

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S-1996-2023 (O&M)

Date of decision: 27.07.2023

Manraj Singh

....Appellant

V/s

U.T. Chandigarh

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Ashish Pal Kaushal, Advocate, for the appellant.

Mr. A.M. Punchhi, Public Prosecutor, U.T., Chandigarh with
Mr. V.S. Mahal, Addl. Public Prosecutor, Chandigarh.

VIKAS SURI, J. (Oral)

1. This appeal has been preferred under Section 449 Cr.P.C by the appellant-Manraj Singh against order dated 01.06.2023 passed by Addl. Sessions Judge, Chandigarh, whereby it was ordered that the complete bond amount of Rs.1,00,000/- was imposed upon the surety-appellant, as penalty under Section 446 of Cr.P.C.

2. Learned counsel for the appellant submits that the appellant had stood surety for accused-Gurmeet Singh and had furnished the requisite bond in that regard. The accused was regularly attending the Court till 12.05.2023 and it was on the said date that the accused namely Gurmeet Singh had not appeared before the trial Court due to the reason of his involvement in case FIR No.101, dated 12.05.2023, under Sections 302, 34 IPC, registered at Police Station Kharar, District Mohali (Annexure P-2). The accused-Gurmeet Singh was on the run apprehending arrest in the said FIR and thus did not appear before the trial Court

in the present case and on the same day his bail was cancelled and he was summoned through arrest warrants and notice under Section 446 Cr.P.C was also ordered to be issued to the surety, i.e. the present appellant. In the meanwhile, accused-Gurmeet Singh @ Geeta was arrested by the Punjab Police. As per the appellant's personal belief, accused-Gurmeet Singh suffered a disclosure statement while in police custody and named the appellant to be his associate being from the same village and known to each other. Thus, the appellant was on the run and did not turn up before the trial Court on 01.06.2023 pursuant to notice under Section 446 Cr.P.C., to explain his position and circumstances. Vide order dated 01.06.2023, after recoding the absence of appellant, the trial Court imposed penalty of complete surety amount of Rs.1 lakh and further ordered issue of recovery warrants of the said amount to be sent to the Collector for effecting the penalty.

3. Learned counsel for the appellant contends that the appellant did not get proper opportunity to explain his position for non-appearance pursuant to the notice issued under Section 446 Cr.P.C and resultantly, there was no due consideration in terms of Section 446(3) Cr.P.C, for remission of the penalty pursuant to the surety bonds.

4. Learned counsel for the appellant contends that in the absence of any connivance between the appellant who stood surety and the accused who did not appear before the Court being involved in another FIR mentioned above, the order passed against the appellant is very harsh and is not sustainable in law, as such. In support of his contentions, learned counsel for the appellant has relied upon the judgment of a coordinate Bench of this Court in CRM-M-17795-2018 titled ***Raghubir and another vs. State of Haryana and another***, 2022 (1) RCR (Crl.)

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5. On advance notice, Mr. A.M. Punchhi, Public Prosecutor, U.T. Chandigarh, puts in appearance on behalf of the respondent-U.T. Chandigarh and waives service.

6. Learned Public Prosecutor has very fairly submitted that the submissions made in the memorandum of appeal and for the grounds taken therein, would have a bearing on the merits of the impugned order. It is, however, submitted that the pleas sought to be raised in appeal, were required to be first pleaded before the trial Court and only the said Court could have gone into the said factual aspect. Thus, it is submitted that this matter be remanded back to the trial Court and the appellant be relegated to plead his case for remission of penalty before the said Court.

7. Heard learned counsel for the parties and with their able assistance perused the record.

8. A perusal of the impugned order dated 01.06.2023 passed by the trial Court would show that there was no allegation against the appellant that he has, as a matter of fact, instigated or helped the accused, in any manner, in the act of not surrendering on time. Rather the plea urged in the present case, explained the circumstances for the absence of the accused who was subsequently arrested in the other FIR noticed above, and thereafter the appellant did not appear before the Court pursuant to notice under Section 446 Cr.P.C, apprehending his arrest on the disclosure statement of the accused for whom he has stood surety, were circumstances beyond his control.

9. No doubt Section 446(3) of the Code of Criminal Procedure empowers the Court to grant remission of penalty. It is within the discretion of the Court to grant remission and to decide the extent of penalty and impose payment in part only. Such discretion must be exercised judiciously and for good reasons.

