

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**Cr. Appeal No. 423 of 2014**

**Date of decision: 30 December, 2016**

State of H.P.

...Appellant

Versus

Kharak Bahadur

...Respondent

*Coram*

***The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.***

***The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.***

*Whether approved for reporting? No.*

**For the Appellant : Ms. Meenakshi Sharma, Additional Advocate General, with Mr. J.S. Guleria, Assistant Advocate General.**

**Tarlok Singh Chauhan, Judge.**

State has appealed against the judgment dated 20.06.2014 of the learned Special Judge, Kullu, passed in Session trial No. 120 of 2013 (290 of 2013), titled as State vs. Kharak Bahadur, challenging the acquittal of respondent Kharak Bahadur (hereinafter referred to as the 'Accused'), who was charged for having committed offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act.

2. Vide order dated 17.12.2014, this Court ordered issuance of bailable warrant to secure the presence of the accused. The said bailable warrant was received back unexecuted with the report that the accused was not found in the given address and there is no clue about his present whereabouts.

3. Thereafter, vide order dated 06.05.2015, the State was directed to take fresh steps for the service of the accused and this exercise continued till 28.03.2016, on which date the learned Additional Advocate General under instructions from the Superintendent of Police concerned stated before this Court that it was difficult to ascertain the latest address of the respondent, who otherwise is a citizen of Nepal and the matter was adjourned by six weeks for taking appropriate action.

4. The State thereafter filed an application seeking permission to carry out proclamation and the same was registered as Cr.MP No. 340 of 2016 and vide order dated 30.5.2016 proclamation under Section 82(1)(2)(i) a to c was ordered to be issued against the accused Kharak Bahadur.

5. Thereafter this Court vide order dated 7.10.2016 directed the State to take consequential steps under Section 83 Cr.P.C.

6. The long and the short of the matter is that the accused who is a Nepal citizen, despite proclamation is not being served. What can be the further course of action to be adopted in such like matters has been considered by a Division Bench of this Court vide its judgment dated **17.12.2008**, passed in **Criminal Appeal No. 114 of 2006, titled as State versus Man Bahadur**, wherein it was held as under:-

*“This appeal was admitted on 2.5.2006. Respondent is native of Nepal. Bailable warrant of arrest was issued against the respondent and it was sent to Ministry of Home Affairs, Government of India, for execution as the respondent is stated to have left country for his native country Nepal. Warrant has been received back unexecuted with a letter from Under Secretary, Government of India, Ministry of Home Affairs, with the report that the warrant was sent to Indian Embassy at Kathmandu and the Embassy has returned the same with a report that in the past when warrants, summons, notices etc. were sent to the Government of Nepal for service/execution, the same were received back, with the remarks that warrants, summons notices received from other countries cannot be served/executed in Nepal, as per the existing law of Nepal.*

*By following the precedent of Hon'ble Supreme Court in the State of H.P. Vs. Satish Kumar in Criminal Appeal No.917 of 1997 decided on 31st August, 2001, we dismiss this appeal for want of prosecution, because no useful purpose will be*

*served by keeping it pending. However, liberty is reserved to the State to get the appeal revived if it happens to secure the presence of respondent.”*

7. Taking into consideration the ratio of the aforesaid judgment as also bearing in mind the fact that the service of the respondent is not feasible in the foreign country, i.e. Nepal, we dispose of the present appeal for want of prosecution, because no fruitful purpose shall be served by keeping the same pending.

8. However, it is specifically observed that liberty is always open to the State to get the present Criminal Appeal No. 423 of 2014 revived, if the State happens to secure the presence of the accused in future.

9. Appeal stands disposed of, so also the pending application(s) if any.

**(Tarlok Singh Chauhan)**  
Judge.

**(Chander Bhusan Barowalia)**  
Judge.

**December 30, 2016**  
(sanjeev)