

(2016) 05 RAJ CK 0012
In the Rajasthan High Court
Case No : Criminal Appeal No. 258 of 1992

Kailash

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437A, 482

Citation : (2017) 170 AIC 633 : (2016) 4 CriLR 1707 : (2016) 2 RajCriC 875 : (2016) 4 RLW 3459 : (2016) 4 WLC 691

Hon'ble Judges : Mr. Dinesh Chandra Somani, J.

Bench : Single Bench

Advocate : Mr. Arvind Kumar Gupta, Mr. V.R. Bajva and Mr. Navab Ali Khan, Learned Counsels, for the Appellant; Mr. N.S. Dhakar, Learned PP, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Dinesh Chandra Somani, J.—In all above criminal appeals, accused-appellants filed applications u/S. 482 of Cr.P.C. for recalling the order dated 29.04.2016 passed by this Court relating to furnish personal bond and sureties u/S 437A of Cr.P.C.. As the averments made in the applications and prayer made therein are almost same, all the four applications were heard together and are being decided by this common order. Order be kept on the file of Cr.A. No. 258/1992 and copies of the order be placed on the files of Cr.A. No. 200/1993, 516/1993 and 604/1996.

2. The order passed by this Court on 29.04.2016 in S.B. Criminal Appeal No. 258 of 1992 Kailash v. State of Rajasthan is as under:

"Counsel for the appellant sought adjournment to argue the case. The case is adjourned and may be listed on 13.05.2016 as prayed for.

The appellant is directed to furnish personal bond of Rs. 50,000/- (Fifty Thousand) and two sureties of Rs. 25,000/- (Twenty Five Thousand) each u/S

437A of Cr.PC. to the satisfaction of Dy. Registrar (Judl.), within two weeks."

3. Almost the same order was passed by the Court on dated 29.04.2016 in rest of the three appeals also.

4. Counsels for the accused-appellants submitted that the sentence of the appellants has already been suspended and they have already submitted their bail bonds long back which are already on record, thus second bail bonds and sureties u/S. 437A of Cr.P.C. cannot be taken. Learned counsels also submitted that the provisions of newly inserted Section 437A of Cr.P.C. can only be applicable when any judgment has been passed by the Court and not before the same. The learned counsels also submitted that the appeals have not been decided and no judgment of acquittal has been passed, there is no question of appearance before higher court, the provision of Section 437A of Cr.P.C. is not applicable, specially when adjournment has been sought. Learned counsels further submitted that the Section 437A of Cr.P.C. indicates that only in case of acquittal there may be chance for State for filing appeal before the higher Court i.e. Supreme Court, only then this provision is applicable. Learned counsels also submitted that the coordinate benches in all judgments while disposing off appeals and giving the judgment of acquittal, taken into consideration the provision of the Section 437A of Cr.P.C.. Learned counsels also submitted that on dated 29.04.2016, the counsels for accused-appellants sought adjournment to argue the appeals and were not heard on applicability of provisions of Section 437A of the code thus, in view of the judgment of the Hon'ble Court, reported in AIR 1987 Rajasthan 83 Habu v. State of Rajasthan, this court is empowered to recall the earlier order in exercise of powers vested u/S 482 of Cr.P.C. and prayed to accept the applications and recall the orders dated 29.04.2016 related to furnish personal bond and sureties u/S 437A of Cr.P.C. Learned counsels placed reliance on:

1. 2011 (1) RCC 138 Ganesh and Ors. v. State of Rajasthan

2. D.B. Criminal Appeal No. 632/2013 Rajesh v. State of Rajasthan decided on 26.04.2016.

Section 437A of Cr.P.C. reads as under:

437A-Bail to require accused to appear before next appellate Court-

(1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure u/S 446 shall apply

5. The above provision mandates that before the conclusion of the trial and before the disposal of the appeal, the trial Court or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition, filed against the judgment of the respective Courts. The provision further envisages that such bail bonds shall be in force for the period of six months. Sub-section (2) of the Section 437A of Cr.P.C. deals with the consequences where the accused fails to appear before the appellate Court, then it will result in forfeiture of his bond and procedure u/S 446 Cr.P.C. shall be followed against him.

6. The purpose of Section 437A of Cr.P.C. is to provide for the Court to require accused to execute bail bonds with sureties to appear before the higher Court as and when such Court issues notice in respect of an appeal against the judgment of the respective Court. The said section was introduced by the legislature with the solemn object that the accused is legally bound to appear before the next appellate Court till the order of acquittal passed by the Court attains finality

7. The mandate of the legislature is very clear. The Section does not peak that the bail bonds with sureties are not required in case of judgment of conviction and required only in case of judgment of acquittal. If it would have been the intention of the legislature then the legislature would not have used, the word "Before conclusion of trial and before disposal of the appeal". In our opinion, the intention of the legislature and literal meaning of the provision is very clear and there cannot be any other interpretation as submitted by learned counsels for accused-appellants. Identical issue came before Hon"ble Delhi High Court also in Crl.L.R 356/2012 State v. Virender Yadav and Anr. decided on 22.10.2013. Para 9 of the order reads as under:

