

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Revision Application No.154 of 2015

Ali Muhammad Son of (Late) Haji Moosa.....Applicant

Versus

The State.....Respondent

Date of hearing: 17.07.2017

Mr. Sikandar Khan, advocate for the Applicant

Mr. Zahoor Shah DPG

ORDER

ADNAN-UL-KARIM MEMON,J:-Through the instant Criminal Revision Application, the applicant has impugned Order dated 09.10.2015 passed by the learned IV-Additional Sessions Judge Karachi West in Cr. B.A No. 1033/2010, whereby an application under Section 514-Cr.P.C moved on behalf of applicant was dismissed.

2. Brief facts of the case are that on 11.07.2010 complainant Nazir Ahmed Son of Awal-ud-Din lodged FIR No.258/2010 at Police Station Docks for offences under Section 324/34 PPC. Police after usual investigation submitted charge sheet against accused Shahzad and others before the learned trial Court; that accused Shahzad filed pre arrest bail application No 1033 of 2010 before IV Additional Sessions Court Karachi-West and he was granted interim pre arrest bail on 2.8.2010 subject to furnishing solvent surety in the sum of Rs. 50,000/ and P.R Bond in the like amount; that applicant stood surety for him. The learned trial court proceeded in the matter and framed charge on

7.10.2011 against the accused Shahzad and others which he pleaded not guilty and claimed trial; that the matter was proceeded for recording of evidence of the five prosecution witnesses; that statement of accused Shahzad was recorded under section 342 Cr.P.C; that he also opted to make statement on oath under section 340 (2) Cr.P.C; that accused after recording of statement absconded away and proclamation was issued against him in terms of section 87 and 88 Cr.P.C vide order dated 29. 12. 2014 and 30.4.2015, and his case was kept on dormant file till his arrest; that co-accused attended the court, and finally the learned trial Court pronounced Judgment on 07.07.2015, in Sessions case No.834/2010, whereby the learned trial Court convicted the accused Junaid, per counsel, due to absconding of accused Shahzad in the above matter his bail was recalled and notice to his surety was issued by the learned trial Court; that on 13.8.2015 applicant moved application under section 514 Cr.P.C for release/discharge of surety viz defence saving certificate. The learned trial Court on 09.10.2015 dismissed the application of the applicant / surety Ali Muhammad Son of Late (Haji) Moosa, thereby his surety bond, already forfeited was confiscated. Surety was further directed to deposit the surety amount of Rs.50,000/ within 15 days. Thereafter the applicant being aggrieved by and dissatisfied with the impugned order dated 09.10.2010 has approached this Court by filing instant Criminal Revision Application.

3. Mr. Sikandar Khan learned counsel for the applicant has contended that statement of accused Shahzad was recorded under

section 342 Cr.P.C by the trial court; that he also opted to make statement on oath under section 340 (2) Cr.P.C ; that applicant moved application under section 540-A Cr.P.C for re-calling of order passed in September 2014 to dispense the appearance of accused till his arrival to Pakistan; that accused after recording of his statement, absconded away and proclamation was issued against him under section 87 and 88 Cr.P.C vide order dated 30. 4. 2015 and his case was kept on dormant file till his arrest; that co-accused attended the court, and finally the learned trial Court pronounced Judgment on 07.07.2015 in Sessions case No.834/2010, whereby the learned trial Court convicted the accused Junaid; that co-accused filed Cr. Appeal No.07/2015 challenged the impugned Judgment dated 07.07.2015 and the learned Appellate court remanded the matter to the learned trial Court on 09.11.2015 for recording the statement of accused under Section 342 Cr.P.C; that applicant moved application, in Bail Application No.1033 of 2010, before IVth Additional Sessions Judge Karachi-West, under Section 514 Cr.P.C for release/discharge of surety viz defence saving certificate; that the surety used to produce the accused Shahzad before the learned trial Court on each and every date of hearing but the learned trial Court failed to announce judgment in time after recording the statement of accused under section 340 (2) Cr.P.C on 17.12.2013 till 07.07.2015; that applicant/surety is a disable person was unable to produce the accused for recording his statement under Section 342 Cr.P.C as per order of the appellate Court dated 09.10.2015 remanding the matter to the trial court; that the applicant is ready to pay reasonable amount of fine for

releasing/discharging of his surety papers. He lastly prays for setting aside of the impugned order passed by the learned trial Court and releasing of surety documents. In support of his contention, learned counsel relied upon the case of Zulfiqar Ahmed v. The State and others (PLD 2001 Lahore 545), Dilshad Ahmed and other v. The State (NLR 2000 Criminal 410), Sanwan and others vs. The State (PLD 1965 W.P Karachi 516).

4. Mr. Zahoor Shah learned DPG has opposed the grant of instant revision application. He contended that the applicant / surety was duty bound and under obligation to produce the accused Shahzad on each and every date of hearing before the learned trial Court but he failed to produce him; that accused Shahzad has absconded away and proclamation was issued against him under section 87 and 88 Cr.P.C vide order dated 30.04.2015 and his case was kept on dormant file till his arrest; that the applicant is not entitled for reduction / releasing / discharging of surety amount. He next contended that the learned trial Court has rightly dismissed the application of the applicant; therefore, no indulgence of this Court is required in the present matter.

5. I have heard learned counsel for the parties and perused the material available on record and case law cited at the bar.

6. Record reflects that the applicant stood surety for his son namely Shahzad by executing P.R bond and surety documents in the shape of defence saving certificate before the learned IV-

Additional Sessions Judge Karachi West. However accused Shahzad absconded away during trial and was declared proclaimed offender by the learned trial Court vide order dated 30.4.2015, and his case has been kept on dormant file, it may be mentioned that still he is at large even after remand of the matter by the learned Appellate Court. The applicant / surety is under obligation to insure attendance of accused Shahzad on each and every date of hearing before the learned trial Court, but he failed to produce him, therefore, the learned trial Court rightly issued notice to the applicant/surety under Section 514 Cr.P.C. and subsequently passed the impugned order. In the present case surety has not brought any mitigating circumstances to take a lenient view against him, therefore, the impugned order dated 09.10.2015 passed by learned trial Court does not call for interference. As regards to the contention of learned counsel for the applicant that the entire surety amount has been forfeited and no lenient view has been taken by the learned trial Court. Suffice it to say that it has now become common that accused person involved in offences after obtaining bail, thereafter jump off the bail. On the contrary, once an accused person jumps off the bail and violate terms of the bond, the entire surety amount becomes liable to be forfeited in the absence of any mitigating circumstances. I am fortified by the decision rendered by the Hon'ble Apex Court in the Case of Zeeshan Kazmi v. The State (1997 SC 267).

7. The case law cited by the learned counsel for the Applicant is distinguishable from the facts and circumstances of the present case.

8. I do not find any illegality and irregularity in the impugned order passed by the learned trial Court, therefore the instant criminal revision application is hereby dismissed.

9. Foregoing are the reasons for short order dated 17.07.2017.

Karachi
Dated:

JUDGE

S.Soomro/PA