

CRM No.49850 of 2024 in/and
CRA-S No.4124 of 2024

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM No.49850 of 2024 in/and
CRA-S No.4124 of 2024
Date of decision: 09.01.2025

Ramphal Sharma ... Appellant

Vs.

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ashok K. Sharma, Advocate,
for the applicant-appellant.

Mr. Apoorv Garg, Sr. DAG, Haryana,
for the respondent-State.

MANISHA BATRA, J. (Oral)

CRM No.49850 of 2024

For the reasons stated in the application, the same is allowed
and the delay of 52 days in filing the appeal is condoned.

Main Case

1. The appellant is challenging the order dated 22.08.2024 passed
by the Court of learned Sessions Judge, Jind in case arising out of FIR
No.34 of 2023 registered under Sections 379A read with Section 34 of
IPC at Police Station GRP Jind titled as *State v. Ramphal Sharma*

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whereby, the proceedings initiated against the appellant under Section 446 of the Code of Criminal Procedure (For short "Cr.P.C.") were ordered to be separated from the main case and recovery certificate in terms of Section 421 of Cr.P.C. was ordered to be issued against him for realization of penalty amount of Rs.50,000/- from his moveable and immovable assets. He has further challenged the order dated 20.11.2024 as passed by the same Court observing that proceedings for auction of the property of the appellant had been initiated.

2. Brief facts relevant for the purpose of disposal of this appeal are that the appellant stood surety for accused Suraj @ Thotha in the aforementioned FIR and had furnished surety bonds to the tune of Rs.50,000/-. The accused absented himself on 24.05.2024 due to which his bail was cancelled and bonds were forfeited to the State. Notice under Section 446 of Cr.P.C. was issued against the appellant. Since the appellant did not appear before the trial Court, therefore, recovery certificate for attachment and auction of moveable and immovable assets of the appellant for realization of penalty amount of Rs.50,000/- had been issued.

3. It is argued by learned counsel for the appellant that the impugned orders are liable to be set aside as while passing the same, the learned trial Court ignored that he was a poor person having no source of income or money to pay the penalty amount. It is also submitted that

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while passing order for imposition of penalty and issuance of recovery certificate, the learned trial Court did not give any opportunity of hearing to him. The fact that there is nothing on record to show that it was the appellant who had aided the absence of Suraj @ Thotha in any manner, has also not been taken into consideration. Therefore, it is urged that the appeal deserves to be allowed.

4. Notice of motion.

5. On asking of the Court, Mr. Apoorv Garg, Sr. DAG, Haryana accepts notice on behalf of the respondent-State and submits that no reasonable ground has been made out to interfere with the impugned orders and has, therefore, urged that the petition is liable to be dismissed.

6. After going through the record and on giving due deliberations to the contentions as raised by learned counsel for the parties, I am of the considered opinion that there is no merit in the appeal. Admittedly and evidently, the appellant stood surety for accused Suraj @ Thotha and furnished bonds to the tune of Rs.50,000/- thereby making himself responsible for ensuring appearance of the accused and in case of any default to pay the amount of the surety bond. Since the accused absented himself and his presence could not be secured, therefore, the learned trial Court rightly issued notice under Section 446 of Cr.P.C. against the appellant. It is also revealed from the record that the appellant did not respond to the said notice thereby compelling the trial Court to issue

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recovery certificate for realisation of the surety amount by treating it as penalty amount. As such, no illegality or infirmity can be stated to have committed by the learned trial Court while passing the impugned orders. Interestingly, the order dated 20.11.2024 simply mentions the fact that auction of the attached property could not be conducted and no such adverse order which could be subject of filing appeal, has been passed. Faced with this situation, learned counsel for the appellant submits that he would be satisfied if the appellant is granted opportunity to appear before the learned trial Court and to file reply to the notice under Section 446 of Cr.P.C. Keeping in view this fact, the appeal is disposed of with liberty to the appellant to appear before the learned trial Court and to contest the notice under Section 446 of Cr.P.C. The appellant shall appear before the learned trial Court on or before the date fixed and till then, no further steps will be taken by learned trial Court for auctioning the property of the appellant if attached. However, it is also clarified that the learned trial Court shall be at liberty to dispose of the notice under Section 446 of Cr.P.C. in accordance with law.

09.01.2025
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No