(9) So far as the non-appearance of the accused persons in the appeal preferred by the State challenging the order of their conviction after suspension of their sentence by the Appellant Court is concerned, a recent judgment of the Hon"ble Apex Court in the case of Surya Baksh Singh v. State of U.P reported in, 2013 (12) SCALE 492, has succinctly stated the legal position. The situation which we are confronted with in the present criminal leave to appeal and in various such other leave petitions preferred by the state is that invariably in all such state appeals the state is not able to serve the respondent mainly because the respondent is not found at his last address or shifted to some new address. After an order of acquittal is passed in favour of such an accused, whether intentionally or unintentionally, he moves out from his residence where he lastly resided. To deal with this malady, the legislature had introduced Section 437A Cr.P.C. on the statute book. The provision of Section 437A Cr.P.C. is not being strictly adhered to by Subordinate Judiciary dealing with the criminal matters as told to us by the learned Standing Counsel, and therefore we feel it imperative to direct the learned Metropolitan Magistrates and the; Sessions Judges, dealing with the trial of the criminal cases or exercising the Appellate powers, to strictly

comply with the mandate of Section 437A Cr.P.C. and also require the accused and the surety to annex their latest passport size photographs along with their latest residential proof at the same time. Consequently, the final judgment passed by the learned Magistrates or Sessions Judges shall carry an endorsement that necessary bail bond with surety, in compliance with the order, has been furnished by the accused along with latest passport size photographs and residential proof. The strict observance to the said provision by the Magistrates and the Sessions Courts to a large extent shall prevent unscrupulous persons from absconding to defeat the course of justice.

Meaning thereby it is incumbent for every Court trying criminal case and/or hearing criminal appeal, has to make an endorsement in it's final judgment that necessary bail bond with surety has been furnished by the accused u/S 437A of Cr.P.C., which can be made only when the bail bonds have been furnished already by the accused before conclusion of the trial or disposal of the appeal.

8. According to the provisions of Cr.P.C. the State Govt. as well as the victim in appropriate cases, may also prefer an appeal against the order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensations or for enhancement of the sentence.

9. Thus under the provisions of Cr.P.C., an appeal can be preferred against the order passed by the Court in following circumstances:-

(a) by the accused against the judgment of conviction & order of sentence,

(b) by the State Govt./victim against the judgment of acquittal and

(c) by the State Govt./victim against the order convicting the accused for a lesser offence or imposing inadequate compensations, for enhancement of sentence.

10. It is a settled legal position that the appeal is the continuation of the trial Court proceedings. It is also settled position that order of conviction or acquittal-, if it is challenged by either the accused or the State/victim, will become final after the decision is given by the appellate Court. Thus, presence of the accused is also required in case the appeal is preferred by the State/victim against the judgment of acquittal as also against the order convicting the accused for a lesser offence or imposing inadequate compensations, for enhancement of sentence. Learned counsels for the accused-appellants did not make any submission regarding above stated third eventuality.

11. From bare reading of Section 437A of the Code, it is amply clear that what would be the fate/result of the trial or appeal, whether it will result in conviction or acquittal of the accused, is immaterial. Nature of the provision is mandatory and there is no exception to the rule. Therefore, before conclusion of the trial and before disposal of the appeal, it is incumbent for the Court to require the accused to execute bail bonds with sureties for appearance before higher court as and when such Court issues notice.

12. The bail bonds furnished by the accused-appellants in consequence of order of suspension of sentence were for the appearance in this Court only, whereas the purpose of bail bonds u/S 437A of Cr.P.C. is to secure presence of the accused before the higher Court as and when such Courts issues notice in respect of any appeal or petition filed against the judgment, thus the argument of learned counsels in this regard, cannot be accepted.

13. By any stretch of imagination it cannot be said that the provision of requiring the accused to furnish bail bonds u/S 437A of Cr.P.C. can only be applicable when any judgment has been passed by the Court and not before that. Thus the argument of learned counsels in this regard cannot be accepted.

14. In 2011 (1) RCC 138 Ganesh v. State of Rajasthan (supra), Hon''ble High Court allowed the appeal of some of the appellants while setting aside their conviction. Hon''ble Court mentioned in para 49 of it's judgment that the bail bonds executed by the appellants shall remain in force for next six months as per provisions of Section 437A of the Code of Criminal Procedure, as the accused are already on bail. As question of interpretation of provisions of Section 437A of Cr.P.C. was not involved thus, this judgment is of no assistance to the present accused-appellants at this stage.

15. In view of the clear mandate and discussions made above, the judgment given in Rajesh v. State of Rajasthan (supra) is also of no assistance to the present accused-appellants at this stage.

16. In view of above, submissions made by learned counsels for accused-appellants have no force and we are not inclined to recall the order dated 29.04.2016, as prayed for

17. Hence all the four applications filed by the accused-appellants u/S 482 of Cr.P.C. are hereby dismissed being devoid of merit, in the interest d justice, the accused-appellants are directed to furnish personal bond S sureties as mentioned in the order dated 29.04.2016 in next two weeks, in case not furnished so far.