



CRA-S-2210-SB-2004

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-2210-SB-2004
Date of Decision: 21.05.2025

Dilawar and another ...Appellants

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Harjyot Singh, Legal Aid Counsel
for the appellants.

Ms. Harpreet Kaur, A.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
142	26.04.2000	Shahbad	15 of NDPS Act and Punjab Excise Act

SC No.	15/2004 of 2001
Date of order	29.10.2004

1. Appellants having been convicted under Section 446 CrPC and sentenced to pay Rs.25,000/- and Rs.50,000/- as penalty vide order dated 29.10.2004, in default appellant No.2 ordered to undergo simple imprisonment for 06 months, have come up before this Court by filing the present appeal.

2. Facts of the case are being taken from the impugned order dated 29.10.2004. The incident which led to the present matter was FIR No.142 dated 26.04.2000 under Section 15 of NDPS Act and 61-1A of Punjab Excise Act registered in Police Station Shahbad. Puneet Kumar was found in possession of 07.2 kg of poppy husk and 384 pouches of illicit liquor. After completion of the trial, Puneet Kumar was convicted and sentenced. However, his sentence was suspended for 30 days u/s 389 CrPC to enable him to file appeal and he was released on bail in which the appellant No.1 has stood his surety. After his conviction, Puneet Kumar did not turn up on the date given by trial Court, on which warrants of arrest of Puneet Kumar were issued and warrant/notices were issued to appellant No.1 Dilawar for production of accused Puneet Kumar, however



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Dilawar Singh could not produce him based on which notice under Section 446 CrPC was issued. On the next date i.e. 07.10.2004, Dilawar Singh did not appear in the Court despite his service and subsequently, he was summoned through warrants of arrest. The trial Court was of the opinion that the conduct of surety showed no respect for the process of the Court and despite having been served for 07.10.2004, he acted hand in glove with Puneet Kumar who had intentionally absconded from the Court.

3. In all, the trial Court imposed penalty of Rs.25,000/- to Dilawar Singh and ordered forfeiture of the amount as per surety bond dated 17.08.2004. Since this order is joint order, the Court dealt with the proceedings under Section 446 CrPC qua Puneet Kumar who is also one of the appellant before this Court. In para no.5, the trial Court did not accept the version of Puneet Kumar that he was not well and accordingly imposed penalty of Rs.50,000/- upon him. In para no.6, the Court was of the opinion that since Puneet Kumar had no property, as such the amount could not be recovered from him, as such he was ordered to undergo simple imprisonment for 06 months.

4. Feeling aggrieved, both the surety Dilawar Singh as well as convict Puneet Kumar came up before this Court by filing common appeal which was admitted.

5. I have heard legal aid counsel for the convict, State of Haryana and have gone through the record. Legal Aid Counsel has drawn attention of this Court to decision dated 24.04.2005 in which sentence of Puneet Kumar was reduced to period already undergone, however subject to payment of fine. Perusal of para no.4 of the order passed by Co-ordinate Bench points out that the actual sentence undergone by PS was 04 months 10 days. It is strange that when the actual sentence for the main offence was 04 months and 10 days but the sentence for violation of Section 446 CrPC was given as 06 months which on the face of it is arbitrary. However the stage of sentence being arbitrary would only come when this Court finds the impugned order is not sustainable in law. Legal Aid Counsel argued that Puneet Kumar was convicted by trial Court and enlarged on bail to enable him to file an appeal and 30 days time was granted. He could not appear before the trial Court on given date due to illness and trial Court issued non-bailable warrants and due to non-appearance of Puneet Kumar, the trial Court initiated proceedings under Section 446 CrPC and subsequently notice was issued to appellant Dilawar Singh- surety.

6. Perusal of the impugned order does not point that the grounds of illness were refuted by the State. It appears that the trial Court was more inclined to send the convict to custody and the intention also showed when the Court on realizing that Puneet Kumar had no money to pay the fine amount of Rs.50,000/-, then the Court sentenced him to simple imprisonment for 06 months which is maximum under Section 446 CrPC



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and such a harsh sentence for non-payment of Rs.50,000/- on the face of it shows that the Court did not act without any biases.

7. Legal aid counsel further argued that Puneet Kumar could not appear due to illness and there was no intention. No reasons have been mentioned to dis-believe the version of appellant- Puneet Kumar. State could not refute the grounds of illness, as such non-appearance was unintentional. Moreover, appellants Puneet Kumar and Dilawar Singh appeared before the trial Court on their own free will, it is not the case that they were arrested.

8. Now coming to the conviction of Dilawar Singh who was surety, legal aid counsel for the appellant submits that once Puneet Kumar has taken stand of sickness, it is impossible for surety to produce a sick person. Whenever, surety came to know about the absence of the accused-appellant Puneet Kumar, he appeared himself before the trial Court along with said Puneet Kumar, which shows that he has respect for the Court and law. State was not even refuting the appellant's stand before the trial Court and it is the trial Court which held the surety as well as convict guilty under Section 446 CrPC. The order sans reasons and logic. As such, the appellants are entitled to benefit.

9. Given above, the appeal is allowed. Conviction and order of sentence/penalty dated 29.10.2004 qua both the appellants is set aside. They are acquitted of the charges under Section 446 CrPC. Amount of penalty, if any recovered be refunded to them within two months in accordance with law.

10. Concerned official of the Legal Aid Services Authority to ensure payment of fee to the legal aid counsel forthwith.

(ANOOP CHITKARA)
JUDGE

21.05.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.