

Girdhari Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-11-1986

Reported in : 1987(2)WLN315

Judge : Mahendra Bhushan Sharma, J.

Appeal No. : S.B. Cr. Misc. Petition No. 7 of 1986

Appellant : Girdhari

Respondent : State of Rajasthan

Judgement :

Mahendra Bhushan Sharma, J.

1. This is a petition under Section 482 Cr. P.C. in proceedings under Section 446(3) Cr. P.C.

2. A criminal case No. 390/1977 under Section 457 and 380 IPC was pending trial against accused Prabhati in the court of learned Additional Chief Judicial Magistrate, Jhunjhunu. Prabhati was ordered to be released on bail and the petitioner Girdhari furnished surety in the sum of Rs. 5,000/- for appearance of Prabhati in the court on all subsequent dates. March 7, 1979 was fixed in the case before the learned Magistrate and the accused did not put his appearance. The learned Magistrate being satisfied forfeited the bail bonds and because the

petitioner stood surety, proceedings under Section 446(3) Cr. P.C. were initiated. The petitioner put appearance and an application was filed by him on June 19, 1980 that he made efforts to trace Prabhati but did not succeed, and for the first time he came to know that he is confined in Police Station, Gudha. The learned Magistrate took into consideration both the above causes shown by the petitioner and under his order dated June 4, 1980 ordered that the entire amount of bail-bonds of Rs. 5000/- be recovered as penalty. The application under Section 446(3) Cr. P.C. was filed by the petitioner before the learned Magistrate and the learned Magistrate under his order dated May 27, 1983, remitted 50% of the amount of penalty and ordered the recovery of the rest.

3. Aggrieved against the aforesaid order, the petitioner filed an appeal before the learned Sessions Judge, Jhunjhunu, who under his order dated April 16, 1985 dismissed the appeal. This Court sent for the file of the original case as well as that of proceedings under Section 446 Cr. P.C. It appears from the perusal of the original file that the accused Prabhati, though was bound to appear, but did not appear in the court on March 7, 1979 and therefore the learned Magistrate being satisfied that the said has been forfeited recorded the ground for being satisfied, called upon the petitioner to pay the amount of penalty and show cause why the amount be not recovered. The only cause shown by the petitioner was that he made efforts but could not succeed. The learned Magistrate considered the cause shown and ordered the remittance of half of the amount of penalty and ordered the enforcement of remaining half only. Parbhati after having absconded on March 7, 1979, did not put his appearance before the learned Magistrate and could only be apprehended on the standing warrant being issued by the Court. Prabhati was in Police Station Gudha only because he had been arrested by the SHO of that police station in execution of the standing warrant. Thus on merits no case for taking lenient view was made before the learned Magistrate or before the learned Sessions Judge but Mr. Dhankar has emphasised that the petitioner is a poor man, and in the area to which he belongs there is consistent famine for last about 5 years. Looking to these circumstances, in my opinion it will be too harsh to enforce the payment of even 50% of the amount of bond. In my opinion, it will meet the ends of justice if the amount of penalty to be recovered from the petitioner is reduced to Rs. 500/-.

4. Consequently, the petition is allowed in part. The amount of penalty to the extent of Rs. 4500/- is remitted and it shall be enforced to the extent of Rs. 500/- only. The order of the learned Sessions Judge is modified to the extent indicated above.

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