



2026:AHC:165721

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2852 of 1988

Siddiq And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Kumar Dhananjay, Sher Bahadur
Counsel for Respondent(s)	:	A.G.A.

Court No. - 88

HON'BLE SANJIV KUMAR, J.

1. This Criminal appeal, under Section 449 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') has been filed by appellants Siddiq and Mahmood against the impugned order dated 21.10.1988 passed under Section 446 Cr.P.C., by Ist Additional Sessions Judge, Ghaziabad, in Criminal Misc. Case No. 4 of 1988, Police Station Murad Nagar, District Ghaziabad.

2. By the impugned order, the Trial Court directed to issue fresh recovery warrant for realization of a sum of Rs. 5000/-, the amount of surety bond from the appellants, through S.H.O. Police Station Moradnagar, District Ghaziabad.

3. During the pendency of this appeal, appellant no.2, Mahmood, died and the appeal stood abated against him vide order dated 17.02.2026. Now this appeal survives against appellant no.1, Siddiq, alone.

4. Brief facts of the case are that in a proceedings under Section 125 Cr.P.C., the surviving appellant Siddiq stood surety to one Farooq and on the date fixed, when Farooq was not present, the sureties were directed to produce him before the court, failing which, on 05.04.1988, show cause notices were issued to the appellants that why the surety amount of Rs.5000/- be not realized from them for not producing Farooq before the Court. The above notices were served upon the appellants and on 05.04.1988, recovery warrants were issued against them. Thereafter, on 21.10.1988, the appellants moved an application that they are ill and are in search of Farooq and they sought two months' time to produce him

before the court. The above application was rejected by the impugned order dated 21.08.1988 and fresh recovery warrant was issued against them for realization of the surety amount.

5. I have heard Mr. Kumar Dhananjay, learned counsel for the appellants and learned AGA for the State.

6. It is submitted by learned counsel for the appellants that the impugned order is bad in the eye of law, because it was passed without assigning sufficient reasons, as such, the impugned order is liable to be set aside.

7. Per contra, learned AGA submits that the impugned order does not suffer from material illegality and irregularity and thus, this Criminal Appeal has no force and it is liable to be dismissed.

8. In view of submissions of both the parties and from perusal of record, it is not in dispute that the impugned order was passed under Section 446 Cr.P.C. To proceed further, it would be apt to quote Section 446 Cr.P.C. for ready reference, which is as under:

Section 446: Procedure when bond has been forfeited:

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited,

or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited,

the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.--*A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.*

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.”

9. The contention of learned counsel for the appellants is that the impugned order was passed without recording the reason that there was sufficient cause against the appellants for ordering the recovery of amount of surety and it was passed without giving them an opportunity of hearing. Section 446 (1) provides that the Court may call upon the person, who has executed the bond to pay the penalty, by a show cause notice that why it should not be recovered. Sub-Clause (2) provides that if sufficient cause is not shown and the penalties not paid, the Court may proceed to recover the same, as if such penalty was a fine imposed by it under the Code.

10. In view of the above provision, if we examine the impugned order, then it appears that it suffers from material irregularity and illegality, as after the notices were issued, the appellants appeared before the Trial Court and moved an application seeking time to produce the person regarding whom they had stood surety, however, the Trial Court, without recording any sufficient cause, rejected the application and issued the recovery warrant for realization the surety amount. The impugned order

further reveals that the Trial Court itself was not sure that the appellants would be able to produce Farooq before the court or not, and without giving sufficient opportunity to the appellants, the recovery warrant was issued against them.

11. Therefore, in my considered view, the impugned order suffers from material irregularity and illegality. The recovery warrant was issued without recording or disclosing any sufficient cause for the realization of the surety amount. Furthermore, the appellants were not afforded an adequate opportunity to show cause in response to the notices issued against them. Mere issuance of notice under Section 446 Cr.P.C. and without affording sufficient opportunity to the appellant has resulted in miscarriage of justice for the appellants, as they were not given sufficient opportunity before passing the impugned order.

12. In view of the above, it is clear that in the present case the impugned order for recovery of amount of surety bond was passed without giving proper opportunity of hearing to the appellants. Thus, the Trial Court has not passed the impugned order in accordance with law. Therefore, the impugned order is not sustainable in the eye of law and in view of the above discussion, it is liable to be set aside and this appeal deserves to be allowed.

13. Accordingly, this appeal stands **allowed** and the order dated 21.10.1988 passed under Section 446 Cr.P.C., by Ist Additional Sessions Judge, Ghaziabad, in Criminal Misc. Case No. 4 of 1988, Police Station Murad Nagar, District Ghaziabad, is **set aside**.

14. Let a copy of this order be sent to the Trial Court concerned, along with the Trial Court record, for information and necessary compliance.

(Sanjiv Kumar,J.)

August 6, 2026

Subham