



CRA-S-86-SB-2005

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

CRA-S-86-SB-2005
Reserved on: 15.01.2025
Pronounced on: 30.01.2025

Charanjit Kaur ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Karamjeet Sharma, Legal Aid Counsel
for the appellant.

Mr. Akshay Kumar, A.A.G., Punjab.

ANOOP CHITKARA, J.

1. Aggrieved by order dated 02.12.2004 passed by Special Judge, Ludhiana whereby appellant stood surety for accused Buta Singh, who was released on bail subject to furnishing of personal bonds and surety bonds was directed to pay a sum of Rs. 20,000/- for which she had stood as surety for the main accused Buta Singh under Section 446 CrPC had come up before this Court by filing the present appeal.

2. In a case under Section 302 r/w 120-B IPC in FIR No.20 of 2004 registered in Police Station Salem Tabri, Ludhiana, appellant stood as surety for a bond of Rs. 20,000/-. Consequently, notices were issued to the appellant to produce him before the Court but she failed to do so. Subsequently, Additional Sessions Judge, Ludhiana initiated the process of proclamation under Section 82 CrPC. Finally on 12.07.2008, the accused was declared as proclaimed person. Since the appellant had executed bond dated 25.05.2004 for a sum of Rs. 20,000/-, as such vide impugned order dated 02.12.2004, her surety bonds were forfeited to the State. Vide order dated 19.01.2005, the properties were ordered to be attached.

3. Feeling aggrieved, the appellant had come up before this Court by filing the present appeal in the year 2005. Appellant remain unrepresented, as such a Co-ordinate Bench of this Court vide order dated 23.01.2024 appointed a legal aid counsel to represent the appellant.

4. I have heard counsel for the parties and have gone through the record.



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5. The grounds taken by the appellant are that no opportunity was afforded to her before attaching her property. It has been mentioned that the impugned order dated 02.12.2004 was served only on 17.11.2004 and when she approached the Court, order of forfeiture has already been passed.

6. Perusal of the impugned order dated 02.12.2004 reveals that the surety was served notice under Section 446 CrPC on 17.11.2004 whereby she was called upon to show cause as to why surety be not forfeited, but despite service neither the appellant appeared nor any explanation is furnished, as such on the next date of hearing i.e. 02.12.2004, the surety was forfeited. It reveals that the Judge did not wait any further beyond 17.11.2004 and forfeited surety on 15th day. Perusal of the order sheet clearly points out that the appellant was unrepresented. The reasoning given by Additional Sessions Judge is that the surety has chosen not to contest the notice and as such, he does not find any justification to discharge the surety from her surety bonds. On this reasoning, the surety bonds were forfeited. Section 446 CrPC (rechristened as 491 BNS without any change) specifies that in case surety fails to produce the accused, then such surety can be called upon and bound to show cause why surety amount should not be forfeited. In the present case, notice was served upon the surety on 17.11.2004 and she was asked to explain on the next date i.e. 02.12.2004. The ground for the appellant is that no sufficient notice or opportunity was given because on the very first date, surety bonds were forfeited. Although the appellant does not deny that she was not served for the next date of hearing but her stand is that adequate opportunity was not given. This Court is prima facie satisfied that the opportunity was not adequate, as such alone, the impugned order dated 02.12.2004 is bad in law, however the question before this Court is that the matter should be remanded back to afford an opportunity to the surety or matter should be closed given that the order is more than 02 decades old.

7. Counsel for the appellant submits that the appellant is poor lady and is unable to afford any lawyer and for this reason, services of legal aid counsel have been provided to her which would clearly justify her financial incapacity to pay the forfeited amount. Thus, in the entirety of facts and circumstances, this Court does not deem it appropriate to remand the matter back to the trial Court for re-hearing the matter by affording an opportunity to the appellant to show cause why she could not produce the surety. The main reason is delay of two decades.

8. Given above, the present appeal is allowed. The impugned order dated 02.12.2004 is quashed and set aside. Any subsequent proceedings arising out of the order shall also stand quashed. Necessary corrections be made in the concerned revenue record by deleting the endorsement of attachment pursuant to the order of trial Court. Legal aid



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counsel shall be entitled to fee as per rules. Concerned Officer to the authority to ensure timely payment to the legal aid Counsel. All pending applications, if any, stand disposed of. Registry to communicate this order to the concerned Court as well as Deputy Commissioner of concerned District for compliance.

(ANOOP CHITKARA)
JUDGE

30.01.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.