

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45012 of 2023
Reserved on:26.02.2024
Pronounced on: 29.02.2024

RammeharPetitioner

Vs.
State of HaryanaRespondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Shailender Singh Momi, Advocate
for the petitioner.

Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.

By way of present petition filed under Section 482 Cr.P.C, petitioner prays for quashing the order dated 10.12.2021 (Annexure P9) passed by learned Additional Sessions Judge, Jind in CRA No.159 of 2021, whereby appeal under Section 449 Cr.P.C against the order dated 19.10.2021 (Annexure P8) passed by learned Judicial Magistrate Ist Class, Jind in NACT No.106/2019 was dismissed. Petitioner also prays for quashing of order dated 19.10.2021 (Annexure P8) passed by learned Judicial Magistrate Ist Class, Jind, whereby recovery warrant was directed to be issued against the petitioner under Section 421 Cr.P.C for effecting the recovery of ₹5 lakhs as penalty amount on account of his failure to produce the accused. Further prayer is made to quash order dated 21.08.2023 (Annexure P10) passed by learned Judicial Magistrate Ist Class, Jind, whereby fresh recovery warrant was issued and the report of the Collector was called for.

2. As it emerges on perusal of the paper book that a criminal complaint bearing NACT/106/2019 titled '*Ramesh Kumar Vs. M/s Guru Nanak Agro Industries and others*'; for dishonour of a cheque for an amount

of ₹1 crore was filed to prosecute the accused under Section 138 of the Negotiable Instruments Act. Kapoor Singh, the proprietor of M/s Guru Nanak Agro Industries, was one of the accused. Said Kapoor Singh was allowed bail by the Court vide order dated 03.07.2019 (Annexure P2) on furnishing bail bonds and surety bonds in the sum of ₹5 lakhs each. Petitioner – Rammehar stood surety for accused Kapoor Singh and furnished the surety bonds in this regard. Pursuant thereto, accused Kapoor Singh was released. During proceedings, said accused Kapoor Singh was directed to pay 20% of the cheque amount. Despite repeated adjournments, he failed to do so. On 07.09.2020, due to his non-appearance, the bail of accused – Kapoor Singh was cancelled and warrants of arrest were directed to be issued. On 30.09.2020, it was informed on behalf of the accused by his counsel that the accused was suffering from Covid-19. He was directed to appear on 26.10.2020. Accused still failed to appear and rather, challenged the order dated 07.09.2020 before this Court. This Court vide order dated 21.12.2020 gave direction to Kapoor Singh to surrender before the trial Court on or before 15.02.2021. He was directed to be released on bail subject to furnishing fresh bonds on deposit of 20% of the cheque amount, as had been directed by the trial Court. Accused – Kapoor Singh still failed to do so. Despite repeated warrants of arrest and proclamation, he could not be served and so, was ultimately declared proclaimed person by the trial Court vide order dated 20.08.2021 (Annexure P7).

3. It is revealed further that on 02.03.2021, notice under Section 446 Cr.P.C was issued to the surety i.e. petitioner – Rammehar. He was duly served but failed to appear before the trial Court. He appeared after the issuance of bailable warrants against him and moved an application seeking time to produce the accused Kapoor Singh. However, he failed to do so and

consequently, the trial Court vide impugned order dated 19.10.2021 (Annexure P8) issued recovery warrant against the surety under Section 421 Cr.P.C for effecting the recovery amount of ₹5 lakhs.

4. Against the afore-said order dated 19.01.2021, petitioner filed appeal under Section 449 Cr.P.C before the Court of Sessions. The Court of learned Additional Sessions Judge, Jind noticed that as per Section 446(3) Cr.P.C., there was provision to remit any portion of the penalty to be imposed, for the reasons to be recorded. The trial Court had not considered the said provision. However, instead of remanding the case for fresh adjudication by the trial Court in view of Section 446(3) Cr.P.C., the Court of learned Additional Sessions Judge, considered as to whether there were sufficient grounds/ reasons to remit the amount of penalty. After considering the submissions made on behalf of the petitioner and finding that there was no ground so as to remit the penalty amount, the appeal was dismissed vide impugned order dated 10.12.2021 (Annexure P9).

