

Emperor Vs. Vithaldas Moolji

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Court : Mumbai

Decided On : Jan-11-1932

Reported in : (1932)34BOMLR584

Judge : John Beaumont, Kt., C.J. and ;Broomfield, J.

Appeal No. : Criminal Appeal No. 708 of 1931

Appellant : Emperor

Respondent : Vithaldas Moolji

Judgement :

John Beaumont Kt., C.J.

1 This is an appeal by the accused from an order made by the learned Presidency Magistrate, Third Court, on November 20, 1931, whereby he directed that the bond given by the accused should be enforced to the extent specified in the order.

2. The material facts are that on August 10 last the accused was convicted of cheating, and a fine of Rs. 1,000 was imposed and the learned Magistrate gave ten days for the payment of the fine. That would make the fine payable by August 20, but for some reason or other everybody seems to have assumed that the date was fixed as August 24, and I will assume that that was the date fixed for the payment of the fine. On the same date as the conviction, viz., August 10, the accused entered into a bond whereby after reciting the sentence upon him to pay

a fine he bound himself to appear before the Court of the Presidency Magistrate, Third Court, at 11-30 on August 24, 1931, and in case of making default therein, he bound himself to forfeit to His Majesty the King Emperor of India the sum of Rs. 1,000. On August 21, the accused made an application for extension of the time for payment of the fine, and one week's extension was allowed. On August 28, further time was given until September 4. On September 4, the accused neither appeared in Court nor paid the fine, and thereupon apart from any question as to the bond the Magistrate could undoubtedly have issued a warrant for the arrest of the accused, the fine not having been paid by the last date allowed. On October 29, a distress order was issued by the Magistrate, and on November 6 the accused was arrested and committed to prison for default, of payment of the fine. The accused had appealed against his sentence, and on November 18, the appeal was heard and allowed, and he was discharged from prison, and of course his obligation to pay the fine came to an end. On November 20 the Magistrate made the order enforcing the bond which is now appealed from.

3. On behalf of the accused it is said that the terms of the bond, have not been proved to have been broken, because the bond only bound the accused to appear on August 24, at 11.30 a.m. There is evidence that the accused did not appear on September 4, which was the last day fixed for the payment of fine, but there is no evidence that he did not appear on August 24. The learned Magistrate disposed of that argument in this way. He says that time given to the accused was extended on the application of the accused on two occasions, but that it was not obligatory to take a fresh bond on each occasion when extension was sought and granted. Now, whether that is so or not appears to me to turn entirely on the form of the bond. In this case the bond provided for the accused's appearance on August 24, 1931. It did not refer to the date of the payment of the fine. The bond follows the form 37A in the 5th Schedule of the Criminal Procedure Code, but those forms need not be slavishly followed. They can be adapted to meet the facts of the particular case, and I think if there be any possibility of the date of payment of the fine being extended, the proper form of bond to take would be for the appearance of the accused on the specified date or on such other date or dates as may be fixed for the payment of the fine. If that had been the form of the bond then no difficulty would have arisen. As that was not the form of the bond, I think the

learned Magistrate was bound, when he extended the time, to take a fresh bond requiring the accused to appear on the altered date. It is said by the learned Government Pleader that we ought to assume that the bond was really intended to require the accused to appear on the date finally fixed for the payment of the fine, and further that, inasmuch as the accused did not appear on September 4, when the fine had to be paid, we should assume that he did not appear on August 24, when there was no reason for his appearance. But, in my opinion, we cannot make either of those assumptions, A bond imposing a penalty must always be construed strictly. Here the only obligation in the bond was to appear on August 24. The party alleging that the condition has been broken must prove the breach. We cannot assume a breach.

4. I think, therefore, the appeal must be allowed and the order of the learned Magistrate set aside,

Broomfield, J.

5. I agree.