



RESEARCH CENTRE, HIGH COURT OF BALOCHISTAN

COURT: NAJEEBULLAH, JUDICIAL MAGISTRATE

SUBJECT: *Forfeiture of surety in case of compromise between parties*

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BY: RESEARCH CENTRE

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PROPOSED QUERY

Whether a compromise can validly be effected in the absence of an absconding accused, particularly in circumstances where one of the accused, after obtaining bail, failed to appear before the Court and proceedings under Section 88 of the Code of Criminal Procedure, 1898 were initiated, resulting in confiscation of his property in favour of the State, and where the matter of forfeiture of surety is presently under consideration. Meanwhile, the complainant has appeared before the Court and stated that he has pardoned the accused persons, who are currently residing in Dubai and are unable to appear before the Court.

In simple legal terms, a compromise **can be effected even in the absence of an absconding accused**. The law does not make the presence of the accused a necessary condition for compromise. Once a criminal case has started, meaning the court has taken cognizance, the right of the legal heirs to forgive (compound) the offence comes into operation. This right is independent of whether the accused is present before the court or is absconding.

The reasoning is straightforward: compromise in such offences is based on the concept of forgiveness by the legal heirs, not on the consent or participation of the accused. Therefore, even if an accused has fled and is not facing trial, the legal heirs can still enter into a compromise with him, and the court may extend the benefit of such a compromise to the absconding accused as well. Reliance is placed on. *PLD 2012 Sindh 35*

17. Spirit line behind Section 345(2), Cr.P.C. is, as stated above, that of (Affwo) and (Derguzar). Under the Islamic Law, there is no provision that in any case of a compoundable offence, the accused person can be forgiven only and only when he agrees to being forgiven. An example would be when the Holy Prophet (peace be upon him) visited Taif and the street urchins of Taif, upon instigations by the notables of Taif, pelted Holy Prophet with stones and according to historians, so much so that the blood of the Holy Prophet dropped into his shoes, the Holy Prophet instead of praying' for God's wrath angers upon residents of Taif, forgave and prayed for their forgiveness. Therefore, contention of APG that unless absconders appear before the Court, offence cannot be compounded, does not appear to be correct.

Moreover, even where the accused has been declared a proclaimed offender, if the legal heirs clearly state that they have forgiven him and settled the matter, the court can extend the benefit of compromise to such an absconding accused and acquit him accordingly. **Reference is made to 2018 P Cr. L J 69.**

4. Perusal of record reveals that the offences with which the accused including the absconder are charged, are legally compoundable. The legal heirs of both the deceased and the injured categorically stated in their statements before the learned trial Court that they have patched up the matter with the accused facing trial and the absconding accused, have pardoned them in the name of Allah Almighty and have no objection if they are acquitted on the basis of compromise. Under Islamic law, there is no provision that in any case of a compoundable offence, the accused person can be forgiven only and only when he agrees to being forgiven. There is an example that when the Holy Prophet (S.A.W.W.) visited Taif and the street urchins of Taif, upon instigations by the notables of Taif, pelted Holy Prophet with stones and according to historians, so much so that the blood of the Holy Prophet dropped into his shoes, the Holy Prophet instead of praying for God's wrath angers upon the residents of Taif, forgave and prayed for their forgiveness. Keeping in view such golden Islamic principles, it would not be in the interest of justice to indulge ourselves into technicalities that accused Muhammad Khan alias Muhammad was an outlaw and did not appear either before the investigating agency or before the Court. When legal heir of both the deceased and the injured have settled their differences, also with the accused Muhammad Khan alias Muhammad, the order of the learned trial Court issuing a perpetual warrant of arrest against him is legally incorrect and not sustainable.

The liability of a surety and the effect of a compromise operate in two distinct spheres. A surety bond is, in essence, an undertaking given to the State to ensure the attendance of the accused before the Court at all stages of the proceedings. Once such an obligation is assumed, the surety is bound to produce the accused, irrespective of the ultimate fate of the case.

The complainant's statement regarding compromise or pardon does not affect this position. Compromise or acquittal relates to the merits of the criminal case, whereas the obligation of the surety pertains to securing the presence of the accused. The latter is not extinguished by the former. Even if the accused is later acquitted based on a compromise, the surety remains liable for having failed to fulfil his undertaking.

Accordingly, the forfeiture proceedings must be decided solely based on the breach of the bond. The alleged compromise, particularly in the absence of the accused, neither validates his non-appearance nor absolves the surety of liability. However, it may be considered, at best, for limited remission under Section 514(5) Cr.P.C.

The judgment **2019 Y L R Note 10** reinforces the possibility of reduction (not extinction) of surety liability where compromise exists. **The Court held:**

“Compromise having been effected between the parties... petitioner had made out a case for lenient view.”

This case clarifies that Compromise may justify leniency, but it does not automatically absolve the surety.

The Court in **Sindh High Court (S-428/2020)** held that even though the accused persons had surrendered before another Court and were acquitted on compromise, the surety remained liable because he failed to fulfill his obligation to produce them before the Court granting bail.

The operative reasoning of the Court states:

“Meaning thereby that the surety has not taken any efforts for production of the accused before this Court, nor had any knowledge that the accused had surrendered themselves and acquitted by way of compromise... The surety has failed to complete his liability... does not deserve any leniency. Consequently, the surety bond... is forfeited.

Thus, the compromise and even subsequent acquittal of the accused do not automatically absolve the liability of the surety under Section 514 Cr.P.C. if the surety failed to produce the accused before the Court.
