

ijat Ali Vs. the State

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Court : Guwahati

Decided On : Jul-04-1964

Judge : Rajvi Roop Singh, J.C.

Appellant : ijat Ali

Respondent : The State

Judgement :

Rajvi Roop Singh, J.C.

1. This is a reference made by the learned Sessions Judge of Tripura under Section 438, Cr.P.C. recommending that the order dated 1.11.62 passed by the learned Additional District Magistrate disposing of the appeal should be set aside as illegal and without jurisdiction and the appeal should be reheard on merits by the District Magistrate who alone is competent to hear the same.

2. The facts which led the Sessions Judge to make the reference are as follows: The petitioner Ijat Ali stood surety after executing two ball bonds for Rs. 100/- each on 22.9.60 in favour of 2 persons named Abdul Ajj and Noab Ali, who were arrested by the Police under Section 54 Cr.P.C. The bail bonds did not mention the name of the specific Court before which they were executed but were accepted by Shri S.C. Chakraborty, Sub-Divisional Magistrate, Belonia, On 24.10.60 notice was issued from, the Court of the Sub-divisional Magistrate, Belonia on the petitioner calling upon him to show cause why the amounts of the

two bails bond's should not be forfeited, A similar notice was also issued on the petitioner on 3.2.61. Thereafter on 1.3.61 a case being Misc. Case No. 12 of 1961 under Section 514 Cr.P.C. was registered, against the petitioner and order was passed for issue of another notice on the petitioner to deposit the forfeited amount of money on failure of which it was ordered that distress warrant should be issued. Accordingly on 11.3.61 notice was issued on the petitioner in respect of the bail bond executed by him for the accused Noab Ali informing him that on his failure to appear in response to the Court's order Rs. 100,- would be forfeited; and directing him to deposit the same amount of money by 29.3.61 or to show cause by that date as to why the said amount should not be realised from him In accordance with law.

On 28.2.61 the petitioner filed a petition praying for being exempted from his liability under the bail bond. On 29.3.61 the learned S.D.M. passed an order to the following effect:

Notice on surety duly executed. He does not respond and no steps from him. Issue D.W. for realisation of forfeited amount for Rs. 200/-, Fix 26.4.61.

3. Thereafter on 30.3.61 the petitioner filed a petition stating inter alia that the bail bonds were furnished by him for production of the accused persons in connection with their arrest under Section 54 Cr.P.C. and not for their production for any offence under the Indian Passport Act as mentioned in the Police Report submitted subsequently against the accused persons. By that petition the petitioner prayed for cancellation of the order passed against him on the previous date. The learned Magistrate, however, rejected the petition. On 30.3.61 an amount of Rs. 200/- was realised by issue of distress warrant from the petitioner. Thereafter 26.4.61 the petitioner preferred an appeal under Section 515 Cr.P.C. before the Court of District Magistrate, Agartala, against the order dated 29.3.61. This appeal was, admitted on 26.4.61 and registered as Criminal Appeal No. 1 of 1961, it appears that a good number of adjournments were granted in the appeal on various grounds until 16.10.62 when the case was adjourned to 1.11.62 for hearing on the ground that the District Magistrate was out on tour. On 1.11.62 the case was taken up by Shri O. Kathipri, Additional District Magistrate who disposed

of the same by recording the following order:

The appellant is absent to-day also without any step. I find no reason for dragging the case any longer. The case is, therefore, dismissed under Section 249 Cr.P.C.

4. Being aggrieved by this order the petitioner filed Criminal Revision before the learned Sessions Judge, Tripura and the Sessions Judge after hearing the counsel for the petitioner and that learned Government Advocate has made this reference for setting it aside.

5. After hearing counsel on both sides, I am of the opinion that the order of the Magistrate is illegal and cannot therefore be maintained.

6. Under Section 515, Cr.P.C. appeal against an order passed under Section 514 Cr. P.C. lies to the District Magistrate. It is well settled that 'District Magistrate' in Section 515 Cr. P.C. does not include Additional District Magistrate. That being so, Shri O. Kathipri, Additional District Magistrate had no jurisdiction to dispose of the appeal. Again the order dated 1.11.62 is illegal because no criminal appeal is liable to be dismissed merely for the absence of the appellant. Even if the appellant be absent it is the duty of the Appellate Court to peruse the records and decide the appeal on a consideration of the merits of the case. The learned Magistrate not having done that there has been a clear, failure of justice. While dismissing the appeal, the learned Magistrate might have thought that the dismissal is warranted under Section 249 Cr.P.C. Section 249 Cr.P.C. however, has no application to any appeal and only provides for stopping of proceedings in summons cases instituted otherwise than upon complaint at any stage.

7. For the reason given above the reference is accepted. The order of the Additional District Magistrate dated 1.11.62 is set aside and the case is sent back to the District Magistrate to rehear and decide the appeal on merits.