

I.A. no. 04/2024.
SC no. 44843/2015
STATE VS. CHAMAN LAL & OTHERS
FIR NO. 185/2012
PS: SEEMA PURI

29.02.2024

Present : Applicant/surety Bala Rani of accused with counsel,
Sh. Ajay Kumar Singh.
Sh. F. M. Ansari, Ld. Addl. PP for the State.

The matter is fixed for today for filing reply and consideration on the application, filed by Ms. Bala Rani, surety of accused Dal Chand for recalling the order dated 28.11.2023 and for seeking direction for handing over the surety amount to the applicant.

Ld. Addl. PP for the State has submitted that he does not want to file reply to this application and he will straightway argue on this application.

I have heard the counsel for the parties.

Sh. A.K. Singh, Ld. Counsel for applicant/surety Ms. Bala Rani has submitted that the accused Dal Chand was granted permanent exemption from personal appearance by the court Sh. Pankaj Arora, Ld. ASJ, North East District, Karkardooma Court, Delhi vide order dated 02.03.2023 and submitted that the applicant/surety Ms. Bala Rani of the accused Dal Chand is feeling aggrieved from the order passed by the court of Sh. Pankaj Arora, Ld. ASJ, North East District, Karkardooma Court, Delhi on dated 17.10.2023, vide which, warrants of attachment was issued against the surety of accused Dal Chand and submitted that in this application wrong date has been mentioned

as 28.11.2023 instead of 17.10.2023 and submitted that since, the accused Dal Chand was appearing in the court and thereafter, permanent exemption from personal appearance was granted to him, so, he did not appear in the court. So, the order dated 17.10.2023 may be recalled as the same has been passed without giving opportunity to the applicant/surety of the accused Dal Chand. He has relied upon the judgment passed by the Hon'ble High Court of Delhi in case DILNAWAZ KHAN V/S STATE, 1980 LEGAL EAGEL (DEL) 75.

On the other hand, Ld. Addl. PP for the State has opposed this application and submitted that Ld. Counsel for accused has tried to mislead the court by mis-interpreting the order dated 02.03.2023 and submitted that vide order dated 02.03.2023 the accused Dal Chand was granted exemption from personal appearance by the court of Sh. Pankaj Arora, Ld. ASJ-04, North East District, Karkardooma Court, Delhi, subject to the condition that either Ld. Counsel, Sh. Vijay Goswami or Ld. Counsel, Sh. M.N. Verma will remain present on behalf of this accused Dal Chand on each and every date of hearing in the said court and the accused Dal Chand shall not dispute his identity and shall not seek adjournment and submitted that thereafter, on dated 11.09.2023, neither this accused Dal Chand nor his counsel appeared in the said court. So, Non-Bailable Warrants were issued against accused Dal Chand Dal Chand and notice to his surety U/s 446 of Cr.P.C was also ordered to be issued for the next date of hearing and the the matter was adjourned for 17.10.2023. He has further submitted that the warrants of arrest issued against accused Dal Chand could not be executed, as the

NBW issued against the accused Dal Chand was received with the report that he had left the said address about 10 years ago and notice to his surety i.e. the applicant U/s 446 of Cr.P.C. could not be served, as she was not residing at the given address and hence, the court of Sh. Pankaj Arora, Ld. ASJ-04, North East District, Karkardooma Court, Delhi was pleased to pass an order for issuance of process U/s 82 Cr.P.C. against accused Dal Chand and warrants of attachment were also ordered to be issued against his surety/applicant (herein) and submitted that the accused Dal Chand did not comply with the order dated 02.03.2023, vide which, he was granted permanent exemption, subject to the condition that his abovesaid counsels will appear on his behalf on each and every date and submitted that the court was not helpless when neither accused Dal Chand nor his counsels had appeared and submitted that since accused Dal Chand did not appear, so, in order to procure his presence, the court had to issue warrants of arrest against him and submitted that since the Ld. Counsel for accused has told that the applicant Bala Rani is none but the wife of the accused Dal Chand and they did not inform to the court about change of address and prayed for dismissal of the application.

I have heard the counsels for the parties.

This court is of the considered opinion that since the court of Sh. Pankaj Arora, Ld. ASJ-04 North East District, Karkardooma Court, Delhi while granting exemption from personal appearance to the accused Dal Chand vide order dated 02.03.2023, had imposed the condition that the counsel for the accused Dal Chand shall remain present, but, on the one side, Dal

Chand had taken the advantage of the said order, but, he failed to comply with the condition that his counsel shall remain present. In the given circumstances, when the warrants of arrest issued against Dal Chand was received back unexecuted and notice issued to his surety that is the applicant was received back unserved. So, in the given circumstances, the court had not committed any illegality while issuing the warrants of attachment against the applicant/surety. The Ld. Counsel for accused has relied upon the abovesaid judgment, but, in view of the dissimilarities of the facts & circumstances, the same is of no help of the applicant/surety of accused Dal Chand. Since, the accused Dal Chand did not disclose his present address and similarly his surety who is the wife of accused Dal Chand also did not disclose her present address in the court, so, the warrants of arrest issued against accused Dal Chand could not be executed and the notice U/s 446 of Cr.P.C. issued to his applicant/surety Bala Rani could not be served.

Taking into consideration the negligent conduct of the accused Dal Chand and his surety Bala Rani, no ground is made out to recall the order dated 17.10.2023 passed by the court of Sh. Pankaj Arora, Ld. ASJ. Whereby warrants of attachment were issued against applicant/surety of accused Dal Chand. Therefore, this application filed by the applicant/surety Bala Rani is hereby dismissed. Since, SI Bhumeshwar Yadav had already deposited the original DD in sum of Rs.20,000/- in the name of DDO North East District, Karkardooma Court, Delhi, so, the same DD is ordered to be sent to the DDO, North East District, Karkardooma Court, Delhi for encashment. Reader of this court,

is directed to issue receipt to the applicant/surety Bala Rani regarding recovery of the amount of surety bond of Rs.20,000/- Put up the file on the date already fixed.

(PAWAN KUMAR MATTO)
Addl. Sessions Judge (Special Judge NDPS)
North East/KKD Courts/Delhi/29.02.2024