

(2008) 05 P&H CK 0173

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 1323-SB of 2007

Nirmala

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 2, 2008**Acts Referred:**

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 446, 446(4)
- Penal Code, 1860 (IPC) - Section 392, 395, 396, 397, 399

Citation: (2009) 3 RCR(Criminal) 166**Hon'ble Judges:** Harbans Lal, J**Bench:** Single Bench**Advocate:** Arvind Kumar, for the Appellant; Madan Gupta, Senior. Deputy Advocate.
General, Haryana, for the Respondent

Judgement

Harbans Lal, J.

This judgment shall dispose of five Criminal Appeals No. 1323 to 1327-SB of 2007 preferred by Nirmala widow of Jagdish (since deceased) against the State of Haryana, as a common question of law and fact is involved therein.

2. The facts are gathered from Criminal Appeal No. 1323-SB-2007. These are: Jagdish (deceased), the husband of the appellant stood surety for accused Fateh Singh son of Sohan Pal, resident of village Barwala District Panchkula in FIR No. 207 dated 29.9.1998 u/s 392, 395, 396 and 397 of IPC, Police Station Chandimandir, District Panchkula. He expired later on. During the course of trial, Fateh Singh jumped over the bail. He was declared a proclaimed offender. The learned trial Court on 12.2.2003 in proceedings u/s 446 of the Code Criminal Procedure against Jagdish in Case No. 7/Misc., ordered that the surety bonds stood forfeited to the State and since Jagdish surety has expired, warrants for attachment of property mentioned in the surety bond be issued for the recovery of the amount of Rs. 25000/- as penalty.

The appellant is little aware of the fact that he stood surety in the aforesaid F.I.R. nor had the knowledge that the order dated 12.2.2003 has been passed. She has come to know about the same when the warrants for attachment of the property have been issued by the Collector, Panchkula to recover the amount as arrears of land revenue. She being a poor lady is not in a position to pay the amount of penalty. At no time, the notice was issued either to her or the legal representatives of the deceased by the learned trial Court nor an opportunity of being heard has been afforded to either of these, as is so clear from the impugned order. The learned trial Court, in stead of issuing notice to his legal representatives, straightway imposed the penalty to the stated extent. In these premises, the impugned order imposing the penalty and subsequent proceedings may be set aside.

3. In Criminal Appeal No. 1324-SB of 2007, Jagdish (deceased) stood surety for accused Tota Ram son of Fateh Singh, resident of village Barwala District Panchkula in FIR No. 211 dated 3.10.1998 u/s 399 and 402 of IPC, Police Station Chandimandir, District Panchkula. The learned trial Court on 11.2.2003 in proceedings u/s 446 of the Code of Criminal Procedure against Jagdish in Case No. 11/Misc., ordered that the surety bonds stood forfeited to the State and since Jagdish surety has expired, warrants for attachment of property mentioned in the surety bond be issued for the recovery of the said amount of penalty of Rs. 10,000/-.

4. In Criminal Appeal No. 1325-SB of 2007, Jagdish (since deceased) stood surety for accused Mukesh son of Suaresident of village Barwala District Panchkula in FIR No. 212 dated 4.10.1998 u/s 25 of the Arms Act, Police Station Chandimandir, District Panchkula. The learned trial Court on 13.2.2003 in proceedings u/s 446 of the Code of Criminal Procedure against Jagdish in Case No. 5/Misc., ordered that the surety bonds stood forfeited to the State and since Jagdish surety has expired, warrants for attachment of property mentioned in the surety bond be issued for the recovery of the amount of penalty of Rs. 10,000/-.

5. In Criminal Appeal No. 1326-SB of 2007, Jagdish (deceased) stood surety for accused Fateh Singh son of Sohan Pal, resident of village Barwala District Panchkula in FIR No. 211 dated 3.10.1998 u/s 399 and 402 of IPC, Police Station Chandimandir, District Panchkula. The learned trial Court on 12.2.2003 in proceedings u/s 446 of the Code of Criminal procedure against Jagdish in Case No. 12/Misc., ordered that the surety bonds stood forfeited to the State and since Jagdish surety has expired, warrants for attachment of property mentioned in the surety bond be issued for the recovery of the amount of penalty of Rs. 10,000/-.

6. In Criminal Appeal No. 1327-SB of 2007, Jagdish (deceased) had stood surety for accused Sanjay son of Buheloo, resident of village Barwala District Panchkula in FIR No. 207 dated 29.9.1998 under Sections 392, 395, 396 and 397 of IPC, Police Station Chandimandir, District Panchkula. The learned trial Court on 14.2.2003 in proceedings u/s 446 of the Code of Criminal Procedure against Jagdish in Case No. 10/Misc., ordered that the surety bonds stood forfeited to the State and since

Jagdish surety has expired, warrants for attachment of property mentioned in the surety bond be issued for the recovery of the amount of penalty of Rs. 10,000/-.

7. I have heard the learned counsel for the parties besides going through the record with due care and circumspection.

8. Mr. Arvind Kumar, Advocate on behalf of the appellant argued that as would be apparent from the impugned orders, Jagdish breathed his last prior to the forfeiture of the surety bonds furnished by him and, thus, in view of the provisions as enshrined in sub-section (4) of Section 446 of the Code of Criminal Procedure, his estate is liable to be discharged from all liability in respect of the bonds.

9. Mr. Madan Gupta, Senior Deputy Advocate General, Haryana on behalf of the State, could not refute this contention in any manner.

10. Section 446 (4) of the Code of Criminal Procedure reads in the following terms:

"Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond."

11. As per order dated 17.7.2007 passed by this Court in all these Criminal Appeals, Jagdish, husband of the appellant had expired on 8.1.2002. The impugned orders tend to show that the surety Jagdish had died before the forfeiture of the surety bonds. Thus, there can be no escape from the finding that the appellant's case is squarely covered by the provisions of Section 446(4) *ibid*. Consequently, the estate left behind by the deceased Jagdish stands discharged from all liability in respect of the bonds furnished by him in all the cases referred to above.

As a sequel of the above discussion, all these appeals succeed and are accepted, setting aside the impugned orders.

Disposed of accordingly.

Order accordingly.