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

CWP No.25180 of 2018

Date of decision : 05.09.2023

Sita Ram

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Saurabh Bajaj, Advocate
for the petitioner.

Ms. Upasna Dhawan, AAG, Haryana.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for setting aside the letters dated 16.03.2018 (Annexure P-3) and 11.09.2018 (Annexure P-4) as the same being illegal and wholly contrary to the relevant provisions of law. Further prayer has been made directing the respondents not to recover the amount of surety from the petitioner without following the due procedure of law and without giving opportunity of being heard to the petitioner.

It has been contended by learned counsel for the petitioner that the petitioner stood surety for an amount of Rs.1,50,000/- for the accused, namely, Vipin son of Ranjit Singh. The said accused was released on parole on 05.02.2014 and he was to surrender on 27.02.2014. After having been granted parole, the accused did not surrender on the due date i.e. 27.02.2014. However, later on he was arrested on 27.06.2014. He submits that in the meantime, vide impugned letter No.38-PBS dated 31.01.2017, the petitioner was directed to deposit an amount of

Rs.1,50,000/-. He submits that the petitioner duly replied that the accused Vipin has already been arrested by the police on 27.06.2014. He further submits that the respondents acting illegally and in arbitrary manner ordered for the attachment and auction of property belonging to the petitioner for recovery of an amount of Rs.1,50,000/- without following the due procedure of law as envisaged under Section 446 of Cr.P.C.

Learned counsel for the petitioner has further submitted that vide letter dated 11.09.2018, the respondents have ordered for the auction of petitioner's property, which is totally against the statutory provisions, as no opportunity of hearing has been given to the petitioner before the attachment of his property. He has submitted that the action taken by the respondents in issuing the impugned letters for attaching his property are totally against the provisions of Cr.P.C. as well as that of the Punjab Land Revenue Act. He submits that not only the orders passed are illegal but are against the principle of natural justice as well as no show cause notice was issued to the petitioner before initiating the action by way of the impugned notices issued to him. He further relied upon the decision passed by Hon'ble the Apex Court in "***Gulam Mahendi vs. State of Rajasthan***", **AIR 1960 SC 1185**, whereby it has been held that prior show cause notice should be given.

After arguing, learned counsel for the petitioner submits that this Court vide order dated 01.10.2018, issued notice of motion to the respondents-State and directed the petitioner to deposit an amount of Rs.75,000/- with the Tehsildar, Nilokheri within ten days with a direction to keep the same in Fixed Deposit in a nationalized bank. He submits that

the petitioner is a poor person and in the facts and circumstances *de hors* the merits of the case, the recovery amount be reduced to the amount of Rs.75,000/- which has already been deposited by the petitioner in compliance of the order of this Court dated 01.10.2018 and thus, the impugned order qua recovery of amount of Rs.1,50,000/- be set aside and the amount be reduced to the one already deposited by the petitioner i.e. Rs.75,000/-.

Learned State counsel though has opposed the submissions made by learned counsel for the petitioner and has submitted that the petitioner stood surety for the accused, namely, Vipin for an amount of Rs.1,50,000/-. She submits that admittedly the accused did not surrender on the date fixed and thus, he jumped parole. He submits that the impugned notices thus, were rightly issued to the petitioner in accordance with law. She submits that when the petitioner failed to deposit the amount, the attachment proceedings were rightly initiated against him.

After hearing learned counsel for the parties and perusing the material on record, it is apparent that the petitioner stood surety for accused, Vipin, who did not surrender after having been released on parole. However, it is apparent that subsequently, he was arrested by the police on 27.06.2014. Notices were issued to him being the surety of the accused, who had submitted the bail bonds of Rs.1,50,000/-. However, the Court cannot ignore the fact that accused, namely, Vipin was later on arrested and he is said to be facing trial. The petitioner in compliance of order of this Court dated 01.10.2018, duly deposited an amount of Rs.75,000/- by way of fixed deposit with the Tehsildar Nilokheri.

Learned counsel for the petitioner has fairly submitted before this Court that the petitioner is a poor person and he has duly complied with the order passed by this Court. Hence, keeping in view the facts and circumstances of the case, the amount of Rs.1,50,000/- be reduced to the amount of Rs.75,000/- which already stands deposited by the petitioner.

On appreciating the arguments raised and perusing the record, this Court finds the submissions made by counsel for the parties would meet the ends of justice, thus, the amount of Rs.1,50,000/- is reduced to the amount of Rs.75,000/-, which is already deposited by the petitioner. This amount of Rs.75,000/-, which has already been deposited by the petitioner by way of Fixed Deposit along with interest would be disbursed to the concerned Department for the satisfaction of the amount for which the impugned notice had been issued to the petitioner under Section 446 Cr.P.C. The order for recovery of amount of Rs.1,50,000/- is modified to the extent of Rs.75,000/- + interest upto date which the petitioner has already deposited. Thus, the petitioner is burdened with Rs.75,000/- already deposited in the shape of FDR + interest till date to be deposited with the Government as per rules.

In view of the above, the impugned notices dated 16.03.2018 (Annexure P-3) and 11.09.2018 (Annexure P-4) stand quashed. Accordingly, the present petition is disposed of in the above mentioned terms.

05.09.2023

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(RAJESH BHARDWAJ)
JUDGE

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