Singh had joined the proceedings and vide judgment dated 01.07.2022, the said Gurpal Singh had been acquitted by the Sessions Judge, Mansa. It is further submitted that it is not the case of the prosecution that the appellant had connived with the said Gurpal Singh in absconding.

Learned counsel for the appellant has relied upon the judgment of Hon'ble Supreme Court in ***Mohammed Kunju vs. State of Karnataka*** reported as ***1999(4) RCR (Criminal) 726***. It has been submitted that in the said case, after considering the fact that there was no allegation against the appellant therein to the effect that there was any connivance with the accused therein, the Hon'ble Supreme Court was pleased to reduce the forfeiture amount / penalty amount from Rs.25,000/- to Rs.5000/-.

Learned counsel for the appellant has also relied upon the judgment of a coordinate Bench of this Court in ***CRA-S-721-SB-2004*** titled as ***"Bhagat Singh Vs. State of Haryana"*** decided on 08.11.2017 vide which the coordinate Bench after considering the totality of circumstances had reduced the penalty from Rs.2 lacs to Rs.20,000/-. The relevant portion of the said judgment is reproduced hereinbelow:-

"It is further submitted that out of 04 accused persons, 03

accused persons namely Mukhtiar Singh, Satnam Singh and Nachhatar Singh have already been convicted by the trial Court vide judgment dated 05.10.2005 and, therefore, no prejudice has been caused to the prosecution for non-production of the tractor-trolley on 24.11.2003.

*Counsel for the appellants 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 has 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 instructions from ASI Randhir Singh, has not disputed the factual position that the main 03 accused persons have already been convicted by the trial Court on 05.10.2005.

Considering the fact that the present appeals are pending since 2004; the operation of the impugned order was stayed on 02.04.2004 and in view of the judgment cited hereinbefore, the present appeals are partly allowed and the penalty amount of Rs.2,00,000/- each imposed by the trial Court upon both the appellants i.e. Bhagat Singh and Suba Singh vide impugned order dated 02.03.2004 is reduced to Rs.20,000/- each, which will be paid by them. The penalty amount of Rs.20,000/- shall be deposited with the trial Court within a period of 03 months from today, failing which these appeals shall stand automatically dismissed without any further action.”

Learned State counsel, on the other hand, has opposed the present appeal and has submitted that it was within the right of the Sessions Judge, Mansa, to forfeit the surety upto the maximum / full extent of the surety amount and has also submitted that the order is legal and deserves to be upheld. The other facts however, have not been disputed by learned State counsel.

This Court has heard learned counsel for the parties and

perused the record.

The present appellant stood as surety for Gurpal Singh who in above-said FIR No.150 of 20.09.2019 was declared as proclaimed offender, vide order dated 15.02.2022. The Sessions Judge, Mansa vide order dated 26.04.2022 imposed a penalty of Rs.50,000 upon the present appellant after observing that the present appellant had undertaken that the accused would appear before the Court on each and every date of hearing and in default thereof, he had agreed that the sum of Rs.50,000/- would be forfeited to the Government. It is not in dispute that subsequent to the order passed on 15.02.2022, the said Gurpal Singh had joined the proceedings and vide judgment 01.07.2022 passed by Sessions Judge, Mansa (Annexure A-1), the said Gurpal Singh had been acquitted. It is not the case of the prosecution that the present appellant had connived with the said Gurpal Singh to evade the process of law, rather it is the case of the appellant, that he had fully helped the prosecution in making said Gurpal Singh join the proceedings. Thus, in such a situation, forfeiture of the entire amount of surety, i.e. Rs.50,000/- is harsh and contrary to the law laid down by the Hon'ble Supreme Court of India in ***Mohammed Kunju's*** case (supra) and the coordinate Bench in ***Bhagat Singh's*** case (supra).

Keeping in view the law laid down in the above said judgments and the above said fact and circumstances moreso, the fact that there is nothing in the impugned order or on record to show that there was collusion between the present appellant and the accused and also the fact that it was the present appellant who had persuaded the accused to join

the proceedings, the impugned order dated 26.04.2022 is modified to the effect that confiscation/forfeiture/penalty amount would be reduced from Rs.50,000/- to Rs.5,000/-. The appellant is directed to deposit the said amount of Rs.5,000/- with the competent authority within a period of one month from today.

It is made clear that in case the said amount is not deposited with the competent authority within a period of one month from today, then the present appeal would be deemed to have been dismissed.

Accordingly, the present appeal is disposed of in the above said terms.

Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

November 15, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No