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(2023-1)209 PLR 369

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Sureshwar Thakur

SOHAN LAL – Petitioner,

Versus

JARNAIL SINGH – Respondent.

CRM-M-25470-2022.

Criminal Procedure Code, 1973 (2 of 1974) Section 379, 482 – Personal appearance – Appellate Court – Suspension of sentence – Appellate Court, was not the trial Court, and, nor was required to ensure the regular attendance before him of the petitioner-accused – The jurisdictional necessity qua the recordings of personal appearance of the accused, is subject to just exceptions, rather vests only in the learned trial Judge concerned, and, is neither required to be asked for, nor, is required to be caused, before the appellate court concerned, except, when after the dismissal of the appeal, and, in case the accused is to be heard for enhancing the sentence of imprisonment – Appellate Court could never insist, upon the repetitiveness of personal appearances of the convict before him, and, nor could proceed to quash the earlier thereto order, wherethrough, he proceeded to suspend the execution of the imprisonment as imposed by the convicting Court, and nor could he in the above order, ask for the regular personal appearance(s) before him.

[Para 6, 8]

Mr. Inderjeet Singh Chawla, for Mr.J.S.Thakur, for the petitioner.

Mr.M.S.Nagra, AAG, Punjab.

Sureshwar Thakur, J. (Oral) - (21st July, 2022) -

1 Through the instant petition, cast under Section 482 Cr.P.C., the petitioner seeks quashing of order dated 8.3.2022 (Annexure P-4), whereby, the concession of suspension of the execution of sentence of imprisonment imposed upon the convict by the learned trial Judge, rather, became withdrawn.

2 The petitioner herein became convicted by the learned trial Court, and, thereafter,

became sentenced to undergo rigorous imprisonment of 10 months. Furthermore, the learned convicting Court, also made a direction, upon the accused, to pay compensation, in the sum of Rs.1,00,000/-, to the complainant, and, in default of payment of compensation, sentenced the convict-accused, to undergo simple imprisonment lasting upto 4 months.

3 The aggrieved – convict made a challenge to the verdict of conviction, and, the consequent, therewith, sentence, which became imposed, upon him, by the learned trial Court, through his making an appeal, before the learned Additional Sessions Judge II, Jalandhar. Though, the learned appellate Court, during the pendency of the appeal, as became cast before him, by the aggrieved convict, hence, on the convict's application, constituted under Section 389 Cr.P.C., rather, proceeded to suspend the execution, of the above term(s), of substantive imprisonment as became imposed upon convict, but, subsequently, through orders drawn on 17.12.2020, directed the accused to record his personal appearance, on 8.3.2021, with a clear intimation to him, that in case he fails to record his personal appearance before him, thereupon, the earlier thereto relief as became granted to him, and, pertaining to the execution of the sentence of imprisonment becoming suspended, shall become withdrawn.

4 Moreover, through the order drawn on 17.12.2022, the learned Additional Sessions Judge, II, Jalandhar, also, proceeded to make an order for issuance of a notice upon the surety concerned.

5 On 8.3.2022, the learned Appellate Court concerned, despite being intimated by his counsel, that the petitioner would shortly make his personal appearance, but, yet, the learned Appellate Court, without awaiting for the recording of the personal appearance, of the appellant before it, proceeded to draw a conclusion that petitioner herein is, deliberately omitting to record his personal appearance, and, thereafter, proceeded to rescind or cancel, the relief as became earlier granted to the petitioner, and, pertaining to his suspending the execution, of the above term, of the substantive sentence of imprisonment which became imposed, upon him, by the learned trial Magistrate. Moreover, he also directed, that the present petitioner be summoned through NBWs, and, made them returnable for 27.5.2022.

6 For the reasons to be assigned hereinafter, the above drawn orders are completely out of the contours of the jurisdiction, which is to be exercised by the learned Appellate Court concerned. Primarily, the appellate Court concerned, was not the trial Court, and, nor was required to ensure the regular attendances before him of the petitioner – accused. The jurisdictional necessity qua the recordings of personal appearance of the accused, is subject to just exceptions, rather vests only in the learned trial Judge concerned, and, is neither required to be asked for, nor, is required to be caused, before the learned appellate court concerned, except, when after the dismissal of the appeal, and, in case the accused is to be heard for enhancing the sentence of imprisonment, from the one which became imposed, upon, him, by the convicting Court, hence, to then insist upon the personal appearance of the convict, and, if there is no appearance, then, to draw, and, ensure the execution(s) of NBW, upon the convict. If the sentence remains unmodified, only

then, the trial Magistrate becomes empowered to execute the sentence of imprisonment, through, makings of, and, execution of committal warrants, unless stayed by the jurisdictionally empowered Court.

7 Secondly, it appears that on 17.12.2021, the learned Appellate Court had listed the victim's appeal, for the hearing of arguments, thereupon, when then too, the counsel engaged for the relevant purpose, by the convict rather would efficaciously address arguments, and, also when then, the personal appearance of the petitioner was not required nor was required to be insisted upon. However, yet, as above stated, in the case after hearing of arguments, the learned Appellate Court deemed it fit, to, in accordance with law, dismiss the convict's appellant, and also deemed it fit to enhance the sentence, to a term higher than the one as became imposed, upon him, by the convicting Court, thereupon rather, the as stated above, hence the personal appearance of the convict, through issuance of the relevant process was required, and, also may have been validly insisted upon, otherwise not.

8. In consequence, the appellate Court could never insist, upon the repetitiveness of personal appearances of the convict before him, and, nor could proceed to quash the earlier thereto order, wherethrough, he proceeded to suspend the execution of the imprisonment as became imposed, upon him by the learned convicting Court, and nor could he in the above order, ask for the regular personal appearance(s) before him, except for his being served on any enhanced sentence, as lawfully deemed fit to be imposed, upon him. Even otherwise, if the above condition never occurred in the order suspending the execution of the sentence of imprisonment, thereupon, the subsequent making(s) of the above condition, upon the convict, prima facie, tantamounts to reviewing and recalling of the order as made, on the petitioner's application, cast under Section 389 Cr.P.C.

9. Consequently, the present petition is allowed, and, order dated 8.3.2022 (Annexure P-4), whereby, the concession of suspension of execution of sentence of imprisonment as became earlier granted to the petitioner, rather became withdrawn, is quashed.

10. The learned Additional Sessions Judge II, Jalandhar, is cautioned to be careful in future.

*R.M.S.
allowed.*

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Petition