

(2008) 09 P&H CK 0184

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal A. No. 1311-SB of 2008

Rakesh Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Sept. 15, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 446
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 21

Citation: (2009) 4 RCR(Criminal) 449

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: S.S. Behl, for the Appellant; A.K. Jindal, AAG, Haryana, for the Respondent

Final Decision: Allowed

Judgement

Sham Sunder, J.

This appeal is directed against the order dated 15.04.2008, rendered by the Special Judge, Ambala, vide which, he imposed penalty of Rs. 50,000/- on Rakesh Kumar, applicant (hereinafter referred to as 'appellant'), who stood surety for Rakesh Kumar son of Anand Bansal, accused, and failed to produce him in the Court.

2. Rakesh Kumar son of Mela Ram, stood surety, for Rakesh Kumar son of Anand Bansal, accused in case FIR No. 153 dated 20.06.2003, u/s 21 of the Narcotic Drugs & Psychotropic Substances Act, Police Station GRPS, Ambala Cantt, in the sum of Rs. 50,000/-, undertaking to produce him, on each and every date of hearing, failing which to pay the amount of forfeited surety bond to the State of Haryana. Rakesh Kumar son of Anand Bansal, accused absented from the Court on 16.10.2007. His bail order was cancelled, his bail bonds were forfeited and he was ordered to be summoned through non-bailable warrants. Till date, he has neither been arrested, nor the appellant has produced him in the Court.

3. Accordingly, notice u/s 446 of the Cr. P.C. was ordered to be issued to the surety, to show cause, as to why the amount of aforesaid surety bond, be not recovered from him. He sought time to produce the accused, but on 15.04.2008, he did not turn up, without any intimation. Accordingly, penalty of Rs. 50,000/- was imposed upon him.

4. Feeling aggrieved, the instant appeal, was filed by Rakesh Kumar, appellant.

5. I have heard the Counsel for the parties, and have gone through the record of the case, carefully.

6. The Counsel for the appellant, at the very outset, submitted that no sufficient opportunity was granted to the appellant, by the trial Court, to produce Rakesh Kumar, accused. He further submitted that the surety (appellant) was, thus, condemned unheard, and, as such, the order impugned is liable to be set aside. He further submitted that the penalty imposed upon the appellant, being very harsh, is liable to be remitted.

7. On the other hand, the Counsel for the respondent, submitted that sufficient opportunity was granted to the appellant/surety to produce Rakesh Kumar, accused, but when he failed to do so, no alternative was left with the Court, to impose penalty upon him. He further submitted that since the appellant failed to produce Rakesh Kumar, accused, in the Court, despite having been afforded sufficient opportunity, and even till date, the accused has not been arrested, it could not be said that the penalty imposed, upon the appellant/surety, was in any way harsh. He further submitted that, no ground, whatsoever, was made out, for remission of the amount of penalty imposed upon the appellant/surety.

8. When Rakesh Kumar, accused, did not appear in the Court on 16.10.2007, his bail order was cancelled and personal bond and surety bond, were forfeited to the State. It is evident, from the record, that notice u/s 446 of the Code of Criminal Procedure was served upon the surety-appellant, and he made a statement, that he will produce the accused on 15.04.2008. However, he did not turn up, in the Court, on 15.04.2008, nor any intimation, on his behalf, was received. It, therefore, could not be said that sufficient opportunity was not granted to the surety/appellant, to produce the accused. In my opinion, reasonable opportunity, was afforded to the surety-appellant, to locate and produce the accused, in the Court, but when he himself absented from the Court, left with no other alternative, the trial Court, imposed penalty upon him. It, therefore, could not be said that the surety was condemned unheard. The submission of the Counsel for the appellant, in this regard, being without merit, must fail, and the same stands rejected.

9. In the second submission of the Counsel for the appellant, there is some merit. There is no material, on the record, to indicate, that the surety, in any way, connived with the accused, so as to facilitate his flee, from the portals of justice. There is no material, on the record, to indicate that the surety/appellant was having an idea,

that the accused will jump the bail. In Mohammed Kunju v. State of Karnataka 1999 (4) RCR (Cri) 726 (SC), the Apex Court, remitted the penalty partly, scaling it down from Rs. 25,000/- to Rs. 5,000/-, finding that there was neither any connivance of the surety, in facilitating the abscondance of the accused, from the Court, nor he had any inkling that he will jump the bail and abscond. In this view of the matter, it can be said that the amount of penalty imposed upon the surety/appellant, is excessive. It deserves to be scaled down from Rs. 50,000/- to Rs. 25,000/-. The submission of the Counsel for the appellant, to this extent, is accepted.

10. For the reasons recorded herein-above, the appeal is partly accepted. The amount of penalty of Rs. 50,000/- imposed upon the surety/appellant, by the trial Court, is reduced to Rs. 25,000/-. The trial Court is directed to take necessary steps, in accordance with law, for the recovery of the reduced amount of penalty of Rs. 25,000/-, from the surety, if already not recovered.