

(2017) 12 RAJ CK 0019
RAJASTHAN HIGH COURT
Case No: 2003 of 2017

Ramchandra S/o Battu Ram

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision: Dec. 8, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 446, Section 446(3), Section 449, Section 446(2) - Procedure when bond has been forfeited - Procedure when b

Hon'ble Judges: Manoj Kumar Garg

Bench: SINGLE BENCH

Advocate: Kulwant Singh, OP Rathi

Judgement

1. Appellant has preferred this appeal under Section 449 Cr.P.C. to challenge impugned order dated 25.11.2017 passed by Special Court, N.D.P.S. Cases, Hanumangarh (for short, "learned trial Court") in Criminal Misc. Case No.32/2014 arising out of Criminal Regular Case No.16/2010. By the order impugned, learned trial Court, while passing final order in proceedings under Section 446 Cr.P.C. against appellant, who stood surety for main accused Bikar Singh, has imposed penalty of Rs.40,000/- and in default of payment of the said amount sentenced him to undergo six months" civil imprisonment. That apart, the learned trial Court has also ordered for lodging FIR against the appellant for furnishing forged Jamabandi as surety alongwith false affidavit.

2. Succinctly stated, the facts are that a case under the Narcotic Drugs and Psychotropic Substances Act, 1985 is registered against main accused Bikar Singh and others and after investigation chargesheet is also filed. When accused Bikar Singh applied for bail, he was enlarged on bail and as a surety the appellant submitted surety bond of Rs.40,000/- assuring the Court that he shall produce

accused Bikar Singh on each and every date of hearing during trial. It appears that after release on bail, accused did not appear before learned trial Court and therefore his bail bonds were forfeited and proceedings under Section 446 Cr.P.C. are initiated. As a consequence of initiation of proceedings under Section 446 Cr.P.C., appellant and other surety were issued show cause notices and pursuant thereto appellant appeared before the learned trial Court through counsel. Later on, on behalf of appellant an application is submitted on 18.07.2014 apprising the learned trial Court that accused is presently living as hermit in an Ashram at Bhatinda (Punjab) and he is prepared to accompany any person to get him arrested by Nishadehi. Be that as it may, the fact remains that main accused Bikar Singh was not apprehended and finally appellant as well as other surety frankly conceded before the learned trial Court that they are unable to produce accused Bikar Singh. It is in that background, the learned trial Court issued warrant of attachment for the land allegedly shown to be owned by the appellant while furnishing surety. On inquiry, it was revealed that Jamabandi for the land in question, produced by the appellant, was a fake document and in fact appellant was having no agricultural land within Hanumangarh district. This sort of situation prompted the learned trial Court to issue arrest warrant against appellant and when the appellant appeared before the Court, the Presiding Officer of the Court was on leave and therefore the appellant was released on bail by link Court. In the said order, learned link Court while acceding to the prayer of the appellant granted him time to deposit Rs.40,000/-. Subsequent to that, after availing many opportunities, when requisite penalty amount of Rs.40,000/- was not deposited by the appellant, learned trial Court, while resorting to proviso to sub-sec.(2) of Section 446 Cr.P.C. ordered for his six months' civil incarceration. Besides that, learned trial Court also ordered for registration of FIR against appellant for furnishing forged Jamabandi and submitting false affidavit before the Court. Therefore, in these circumstances, the appellant has approached this Court by way of this appeal.

3. Learned counsel for the appellant, Mr. Kulwant Singh, at the outset submits that appellant is assailing the impugned order in part inasmuch as his grievance is only to the extent of quantum of penalty determined by the learned trial Court and the appellant is not challenging the impugned order to the extent learned trial Court has directed registration of FIR against him. Mr. Kulwant Singh submits that appellant is a poor agriculturist and therefore learned trial Court ought to have granted remission for atleast part of the penalty under sub-sec.(3) of Section 446 Cr.P.C. Learned counsel has urged that penalty of Rs.40,000/- is excessive and exorbitant in the facts and circumstances of the case and therefore the same may be reduced in the interest of justice. Lastly, learned counsel has urged that if the impugned order to that extent is not interfered with, appellant would suffer imprisonment for six months which in the backdrop of facts and circumstances of the case is not commensurating with his alleged lapses and default.

4. Per contra, learned Public Prosecutor has vehemently opposed the appeal of the appellant. Learned Public Prosecutor submits that the learned trial Court has exercised its discretion under proviso to sub-sec.(2) of Section 446 Cr.P.C. appropriately and as such a discretionary order warrants no interference in exercise of appellate jurisdiction. Learned Public Prosecutor has lastly urged that in the backdrop of peculiar facts and circumstances of the instant case wherein appellant is prima facie guilty of furnishing forged Jamabandi and a false affidavit before the learned trial Court, no interference with the impugned order even to the limited extent of remission in penalty is warranted.