However, in the present appeal, a case has been made out that the appellant did not get proper opportunity to present his plea for remission and avail the said statutory right for reasons that were beyond his control.

10. The Apex Court, while dealing with the issue of remission in ***Mohammad Kunju and another vs. State of Karnatka, (1999) 8 SCC 660***, has held as under:-

13. Learned counsel then contended that as the bond was executed by the accused with two sureties the upper limit of the amount which the Court can realise from both the sureties together cannot exceed the amount which the accused has stated in his bond. In other words, when the accused executed a bond for Rs 25,000 the sureties can be made liable to pay the said amount either jointly or severally, according to the counsel. The acceptability of the aforesaid contention depends upon the wording of the bond executed by the appellants. There was a controversy earlier as to whether the bond is a single one supported by two sureties or the bond executed by a surety is different from that of the accused. The controversy stands settled now by the decision of this Court in *Ram Lal v. State of U.P.* [(1979) 2 SCC 192 : 1979 SCC (Cri) 418 : AIR 1979 SC 1498]. Their Lordships, after referring to the wording contained in Form 42 of Schedule V of the old Code of Criminal Procedure, 1898, have held thus: (SCC p. 195, para 3)

“The undertaking to be given by the surety was to secure the attendance of the accused on every day of hearing and his appearance before the Court whenever called upon. The undertaking to be given by the surety was not that he would secure the attendance and appearance of the accused in accordance with the terms of the bond executed by the accused. The undertaking of the surety to secure the attendance and presence of the accused was quite independent of the undertaking given by the accused to appear before the Court whenever called upon, even if both the undertakings happened to be executed in the same

document for the sake of convenience. Each undertaking being distinct could be separately enforced.”

14. We have noticed that the wording in the corresponding form in the new Code is identical (vide Form 45 in the Second Schedule to the Code) and hence the same principle must follow in the present case also. Thus forfeiture of a bond would entail the penalty against each surety for the amount which he has undertaken in the bond executed by him. Both the sureties cannot claim to share the amount by half and half as each can be made liable to pay the amount of Rs 25,000.

15. Lastly, learned counsel made a plea for remission of the penalty. No doubt Section 446(3) of the Code empowers the court to grant such remission. It is within the discretion of the court to grant remission and to decide the extent of the remission. Such a discretion must be exercised judicially and for good reasons. Learned counsel cited the decisions of this Court in *Madhu Limaye v. Metropolitan Magistrate* [1984 Supp SCC 699 : 1985 SCC (Cri) 148]. A three-Judge Bench of this Court considered the plea advanced by a surety who was proceeded against as the accused – some foreign nationals – escaped from India. They were students charged with offences of “trivial nature” in 16 cases altogether. This Court held that in such circumstances “the ends of justice will be met by imposing a token penalty of Rs 100”. In the present case, though the offences charged against the foreign national are not trivial they are nevertheless not very serious comparatively. The accused slipped out of the country without anybody's knowledge and thereby rendered himself beyond the reach of the appellant. The Court could have imposed the condition to surrender his passport as a measure to prevent him to escape out of India. There is no allegation that the appellant had any remote scent that the accused was preparing to escape from India, nor that he had connived with the accused jumping out the bail.

11. Learned counsel for the appellant further submits that forfeiture of the entire amount by way of imposition of penalty of Rs.1 lakh is very harsh and

has relied upon the judgment of a coordinate Bench of this Court in CRM-M-15296-2012, titled *Dalbir vs. State of Haryana*, decided on 01.02.2013 as well as the judgment in CRM-M-18977-2015 titled *Ram Singh and others vs. State of Haryana*, decided on 15.09.2016.

12. In light of the above discussion and keeping in view the equitable stand of the learned Public Prosecutor and to give a fair and reasonable opportunity to the appellant to plead his case for remission of penalty in terms of Section 446 (3) Cr.P.C, this Court deems it fit to set aside the impugned order dated 01.06.2023 and remand the matter back to the trial Court, which would pass orders afresh after granting an opportunity of hearing to the appellant who may raise all pleas available in law including those taken in the instant petition. The appellant is directed to put an appearance before the trial Court on 22.08.2023 at 10.00 A.M.

13. Accordingly, the appeal is allowed in the aforesaid terms.

July 27, 2023
vcgarg

Whether speaking/reasoned:
Whether reportable:

(VIKAS SURI)
JUDGE

Yes
No