

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

Criminal Revision Application No. S – 38 of 2017

Date	Order with signature of Judge
------	-------------------------------

21.06.2017 :

Mr. Muhammad Ramzan Chandio, advocate for the applicant.
Mr. Shahzado Saleem Nahiyoon, A.P.G. Sindh.

ORDER

NADEEM AKHTAR, J. – The applicant has impugned order passed on 28.02.2017 by the learned Sessions Judge Jamshoro in Sessions Case No.273/2015 (The State V/S Ghulam Nabi), whereby it has been held that the applicant / surety should be penalized and he has been directed to pay the bond amount of Rs.30,000.00 within a week, with further direction to sell his motorcycle for recovery of the said amount in case he of his failure.

2. Relevant facts of the case are that a case bearing Crime No.317/2015 was registered under Section 23(1)(a) of the Sindh Arms Act at P.S. Kotri against accused Ghulam Nabi, wherein he was granted bail. The applicant Imran Jatoi stood surety on behalf of the accused to the extent of Rs.30,000.00. The accused jumped the bail and absconded, whereafter he was declared as proclaimed offender on 21.11.2015. Notices were issued to the applicant / surety, but as he did not appear,ailable warrants were issued against him which could not be executed by the police. The excise office was directed by the trial Court to attach motorcycle bearing registration No.HAY-7610 belonging to the surety. On the date when the impugned was passed i.e. 28.02.2017, the surety and his motorcycle were produced by the SHO concerned. On that date, it was submitted by the surety that the accused was confined in jail in another crime viz. Crime No.14/2017 of P.S. Jamshoro for the offence punishable under Section 9(a) of CNS Act. A copy of FIR of the above crime was produced before the trial Court by the surety in support of his above contention. The surety also submitted before the trial Court that in view of the above he wanted to withdraw himself from the responsibility of surety of the accused.

3. In the impugned order, it was observed by the trial Court that the offence in subsequent Crime No.14/2017 was committed on 20.01.2017, whereas in the present case the accused had already been declared as proclaimed offender on 21.11.2015. In view of the above, the contention of the surety was not accepted by the trial Court and it was held that he had failed to produce the accused or to respond to the processes issued to him. It was further held that he cannot be allowed at this stage to withdraw as surety of the accused who has already

been declared as proclaimed offender and whose bail bond has been forfeited, and as such he was liable to be penalized.

4. Under Section 514 Cr.P.C., when it is proved to the satisfaction of the Court which has accepted the bond that such bond has been forfeited, the Court on recording the ground of such proof of forfeiture may proceed to call upon the person bound by such bond (the surety) to pay the penalty or to show cause as to why penalty should not be paid by him. This Section clearly contemplates certain steps / stages of such proceedings. The first step is declaration of forfeiture, which can be done only after satisfaction of the Court that the bond was for appearance of the accused, and such satisfaction and declaration, which must be expressly recorded by the Court, should be objective and the same should be recorded in writing after hearing the parties and before the penalty is inflicted. The second step is the order of payment of penalty or in the alternative to show cause as to why penalty should not be paid. Needless to say that finding of the Court at the first step with regard to forfeiture of the bond must be a speaking one with reasons for necessitating such forfeiture. It is important to note that order of payment or to show cause cannot be passed unless satisfaction and declaration of forfeiture are recorded by the Court through a speaking order. The last step is the actual recovery of the amount / penalty, which cannot be initiated without fulfilling the requirements of the first two steps.

5. Perusal of the impugned order shows that declaration of forfeiture of the bond and satisfaction of the Court with regard to such forfeiture or its declaration, were not expressly recorded by the learned trial Court through a speaking order with reasons for necessitating such forfeiture nor were the parties, particularly the applicant / surety, were heard before inflicting the penalty. Since the above compliance of first step was not made, order for payment could not be passed by the learned trial Court at the second stage. Therefore, the impugned order cannot be allowed to remain in the field.

6. As a result of the above discussion, this Criminal Revision Application is allowed and the impugned order is hereby set aside. The learned trial Court may, however, proceed against the applicant / surety strictly in accordance with law. In case the applicant / surety files any application seeking discharge, the same may also be decided by the learned trial Court strictly in accordance with law.

J U D G E