5. I have heard learned counsel for the parties and perused the impugned order.

6. While it is true that appellant stood surety for main accused Bikar Singh and he has not been able to produce the accused before Court but then while imposing penalty under sub-sec.(1) of Section 446 Cr.P.C. the Court is required to see bona fide of the surety and normally in such matters a benevolent view is desirable. Although as a surety appellant was duty bound to produce accused before the learned trial Court on each and every date of hearing but any sort of omission in this behalf by the surety cannot be viewed as an act of defiance in judicial process. For imposition of harsh penalty under Section 446 Cr.P.C., the Court is required to see as to whether surety has connived with the accused or had remote scant that the accused would abscond after release on bail. Otherwise, it is expected of the Court to take a benevolent view while imposing penalty. Be that as it may, if the impugned order is examined threadbare, then it would ipso facto reveal that while quantifying the amount of penalty against appellant, the learned trial Court has not taken into account the relevant factors viz., connivance of the appellant with the accused or the fact that it was within his knowledge that accused would abscond after availing bail, rather the Court was impressed by the fact that appellant has furnished fake Jamabandi for showing his financial status and furnishing false affidavit. I am at loss to say that if the appellant has committed any crime then for that the Court has already ordered registration of FIR and as such the same cannot be taken as a plausible ground for imposing maximum penalty against him. Indisputably, appellate jurisdiction can be exercised by this Court for remission of penalty wholly or in part and in the instant case looking to the penury condition of the appellant it is desirable to grant remission in penalty imposed by the learned trial Court in part.

7. This Court in Moola Ram Vs. State of Rajasthan [1982 Cr.L.J. 2333 (Raj.)] has observed that even after passing the final orders and before recovery of whole amount Court under Section 446(3) Cr.P.C. may grant remission of any portion of penalty. The Court held:

"Judged from this background, the order under appeal passed by the learned Sessions Judge, Bikaner, is not sustainable in the eye of law, because he was empowered to exercise his discretion in the matter under Sub-section (3) of

Section 446 Cr. P.C. even after the final order directing realisation of the entire penalty under the bond was passed by him on July 3, 1976.

8. Supreme Court, in Mohammed Kunju Vs. State of Karnataka [AIR 2000 (SC) 6], while considering case of a foreign national, allowed remission in penalty amount Rs.25,000/- reducing it to Rs.5,000/- only sans allegations of collusion/connivance. The Court held:

"Lastly, learned Counsel made a plea for remission of the penalty. No doubt Section 446(3) of the Code empowers the court to grant such remission. It is within the discretion of the court to grant remission and to decide the extent of the remission. Such a discretion must be exercised judicially and for good reasons. Learned Counsel cited the decisions of this Court in Madhu Limaye v. Metropolitan Magistrate and Ors . (: 1984 Supp. SCC 699). A three Judge Bench of this Court considered the plea advanced by a surety who was proceeded against as the accused some foreign nationals- escaped from India. They were students charged with offences of "trivial nature" in 16 cases altogether. This Court held that in such circumstances "the ends of justice will be met by imposing a token penalty of Rs. 100". In the present case though the offences charged against the foreign national are not trivial they are nevertheless not very serious comparatively. The accused slipped out of the country without anybody's knowledge and thereby rendered himself beyond the reach of the Appellant. The court could have imposed the condition to surrender his passport as a measure to prevent him to escape out of India. There is no allegation that the Appellant had any remote scent that the accused was preparing to escape from India, nor that he had connived with the accused jumping out the bail.

In the above circumstances we are of the view that some remission can be granted to the Appellants. To meet the ends of justice a remission is granted to the extent that each Appellant need pay Rs. 5,000/- as penalty. If the Appellants have already paid any amount in the excess portion from the court concerned. Appeals are disposed of accordingly."

9. In view of foregoing discussion, appeal of the appellant is allowed in part and the impugned order to the extent it has imposed penalty of Rs.40,000/- against the appellant and in default of payment of same sentencing him to undergo six months" civil imprisonment, is altered and modified by reduction/remission of penalty to Rs.10,000/-. The appellant is directed to deposit a sum of Rs.10,000/- within seven days from the date of receipt of certified copy of this order before the learned trial

court and upon deposition of the said amount he may be released forthwith. It is needless to observe that rest of the order, i.e., registration of FIR against the appellant is not being interfered with and further action pursuant thereto shall continue in accordance with law.