

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Crl. Revision No.23-P of 2019

Shamas-ur-Rehman Vs. State

JUDGMENT

Date of hearing: 08.11.2019

Mr. Muhammad Riaz, Advocate, for petitioner.

Malik Akhtar Hussain Awan, AAG, for State.

AHMAD ALI, J.- The petitioner being aggrieved of the order dated 29.01.2019 of the learned Sessions Judge Mardan, passed in the proceedings under Section 514 Cr.P.C. only to the extent of remarks recorded therein against him, has filed present revision petition for the expunction of same.

2. The short facts of present petition are that accused Naseeb Khan and Gulsher were granted transit bail to appear before the competent court at Rawalpindi. The accused submitted bail bonds whereby the petitioner being Nazim of Union Council Roriyar Jadeed, Mardan stood verifier of the sureties namely Hijab Gul, Ghani and Taza Gul. Nevertheless, the accused failed to appear

before the concerned Court at Rawalpindi and proceedings u/s 514 Cr.P.C. were initiated against the sureties. They were given notices u/s 514 Cr.P.C. to which they replied and finally vide order dated 29.01.2019, the learned Sessions Judge Mardan forfeited one-half (1/2) of the amount of bail bond burdened each of the sureties to deposit an amount of Rs.100,000/- in favour of the government or to suffer six months S.I. However, the learned Sessions Judge Mardan, in the 2nd Para at page No.4 of the impugned order, noted certain adverse remarks against the verifier (now petitioner) and issued directions to the Secretary Local Government, Government of K.P.K. Peshawar to initiate proper action under the law against the petitioner, who was Nazim of the Union Council at that time. Therefore, aggrieved of the adverse remarks in the order dated 29.01.2019, the petitioner approached this Court through the present petition.

3. Arguments heard and record gone through.

4. A thorough perusal of the impugned order reveals that the learned court below after forfeiting the bail bonds of sureties, recorded certain remarks in the impugned order against the present petitioner who, at that time, was the Nazim of Union Council Roriyar Jadeed, Mardan and

also directed the Secretary Local Government Department of Khyber Pakhtunkhwa to initiate action against him. The learned court below was of the view that *“The role of identifier of the bail bonds, namely, Sham-ur-Rehman, Nazim U.C. Roriya Jadeed, Tehsil & District Madan in this case remained very dirty. He had performed the role of a tout in this case, which is not expected from an elected representative. He has not only cheated the sureties but has also tried to practice fraud upon the court by verifying such sureties who are not enjoying good reputation due to their previous involvement in such like cases.---*” These observations of the learned court below are without any backing and the record. There is no cavil with the proposition that while granting transit bail to accused persons, no responsibility was placed at the identifier/verifier of sureties nor any direction to be followed by the identifier was there. The role of identifier/verifier of the bail bonds is limited to the extent that he verifies the sureties to be local residents. Now, it is upon the Court to determine as to whether the sureties are reliable and men of means, if so, it can proceed further to accept the bail bond otherwise to reject it. in the case titled “Muhammad Salim Vs. The State” (PLD 1970 Karachi 187) it was held:

“When a person offers to stand surety and submits his documents for verification it is for the Court to determine his solvency and his fitness for standing as surety for that person. The Magistrate cannot act on the opinion of another authority, such as the City Deputy Collector. The judicial function necessarily implies that it must be his own judgment and not that he could act otherwise.”

Reliance, in this regard, is also placed on the judgment of this Court in the case titled “Muhammad Sarwar Vs. The State” (**PLD 1965 (W. P.) Peshawar 14**) whereby the practise of verifying security bonds by the Tehsildar or requiring police to report on suitability or otherwise of surety was highly criticized and it was held that it is sole prerogative of the court to ascertain the fitness or otherwise of the surety.

5. Apart from above, the impugned observations regarding acting of petitioner as a ‘tout’ are without any record and evidence recorded in this regard. If sureties were cheated by the petitioner, they had to complain

about it before proper forum for taking legal action against the petitioner. Impugned order reveals that a proper opportunity was given to the sureties by giving them notices u/s 514 Cr.P.C. whereas, no opportunity was afforded to the petitioner to justify his position. The impugned observations against petitioner are hit by the doctrine of '*audi alteram partem*' and therefore, the same are unwarranted.

6. In view of the foregoing discussion, this petition is allowed and impugned adverse remarks recorded against petitioner in the judgment dated 29.01.2019 are hereby expunged.

Announced
08.11.2019

J U D G E

SB Hon'ble Mr. Justice Ahmad Ali