

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**BANNU BENCH.**

*(Judicial Department)*

**Cr.R No.03-B of 2017.**

**Shabbir Hussain and another**  
**Vs**  
**The State etc.**

**JUDGMENT**

Date of hearing \_\_\_\_\_ 17.04.2017 \_\_\_\_\_.

Appellant-Petitioner: **Shabbir Hussain and Javed Khan by**  
**Syed Umer Ali Shah Advocate.**

Respondent: **State by Shahid Hameed Qureshi, Addl: AG.**

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**ISHTIAQ IBRAHIM, J.**--- Through instant criminal revision petition, the petitioners have called in question the order dated 22.11.2016 passed by the learned Additional Sessions Judge-II, Lakki Marwat, whereby bail bonds submitted by the accused Umer Hayat, involved in case F.I.R No.165 dated 24.03.2014 under sections 9 CNSA, registered at Police Station Serai Naurang, Lakki Marwat were forfeited in favour of the State and petitioners being sureties were directed to

pay Rs.1,00,000-(one lac) each, the bail bond amount as penalty.

2. Arguments heard and record perused.

3. Perusal of the record reveals that during trial, accused Umer Hayat, he absented himself and sureties/petitioners were summoned. On 22.11.2016 neither the accused appeared nor his sureties/petitioners put their attendance, which resulted into forfeiture of bail bonds of accused and the petitioners/sureties were held liable for payment of Rs.100000/- (One lac) each, the bail bond amount.

The record is suggestive of the fact that no show-cause-notice was issued to them albeit nor they were extended time to produce the accused. On 22.11.2016, when the sureties of accused were not in attendance, the learned trial court straightaway passed impugned order for forfeiture of bail bonds of accused and held the petitioners/sureties liable to pay surety amount one lac each. The impugned order is against the scheme of law relating to forfeiture of bond and realization of amount as provided under section 514 Cr.PC, which read as under:

**514. Procedure on forfeiture of bond.**

**(1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Magistrate of the first class,**

**or when the bond is for appearance before a Court, to the satisfaction of such Court.**

**that such 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.**

**(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person or his estate if he be dead.**

**(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the attachment and sale of any movable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.**

*(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.*

*(5) The Court may at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.*

*(6) 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.*

*(7) When any person who has furnished security under section 107 or section 118 is convicted of an offence the commission of which constitutes a breach of the conditions of this bond, or of a bond executed in lieu of his bond under section 514 B, 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.”*

4. The above provision of law provides that it is obligatory upon the Courts to first forfeit the bail bond, call the surety/sureties bound by the bonds to show cause as to why the penalty should not be paid by him/them and the courts shall record the ground of such proof, while in the instant case no show cause notices were issued to the sureties/petitioners, that why the forfeited amount may not be realized from them. It has not been mentioned that the bail bonds were obtained by putting liability on the sureties/ petitioners regarding appearance of accused. In absence of such notice, the impugned order is liable to be set aside. In the case titled

**“Shaukat Ali and another Vs the State” (1984 PCrLJ 718**

**Supreme Court (A J&K)**, it is held that:

***“Moreover, section 514, Criminal Procedure Code clearly contemplates that final decision, regarding recovery of the amount of the bond that has been forfeited, should be made after issue of notice to show cause why the amount should not be paid. Where show-cause notice is issued but without such show-cause notice being duly served, an order for recovery is made, such an order is not only contrary to the wholesome***

*provisions of section 514, Cr. P. C. but is also in violation of the principle of natural justice contained in the Latin maxim : 'audi alteram partem' which, in fact, stems out from the principle of Islamic Law'.*

Similarly in case titled “Muhammad Siddique khan Vs the State through Advocate-General Azad Jammu and Kashmir, Muzaffarabad’ (2014 PCrLJ 33 Supreme Court (AJ&K), it was held as under:

*“The non-issuance of notice in absence of prima facie proof will render the proceedings liable to be set aside as laid down in a case reported as Sanwan and another v. The State (PLD 1965 (W.P.) Karachi 516) wherein it has been observed as under:--*

*"It is plain from a perusal of the language of this section that it is incumbent on a Court to first declare the bond forfeit and to record the grounds for such a finding before calling upon the surety to pay the penalty thereof or to show cause why it should not be paid."*

5. Accordingly this criminal revision is accepted and order passed by the learned Additional Sessions Judge-II,

Lakki Marwat, is set aside. The case is remanded to the trial court for decision afresh in accordance with law after affording reasonable opportunity to the petitioners. Parties are directed to appear before the learned trial court on 15.05.2017.

**Announced.**

17.04.2017

\*Azam/P.S\*

**J U D G E**