

Khursheed Begum and anr. Vs. State

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Court : Delhi

Decided On : Mar-31-1992

Reported in : 48(1992)DLT207

Judge : V.B. Bansal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 446

Appeal No. : Criminal Appeal No. 90 of 1991

Appellant : Khursheed Begum and anr.

Respondent : State

Advocate for Pet/Ap. : K.K. Sud,; Rakesh and; K.P. Sood, Advs

Judgement :

V.B. Bansal, J.

(1) By way of this application the petitioners have challenged the order dated 4th July 1991 of Additional Sessions Judge, New Delhi thereby imposing a penalty of Rs. 2 lacs on each of them.

(2) Counsel for the petitioners states that the allegation against the petitioners has been that they stood sureties for Khial Asghar and undertook to pay Rs. 2 lacs each to the State in case of default in appearance before the Court. However, the

accused absented and non-bailable warrants against the said accused remained un-executed. Bail bonds were forfeited and penalty has been imposed upon the petitioners vide impugned order dated 4th July 1991.

(3) Learned Counsel for the petitioners has submitted that there has been a violation of the mandatory provisions by the learned Trial Court inasmuch as no opportunity has been given to the petitioners to show cause against the imposing of the penalty after the order of forfeiture and impugned order has been passed, imposing the penalty simultaneously while forfeiting the bonds.

(4) A perusal of the impugned order fully supports the contention of the learned Counsel for the petitioners and learned Counsel for the respondent has not been able to advance any arguments in this behalf. The law is well settled that before a penalty could be imposed on a surety and after the forfeiture of the bail bond, the sureties have to be called upon to pay the amount of penalty and show cause why it should not be paid. If sufficient cause is, thereafter not shown and penalty is not paid the Court is authorised to recover the amount as if such penalty were a fine imposed by it under the Code of Criminal Procedure. Reference in this regard can be made to a case *Shashi Kant v. State* : 43(1991)DLT622 .

(5) In these circumstances, the impugned order cannot be sustained. The learned Trial Court, however, may proceed further against the petitioners in accordance with law.

(6) As a result, the appeal is accepted. The impugned order is set aside. Appellants to appear before the Trial Court on 24th April 1992.