

M.A. Gaffur Vs. the State

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Court : Guwahati

Decided On : Jul-24-1951

Judge : Deka, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 514 and 515

Appeal No. : Criminal Revn. No. 44 of 1951

Appellant : M.A. Gaffur

Respondent : The State

Advocate for Def. : D.N. Medhi, Senior Govt. Adv. and S.C. Das, Adv.

Advocate for Pet/Ap. : S.K. Ghose and N.M. Dam, Adv.

Judgement :

Deka, J.

1. This is a criminal revision case that comes up for hearing under Section 439, Criminal P. C., against an order of the District Magistrate, K & J Hills, forfeiting a bail bond executed by the petitioner for the sum of RS. 10,000 on behalf of one T. C. Barlow. There were two sureties for the accused Barlow for Rs. 10,000 each and they were M.A. Gafur the petitioner and one Mrs. M.E. Phillips. Barlow was convicted by the Sessions Court at Shillong on a charge of fraudulent conversion and breach of trust and was sentenced to rigorous imprisonment for three years.

He preferred an appeal to the Calcutta High Court which granted him bail till the disposal of the appeal and Gaffur and Mrs. Phillips stood sureties for him.

2. The appeal to the High Court on behalf of Barlow failed and he was asked to surrender and notices were accordingly issued on the two sureties to produce Barlow in Court but they failed. A notice dated 8-12-49 was then issued calling upon the bailor Gaffur to show cause why the bail-bond should not be forfeited. He showed cause and stated inter alia that on 26-9-1947 he filed a petition to the District Magistrate, K & J Hills praying for discharge from the bail bond, as it was reported to him by the wife of accused Barlow that the latter was seen in an abnormal state of mind. The District Magistrate thereupon issued notice under Section 502, Criminal P. C., for arrest of the accused but that order could not be complied with and the accused was not produced before the Court either by his bailors or in execution of the warrant of arrest.

The matter, however, was dealt with by the Additional District Magistrate Mr. H. Blah who heard the cause shown by the bailor Gaffur and by his order dated 24-6-48 exercising the powers under Section 514, Criminal P. C., reduced the amount of surety money to be realised from him to RS. 1,500 and remitted the balance. The learned District Magistrate, K & J Hills, took up the matter subsequently and by his order dated 17-2-1951 revised the order of the Additional District Magistrate dated 24-6-1948 and directed realisation of the entire amount of RS. 10,000 covered by the bail bond from Gaffur inasmuch as he failed to abide by the terms of surety, bond that he executed.

3. Against this order the petitioner has come up to this Court and Mr. Ghose who appeared on behalf of the petitioner has tried to show that the District Magistrate had no power to revise the order passed by the Additional District Magistrate on 24-6-1948 and even if he had, circumstances would not justify the realisation of the entire amount of RS. 10,000 from the petitioner. I have heard Mr. S. C. Das on behalf of the State who supported the order passed by the District Magistrate.

4. It is clear from a perusal of Section 515, Criminal P.C., that the District Magistrate was competent to revise the order passed by any other Magistrate subordinate to him including the Additional District Magistrate exercising powers

under Section 514, Criminal P.C. The order of the Additional District Magistrate dated 24-6-1948 was one that comes under Section 514 (5), Criminal P.C., and, in my opinion, the District Magistrate had jurisdiction to revise that order, though more time has elapsed than would be expected in ordinary course. However, the circumstances, in my opinion, would justify interference by the District Magistrate against the order of the Additional District Magistrate though late. In view, however, of the fact that there were two sureties and each liable for RS. 10,000, I think the ends of justice will be met if the amount of RS. 5,000 is directed to be realised from Gaffur on forfeiture of his surety bond.

5. Under these circumstances, I hold that the District Magistrate had power to revise the order of the Additional District Magistrate but in consideration of all the circumstances about -the case I modify the order of the District Magistrate and direct that Rs. 3,500 more should be realised from the petitioner inasmuch as he has already paid up Rs.1,500 under orders of the Additional District Magistrate.

6. The result is that the rule is made partially absolute.

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