

**Shiv Kishan Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/759821](http://sooperkanoon.com/759821)

**Court :** Rajasthan

**Decided On :** Jan-17-2005

**Reported in :** RLW2005(3)Raj2101

**Judge :** H.R. Panwar, J.

**Acts :** Code of Criminal Procedure (CrPC) - Sections 446 and 449(2)

**Appeal No. :** S.B. Criminal Appeal No. 1155 of 2004

**Appellant :** Shiv Kishan

**Respondent :** State of Rajasthan

**Advocate for Def. :** J.P.S. Choudhary, for Public Prosecutor

**Advocate for Pet/Ap. :** Sandeep Mehta, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**H.R. Panwar, J.**

1. The notice of final disposal is served on the public prosecutor. With the consent of the counsel for the parties, the appeal is being finally heard and disposed of at admission stage.

2. By this criminal appeal under Section 449(2) Cr.P.C., the appellant has challenged the orders dated 5.10.2004 and 29.10.2004, passed by a the learned Additional Sessions Judge (Fast Track), Nagaur (for short 'the Trial Court') in Criminal Misc. No. 7/2004 whereby the Trial Court rejected the application filed by the appellant under Section 446 Cr.P.C. and forfeited the surety bond and directed to recover a sum of Rs. 15,000/- from the appellant.

3. The facts and circumstances giving rise to the instant appeal are that in Sessions Case No. 244/2001 (State v. Deep Singh and Ors.) pending before the Trial Court, it is alleged that the appellant stood surety to co-accused Jayant Pandey in a sum of Rs. 15,000/-. Co-accused Jayant Pandey was released on bail, however, subsequently, he absconded and therefore, the Trial Court forfeited the bail bonds of accused Jayant Pandey as well as the surety bonds alleged to have been filed by the appellant. On receiving the notice from the Trial Court, the appellant appeared before the Trial Court and filed reply stating therein that enquiry has been wrongly initiated accused him under Section 446 Cr.P.C. and further stated that he never stood surety for accused Jayant Pandey, who alleged to have absconded. He has denied having signed the surety bond and stated that some one else, impersonating himself as the appellant had signed the surety bond and got accused Jayant Pandey released on bail. The Trial Court, without enquiring into as to whether the appellant stood surety for accused Jayant Pandey or whether it was the appellant who has signed the surety for co-accused Jayant Pandey, straight way proceeded the forfeit the amount of surety bonds and directed the appellant to pay a sun of Rs. 15,000/-.

4. It appears that the Trial Court has not considered the contentions issue raised by the appellant. Unless it is determined that it was the appellant who stood surety and signed the surety bound for accused Jayant Pandey, the direction for recovery of amount of surety bonds cannot be termed as justified. In the circumstances, therefore, the order impugned cannot be sustained and liable to be set aside.

5. Consequently, the appeal is allowed. The impugned orders dated 5.10.2004 and 29.10.2004 are set-aside. The matter is remanded to the Trial Court to hold the enquiry as to whether it was the appellant, who has stood the surety and then

decide the matter afresh.

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