5. Thereafter, learned Judicial Magistrate Ist Class, Jind ordered fresh recovery warrant against the surety under Section 421 Cr.P.C and called for report of the Collector vide order dated 21.08.2023 (Annexure P10). Pursuant to the order of the Court, the Deputy Commissioner, Jind, issued proclamation of sale under Section 79 of the Punjab Land Revenue Act, 1887 with regard to land measuring 44 kanal 08 marlas of the petitioner vide Annexure P11 dated 23.06.2023.

6. Challenging all the afore-said proceedings, by way of the present petition, it is contended by learned counsel that sufficient opportunity was not granted to the petitioner to exhaust the benefit of Section 446(3) Cr.P.C. and that impugned order was passed mechanically.

Learned counsel contends further that the petitioner is an old person, aged

more than 70 years. Petitioner could not presume in dreams that accused Kapoor Singh will flee away from the Court as he was running the Rice Mill in the name of M/s Guru Nanak Agro Industries. Learned counsel also refers to Section 440 Cr.P.C in order to contend that the bond amount was required to be fixed with regard to circumstances of the case and could not be excessive. With all these submissions, prayer is made for setting aside all the impugned orders.

7. Upon notice, learned State Counsel has appeared and defended the impugned orders. It is submitted by learned State Counsel that when petitioner furnished the surety bond on behalf of the accused – Kapoor Singh, he was well aware of the consequences that in case of non-appearance of the accused, he (petitioner) will have to be responsible for paying the bond amount of ₹5 lakhs. Knowing the consequences, he furnished the bonds. The Court granted sufficient opportunity to the petitioner to produce the accused Kapoor Singh after his absence from the Court but petitioner failed to do so. The accused ultimately was declared proclaimed person and that in these circumstances, no fault can be found with the impugned order, in imposing the penalty of ₹5 lakhs and not remitting the amount under Section 446(3) Cr.P.C. Prayer is made for dismissal of the petition.

8. I have considered submissions of both the sides and have perused the record.

9. Section 439 of the Code of Criminal Procedure provides about the powers of the High Court or the Court of Sessions to grant bail to an accused.

10. Section 440 Cr.P.C reads as under:-

“440. Amount of bond and reduction thereof.

[\(1\)](#)The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

[\(2\)](#)The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.”

11. It is clear from the afore-said provision that amount of the bond is required to be fixed with regard to the circumstances of the case and it should not be excessive. However, Section 440 Cr.P.C is applicable at the stage prior to furnishing of the bonds. Once the bond amount has been fixed and bonds have been furnished pursuant to the order, Section 440 Cr.P.C does not have any further application. In case, the bond is subsequently forfeited, it is the procedure provided under Section 446 Cr.P.C, which is required to be followed.

12. Section 446 Cr.P.C reads as under:-

“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.

[\(3\)](#)The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only.

[\(4\)](#) & (5) xxxxxxxxxxxxxxxx”

13. The distinction between Section 446(3) Cr.P.C and that of Section 440 Cr.P.C has been explained by Kerala High Court in case titled ***Valsan Vs. State of Kerala, - CRL-A No.95 of 2021*** decided on 14.07.2021, which has also been referred by the learned Additional Sessions Judge, Jind in the impugned order, which reads as under:-

