

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

CRM-M-25216-2019
Date of decision: 23.11.2023

Smt. KamleshPetitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ketan Antil, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

This petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of order dated 29.04.2019 (Annexure P-2) passed by the learned Additional Sessions Judge, Sonapat and order dated 22.06.2017 (Annexure P-1) passed by the learned District Magistrate, Sonapat, whereby, penalty under Section 446 Cr.P.C. had been ordered against the petitioner.

2. Learned counsel for the petitioner argued that the petitioner stood surety for an accused-Bhupender who was facing conviction for a period of ten years. He further submits that Bhupender was released on furlough vide No.5147 -49 dated 07.08.2014 by the District Magistrate, Gurgaon for a period of four weeks for the purpose of construction of his house on furnishing surety bonds to the tune of Rs.2 lakhs by the petitioner and as per the said order, Bhupender had to surrender before the Jail Authorities on 14.09.2014 but he failed to surrender himself and, thereafter, the Court issued notice to the

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petitioner, being surety of Bhupender under Section 446 of Cr.P.C. and despite a request for taking a lenient view, the entire amount of Rs.2 lakhs has been imposed as a penalty by the learned District Magistrate vide order dated 22.06.2017. It is also submitted that the petitioner-Kamlesh is a poor widow lady, working as a house maid, getting a widow pension of Rs.2,000/- only from the Government and since, the accused-Bhupender, son of the petitioner had died, she is also taking care of minor grandson, namely, Daksh. It is further contended that the revision petition filed by the petitioner before the Additional Sessions Judge, Sonapat, was partly allowed vide order dated 29.04.2019 and remission was granted to the petitioner to the extent of Rs.1 lakh as penalty amount instead of Rs.2 lakh.

3. Heard learned counsel for both the parties and perused the records of the case.

4. The learned State counsel could not dispute the factual position.

On 30.05.2019, the following order was passed by this Court:-

“Prayer in this petition is for setting-aside the orders dated 29.04.2019 (Annexure P2) passed by the Additional Sessions Judge, Sonapat and dated 22.06.2017 passed by the District Magistrate, Sonapat (Annexure P1) vide which penalty under Section 446 Cr.P.C. have been ordered against the petitioner.

Notice of motion for 06.09.2019.

In the meantime, operation of the impugned orders shall remain stayed subject to the condition that the petitioner will deposit the amount of Rs.20,000/- with the District Magistrate, Sonapat.”

5. A similar issue was decided by the Hon'ble Supreme Court in 'Mohammed Kunju Vs. State of Karnataka' 1999 (4) R.C.R. (Criminal) 726 and this Court in 'Bhagat Singh Vs. State of Haryana' 2018 (2) R.C.R. (Criminal) 337, 'Mohinder Singh Vs. The State of Punjab' 2008 (22) R.C.R. (Criminal) 704, 'Angrej Singh Vs. State of Punjab' 2010 (4) R.C.R. (Criminal) 580 and 'Gopal Kaur Vs. State of Punjab' 2011 (6) R.C.R. (Criminal) 1394, wherein, the penalty imposed under Section 446 of Cr.P.C. was reduced to 1/4th of the amount of surety bonds being on the higher side.

6. The son of the petitioner was arrested on 19.09.2014 after five days from the date of surrender i.e. 14.09.2014. The petitioner had no knowledge that his son would not surrender on time and there is no allegation of connivance of the petitioner with her son in not surrendering on 14.09.2014.

7. Keeping in view the facts and circumstances of the case, this Court is of the opinion that petitioner-Kamlesh is a poor widow lady, working as a house maid, getting a widow pension of Rs.2,000/- only, from the Government and since, the accused-Bhupender, son of the petitioner had died, she is also looking after her minor grandson, namely, Daksh, the present petition is allowed and the impugned orders dated 29.04.2019 (Annexure P-2) and 22.06.2017 (Annexure P-1) are hereby quashed.

8. The amount of penalty of Rs.1 lakh is reduced to Rs.20,000/-. The petitioner was directed to deposit the amount of Rs.20,000/- with the District Magistrate, Sonapat, by this Court vide order dated 30.05.2019 and if the said amount of Rs.20,000/- has not been deposited by the petitioner so far, she is directed to deposit the same with the District Magistrate, Sonapat within a

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period of 03 months from today, failing which, this petition would automatically stand dismissed without any further orders.

(HARPREET SINGH BRAR)
JUDGE

23.11.2023
Neha

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