

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Criminal Misc. No. 213/2020
Akhtar Sait
Versus
Dr. Aftab Asif etc

Petitioner by: Mr. Shahid Shabbir, Advocate,
Respondent No.1 by: Hafiz Munawar Iqbal and Syed Pervaiz
Zahoor, Advocates,
State by: Syed Shahbaz Shah, State Counsel
with Shah Nazar SI.
Date of Decision: 11.08.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant criminal misc. petition, petitioner impugns orders dated 30.01.2020 and 18.02.2020 passed by the learned Judicial Magistrate and learned Additional Sessions Judge Islamabad-West, respectively, whereby respondent No.1-accused was directed to submit fresh surety bond, while revision petition was dismissed.

2. The facts, necessary for the disposal of instant petition, are that the petitioner lodged FIR No.228 dated 01.09.2018, under Sections 420, 467, 468, 471, 34 PPC, Police Station Margalla, Islamabad against the respondent No.1 and two others with the allegations of cheating, forgery and preparation of forged documents. In the said case, respondent No.1 was granted pre-arrest bail by the learned Additional Sessions Judge-IX, Islamabad-West vide order dated 06.11.2018. the respondent No.1 after getting concession of pre-arrest bail, failed to appear before the learned Trial Court. The learned Trial Court after adopting legal procedure declared the respondent No.1 as proclaimed offender and his bail was cancelled, proceedings under section 514 Cr.PC were also initiated against the surety vide order dated 26.09.2019.

On 30.01.2020, respondent No.1 filed an application before the learned trial Court for recalling of order dated 26.09.2019 which was accepted and he was ordered to submit fresh surety bonds. Against the said order, petitioner filed revision petition which was dismissed by the learned Additional Sessions Judge vide order dated 18.02.2020, hence, this petition under Article 199 of the Constitution read with Section 561-A, Cr.P.C.

3. Learned counsel appearing on behalf of the petitioner submits that on 26.09.2019, the learned trial Court cancelled the bail of the respondent No.1 due to his non-appearance and issued non-bailable warrants of arrest but on 30.01.2020, on the application of respondent No.1, passed the impugned order for submission of fresh bail bonds holding therein that as the bail of the accused was granted by the Additional Sessions Judge, therefore, the same is intact; that learned trial Court cannot review its own order; that the impugned orders are illegal, unlawful and based upon surmises and conjectures; that learned trial Court was empowered to cancel the bail of the respondent No.1 as the same was recalled not on merits but due to misuse of concession of bail; that no criminal court can review its own order or order of predecessor court.

4. Learned State Counsel assisted by the learned counsel for the respondent No.1, states that learned trial Court has rightly passed the order for submission of fresh surety bonds because respondent No.1 himself surrendered before the Court; that respondent No.1 was granted pre-arrest bail by the learned Additional Sessions Judge, therefore, the learned trial Court cannot cancel the same.

5. I have heard the contentions of the learned counsel for the parties and have perused the record with their able assistance.

6. It is settled principal that if bail is granted by the superior Court then the trial Court cannot cancel the same on merits and the trial Court has to make a reference to the Court who granted the bail for appropriate action according to law, but in case where accused after the grant of bail from superior Court fails to attend the trial Court or jumps the bail, the trial Court is competent to cancel the bail for non-attendance of the accused and issue non-bailable warrants in order to cause arrest of the accused. The trial Court is also competent to issue notice to surety under section 514, Cr.P.C. for procuring the attendance of the accused and in case of failure of surety to produce the accused in Court to forfeit the bond of the surety as well as 'personal bond of the accused.

7. The perusal of record reveals that respondent No.1 himself surrendered before the learned Trial Court with prayer to recall the order dated 26.09.2019 on the ground that after submission of report under Section 173 Cr. PC in the Court, he was not informed regarding the next date of hearing nor any warrant was served upon him. Said application was accepted by the learned trial Court and the respondent No.1 was directed to furnish fresh surety bonds.

8. The learned Court in its order dated 30.01.2020 had discussed the defects of order dated 26.09.2019 in-detail, whereby the respondent No.1 was declared proclaimed offender and proceedings were initiated against surety under Section 514 Cr.PC and thereafter passed the order for filing of fresh surety bonds. Needless to mention that if the order to declare the respondent No.1 a proclaimed

offender was defective and interfered with by the learned court, that is a legal exercise carried out by the court.

9. The main purpose of all these proceedings is that the accused should be before the court to face the trial, that is the ultimate object, when such object is achieved, that too, at the hand of respondent No.1/accused, who himself surrendered, same is material, instead of challenging these procedural technicalities, consideration should be to conclude the trial expeditiously.

10. The learned Revisional Court, in its order, has attended all the grounds, being pressed in support of the instant criminal misc. petition. There appears no illegality or material irregularity warranting interference in the impugned orders. Consequently, the instant criminal misc. petition fails and is accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE