ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Misc. Appln. No. S-63 of 2013.

Date	Order with signature of Hon'ble Judge

For hearing of case.

07.9.2018.

Mr. Muhammad Afzal Jagirani, advocate for the petitioner.

Mr. Sharafuddin Kanhar, A.P.G,

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By means of this criminal miscellaneous application, applicant Pyaro Machi S/O Allah Bux who stood surety for the accused Wadhal @Wahid Bux has impugned the orders dated 02.11.2011 and 20.2.2013 whereby learned Additional Sessions Judge, Kandhkot in Cr. Revision Appln. No.25 of 2010, forfeiting his surety bond, penalized whole surety amount of Rs.50,000/= vide order dated 02.11.2011 and subsequently rejected his application filed U/S 439 Cr.P.C excusing him from payment of surety amount, vide order dated 20.2.2013.

Learned counsel for the applicant/surety states that the applicant stood surety for accused Wadhal @Wahid Bux in CrimeNo.03 of 2010 registered at P.S Ghulam Serwer Sarki U/S 13 D.A.O who subsequently jumped from the bail, hence the learned trial Court forfeited the entire surety amount but thereafter accused Wadhal was produced before the trial Court and the applicant/surety moved an application to excuse him from payment of surety amount, which was also dismissed vide order dated 20.02.2013 and against aforementioned both the orders the instant application has been maintained on the ground that the applicant/surety is extremely poor person and though the accused Wadhal jumped away from the bail but later on he was produced before the Court hence the impugned orders are liable to be recalled being not sustainable in law.

On the other hand, learned A.P.G placing reliance in the case of Zeeshan Kazmi vs. The state (PLD 1997 SC 267 and 406), has opposed this application and he has maintained that the applicant/surety was given sufficient time to locate and find out

the absconding accused but he failed and subsequently absconding accused was produced after forfeiting of the surety.

Heard learned counsel for the parties and perused the material available on record.

It goes without saying that surety is bound down to cause attendance of accused in Court on each and every date of hearing and failure of accused to attend the Court would react on the surety. If inspite of the notice he failed to produce the accused in Court the Court within its right to forfeit the surety bond U/S 516 Cr.P.C and further fine the surety directing the surety to deposit the full quantum of surety bond.

In the instant case, it appears that the applicant/surety not only failed to produce the absconding accused Wadhal @Wahid Bux before the trial Court but also submitted no reply to the notice issued to him U/S 514 Cr.P.C despite of the fact that he was grnated time and the learned trial Court while observing that the applicant/surety was not interested either to submit his reply to produce the accused, penalized the whole surety amount of Rs.50,0000/=. It further appears from the record that the absconding accused was subsequently produced before the trial Court not by the present applicant but one Bakhat Ali Mochi who was also stood sturety for him in main case/crime No.58 of 2010. It further appears that against the impugned order dated 02.11.2011 the applicant maintained Cr.Revision No.S-84 of 2011 before this Court which was dismissed for non-prosecution vide order dated 16.2.2012, hence the order dated 02.11.2011 has already attained finality. So far the order dated 20.02.2013, whereby his application U/S 439-A for excusing him from payment of surety amount dismissed by the trial Court, is concerned, it may be observed that after imposing the penalty on the surety, the surety can not be excused from payment thereof. Hence this criminal miscellaneous application being devoid of merits is dismissed accordingly.

JUDGE