

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(112)

CRA-S-2285-2023 (O&M)

Date of Decision:- 22.08.2023

Sohan Lal

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Dheeraj Narula, Advocate
for the applicant-appellant.

Mr. Ramender Singh Chauhan, AAG, Haryana
for State-respondent.

SUVIR SEHGAL, J. (Oral)

CRM-34984-2023

1. Application is allowed as prayed for.
2. Annexures A-1 and A-2 are taken on record.

CRA-S-2285-2023 (O&M)

1. Instant appeal has been filed under Section 449, Cr.P.C assailing orders dated 15.05.2023 passed by the learned District and Sessions Judge, Sirsa and 31.07.2023 passed by the learned Additional Sessions Judge, Sirsa, respectively, whereby appellant has been saddled with fine of Rs.1 lac on account of non-appearance of accused, Mahabir Singh, being a surety and his property has been attached for realizing the amount of fine as land revenue.
2. Brief facts may be noticed. FIR No.0064 dated 11.02.2020 for offences under Sections 392, 328, 412, IPC has been lodged at Police Station City Mandi Dabwali, Sirsa on the complaint of Rajeev Bansal, wherein he

alleged that three unknown persons had looted a mobile phone and other articles. Mahabir Singh was arrested on the allegation that he had purchased the said mobile from the main accused for Rs.2,000/- and on his arrest, offence under Section 412, IPC was added. Mahabir Singh was released on regular bail and the appellant, who is his father, furnished surety bond of Rs.1 lac. When the said accused failed to attend the proceedings, proclamation was issued and he was declared as a proclaimed person on 11.04.2023. By impugned orders, appellant has been ordered to deposit the surety amount of Rs.1 lac and his request for waiving of the amount has been declined.

3. While making a reference to the application dated 03.07.2023, Annexure A-2, counsel for the appellant has argued that the appellant had played an active role in procuring the presence of the accused, Mahabir Singh, who was re-arrested in another criminal case and was confined in Central Jail, Hisar-II. Counsel submits that as the accused has been re-arrested, the objective of the statutory provision stands achieved and the attachment of appellant's property deserves to be withdrawn. He has placed reliance upon the judgment of the Apex Court in ***Vimalben Ajitbhai Patel Versus Vatslabel Ashokbhai Patel and others 2008 (4) SCC 649***. Counsel urges that in view of this background, the penalty amount deserves to be remitted under Section 446 (3), Cr.P.C. Reference has been made by him to the judgments of this Court in ***Phuman Singh Versus State of Punjab 2003 (3) R.C.R. (Criminal) 767*** and ***CRA-S-3242-SB-2013*** titled as "***Kulwant Singh Versus State of Punjab***", decided on 10.12.2013.

4. Notice of motion.

5. On asking of the Court, Mr. Ramender Singh Chauhan, AAG, Haryana accepts notice on behalf of the State-respondent. He has opposed the appeal and has supported the impugned orders.

6. I have considered the submissions made by counsel for the parties.
7. Sub-Section 3 of Section 446, Cr.P.C. vests a discretion in the Court to remit any portion of the penalty and enforce payment in part only. While exercising this power, the Court is required to see whether there is any sufficient cause given for non-appearance of the accused or for his non-production by the surety. The fine imposed by the Court must have a correlation with the circumstances of the case, inconvenience caused to the Court and the expense and time taken by the State in re-apprehending the accused.
8. Adverting to the facts of the present case, it is evident that the accused, Mahabir Singh, abstained from the proceedings and after following the due process of law, he was declared as a proclaimed person. Application, Annexure A-2, was moved by the appellant, who is his father, in July, 2023 to secure his presence, thereafter, he has been re-arrested.
9. Undoubtedly, appellant has played an active role in procuring the presence of the accused. There is no allegation against him of conniving with the accused. Though, at the same time, this Court cannot lose sight of the fact that the accused was declared as a proclaimed offender. Keeping in view the above circumstances, this Court is of the view that the appellant deserves the concession of reduction of penalty.
10. Consequently, impugned orders are modified to the extent that the petitioner shall pay 50% of the surety amount as penalty and deposit an amount of Rs.50,000/-before the Trial Court.
11. Appeal is disposed of on the aforesaid terms.

22.08.2023

Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No