“5. When the bond amount was forfeited, the liability for the entire amount would arise at the same moment. Provisions are made in the [Cr.P.C.](#) by way of Section 446(3) to remit any portion of the penalty to be imposed and to enforce payment in part, but for which reasons should be recorded. It is not within the jurisdiction of the trial court either to reduce or to give up or to alter the penalty, which would be the legal consequence of the forfeiture of the bail bond except under [Section 446 \(3\)](#) Cr.P.C., for which, reasons must be recorded. [Section 440](#) Cr.P.C. cannot be applied while dealing with forfeiture of bail bond under CRL.A NO. 95 OF 2021 [Section 446](#) Cr.P.C.. [Section 440](#) Cr.P.C. basically deals with fixation of bond amount or reduction thereof and it should be done with due regard to the circumstances of the case and it should not be excessive. The exercise of discretion under [Section 440](#) Cr.P.C. for fixing the bond amount is entirely different from that under [Section 446\(3\)](#) Cr.P.C.. The former one deals with pre-bail authority and the court can fix bond amount with due regard to the circumstances of the case, such as the gravity of the offence and other attending circumstances and it is the subjective satisfaction of the Magistrate/court for which, it is not at all necessary to record the reasons in writing. But, in the latter case, it would come into play as a legal consequence of violation of bail bond conditions on a post-bail stage and reasons must be recorded for giving remission of portion of penalty. Both these provisions are independent, CRL.A NO. 95 OF 2021 hence governs different fields. The court cannot go back or revert back to [Section 440](#) Cr.P.C. so as to have a discretion either to reduce the bail bond amount or to refix the same under [Section 446](#) Cr.P.C.. In fact, under [Section 446](#) Cr.P.C., the discretionary power vested with the court is so limited to the extent of fixing the quantum of penalty that can be remitted under sub-section (3) by recording reasons for it. The expression "at its discretion" in sub-section(3) was substituted by the words "after recording its reasons for doing so" by Amendment Act 25 of 2005 w.e.f. 23/06/2006 and thereby the legislature had taken away considerably the exercise of discretion by substituting the requirement of sufficient reasons to be recorded for giving remission.”

14. In view of the afore-said legal position, the reliance of learned counsel for the petitioner on Section 440 Cr.P.C is absolutely misplaced.

Once the petitioner had furnished the bonds for an amount of ₹5 lakhs, undertaking the appearance of the accused – Kapoor Singh on each and every date of hearing, he cannot be allowed to turn around and say that bond amount was excessive.

15. Proceeding further, it is no doubt true that Section 446(3) Cr.P.C., empowers the Court to remit any portion of the penalty and to enforce the payment in part only but Court is required to mention the reasons for doing so.

16. In the present case, learned Appellate Court rightly observed that there was no sufficient ground to remit the amount. The petitioner was provided adequate opportunity to produce the accused – Kapoor Singh after his absence from the Court. Petitioner failed to do so. The accused was declared proclaimed person. At the time, the petitioner furnished the bonds, he was fully aware about the consequences to be followed, in case the accused disappeared and as such, petitioner cannot be now allowed to plead that he is a poor person or not in a position to pay the amount.

17. Learned counsel has referred a judgment of this Court in ***Mahinder Singh Vs. State of Punjab – CRA-S-1578 of 2022 (O&M)***, decided on 19.12.2022, wherein petitioner Mahinder Singh had stood surety for accused Gurjant Singh. On absence of the accused, notice to petitioner - surety was issued. However, the accused was arrested and no material delay was attributed to the petitioner. It was in these circumstances that the penalty amount was remitted by this Court from ₹1 lakh to ₹10,000/-. In ***Mahinder Singh's case (supra)***, there is also reference of a Division Bench judgment of this Court titled ***Shiv Mangal and another Vs. State of Haryana, 2018(2) Law Herald 1708***, wherein also, it was found that accused Basant had already been arrested and surrendered before the trial

Court and it was in these circumstances that penalty imposed upon the surety was remitted.

18. None of the afore-said authorities are applicable to the facts of the present case, as it had already been noticed that in this case neither the petitioner could produce the accused – Kapoor Singh nor the accused has been arrested by the Police till date nor he has surrendered before the trial Court. As such, this Court finds absolutely no illegality in any of the impugned orders.

Dismissed.

February 29, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No