

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

251

CRM-M-1037-2017 (O&M)

Date of decision: 22.02.2023

BALWINDER SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. H.S. Randhawa, Advocate for
Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 CrPC for setting aside the impugned order dated 05.09.2016, Annexure P-4 passed by learned Judge, Special Court, Patiala in case FIR No.168 dated 30.06.2014, Annexure P-1, registered at Police Station Sadar Samana, District Patiala under Section 50 of the NDPS Act along with consequential impugned orders dated 22.11.2016, Annexure P-5 and 04.01.2017, Annexure P-6.

Briefly put, the facts of the case are that on being informed by a special informer, a non-sikh middle aged person, mulla fashion, was stated to be selling poppy husk in village Mavi Sappan by filling it on both sides of khurji of almond colour 'mare', who on seeing the police party sat on it and made it run through the jeeri crop but was apprehended after a chase and 55 Kgs poppy husk was recovered from him along with the 'mare'.

Accordingly, FIR was registered against him. After completion of investigation, challan was presented and charges were framed on 21.12.2015. During the pendency of the trial, the 'mare' was released on Superdari vide order dated 22.08.2014 passed by the learned Special Judge, Patiala on furnishing surety bonds to the tune of Rs.5 Lakh, by the petitioner and filed documents of his land.

Learned counsel for the petitioner would submit that the 'mare' expired on 03.01.2016 and the intimation regarding which was given by the Superdar (accused in FIR) by filing an affidavit dated 09.08.2016. His submission being that the trial Court has erred in not adhering to the mandate of Section 446 of CrPC which provides that a show cause notice has to be issued by the Court before the bond is forfeited and person is directed to pay the amount of penalty which in the present case it was not issued to the petitioner prior to passing the impugned orders. In this regard, he relies on the judgment of Hon'ble The Supreme Court of India in the case of **Ghulam Mehdi Vs. State of Haryana**, AIR 1960 (SC) 1185 and Delhi High Court in the case of **Yashodha Vs. State**, 1994 (54) DLT 637.

Learned State counsel opposes the petition and submits that the 'mare' has expired on 03.01.2016 but the affidavit was filed only on 09.08.2016. The orders impugned have been rightly passed by the trial Court.

Heard.

It is apt to refer to Section 446 of Code of Criminal Procedure, which provides for the procedure to be followed where penalty is not paid by the surety, which reads thus:

“446. Procedure when bond has been forfeited :

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. Explanation.- A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code : Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3 to 5) xx xx xx”

Section 446 CrPC makes it crystal clear that where the Court is satisfied that the bond executed for appearance or for production of property stands forfeited, it shall record the grounds of its satisfaction, in writing, and call upon the person bound by such bond to pay the penalty or to show cause as to why he should not pay the penalty, while in the present case, the Court after cancelling the superdari bonds and surety bonds vide the impugned order dated 05.09.2016, but without issuing notice to the petitioner in terms of the aforesaid provision, ordered recovery of the amount of surety bond i.e. Rs.5 lakh from his land, as the petitioner stood surety of Superdar. The learned trial Court did not properly take into consideration the affidavit

dated 09.08.2016, Annexure P-3, submitted by the Superdar (accused in the FIR) specifically stating therein that the said 'mare' had expired and was buried in the presence of Sh.Dhian Singh s/o Gurdial Singh, resident of Dera Pandoria, Asandh, Tehsil, Asandh, District Karnal and it be relieved from the case.

It is apparent from the order dated 22.11.2016, that report from AC 2nd Grade, Samana was received that the land of surety -petitioner had been attached and there was a direction given in the said order to sell the said land as the arrears of land revenue, but no notice was given to the petitioner, which is against the law laid down by Hon'ble The Supreme Court of India in the case of **Ghulam Mehdi** (supra) wherein while setting aside the order of attachment it was observed that, "We are therefore of the opinion that the Magistrate could not proceed to attach the property of the appellant unless a proper notice was given to him and he was given an opportunity to show cause why he should not pay the amount of the bond".

In the case of **Yashodha** (supra), the precise question involved was that in a case where a bond for appearance of the accused is forfeited, can penalty be imposed upon the surety without first serving upon him a notice to show cause? and it was held thus:-

"(6) Section 446 of the Code of Criminal Procedure which deals with the procedure when a bond has been forfeited clearly lays down that once it is so forfeited, the court may call upon the person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. It would thus be clear that before any person bound by such bond becomes liable to pay the penalty thereof it is required of the court to give notice to him as to why it should not be paid and if he fails to show sufficient cause only then it can proceed to recover the amount of penalty imposed....."

(7) Since, in the present case, no show cause notice as required was given, the impugned order cannot be said to be in accordance with law, Consequently, it is set aside.”.

Before a person can be penalised, forms of law have to be observed as the aforesaid provision envisages that before a surety becomes liable to pay the penalty after the bond is forfeited, it is imperative to give a show cause notice and if he fails to show sufficient cause only then can the Court embark to recover the amount. This Court finds that in the present case, no such procedure was adopted and the trial Court passed the impugned orders in a cursory manner, completely in contravention of the provisions contained under Section 446 Cr. P.C. and without due application of mind. As such, the same are unsustainable in the eyes of law.

As a sequel thereto, the orders dated 05.09.2016, 22.11.2016, 04.01.2017, Annexures P-4, P-5, P-6, respectively, are hereby set aside.

The present petition is allowed accordingly.

(AMAN CHAUDHARY)
JUDGE

February 22, 2023

S.Sharma(syr)

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