

In Re: Hubert Crawford

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Court : Mumbai

Decided On : Jan-15-1918

Reported in : AIR1918Bom226; (1918)20BOMLR379; 45Ind.Cas.511

Judge : Shah and ;Marten, JJ.

Appeal No. : Criminal Application for Revision No. 406 of 1917

Appellant : In Re: Hubert Crawford

Judgement :

Shah, J.

1. The order, the legality of which we have to consider, relates to two bonds taken under the City of Bombay Police Act of 1902. These bonds were taken under Sections 106 and 107 of the Act, whereby one Clegg undertook to appear at a certain police station on a certain day and on subsequent days as directed, and the applicant before us stood surety for him in respect of both the bonds. The learned Presidency Magistrate has found that Clegg absconded from Bombay and that the bonds were broken. On that footing he has made an order directing a partial forfeiture of both these bonds.

2. The question of law which arises on this application is whether the Court of the Presidency Magistrate had any jurisdiction to direct these bonds to be forfeited under Section 514, Criminal Procedure Code. It is common ground that that is the

only section, under which, if at all, the Magistrate would have jurisdiction. It is also common ground that these bonds are not taken under the Code of Criminal Procedure, and that they are not 'bonds for appearance before a Court'. They are bonds taken under the City of Bombay Police Act for appearance before the Police. The question is whether Section 514 of the Code applies to such bonds.

3. The learned Magistrate has come to the conclusion that these bonds can be dealt with by him under Section 514. After a careful consideration of the arguments addressed to us, I am of opinion that such bonds cannot be dealt with under Section 514. 'Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or a Magistrate of the First Class, or when the bond is for appearance before a Court, to the satisfaction of such Court, that such bond has been forfeited ', the Court can deal with the matter as provided in the section. It is urged on behalf of the Crown that the words 'such bond' must be liberally construed so as not to defeat the object of Section 514, and that if so construed they would include not only a bond under the Code of Criminal Procedure or the bond for appearance before a Court but also such bonds as we have in the present case. I am in full sympathy with the argument that the words should be construed as far as possible so as not to defeat the obvious purpose of Section 514; but I am unable to interpret these words as including the bonds in question. They are admittedly not bonds under the Code and they are not bonds for appearance before a Court. I do not see how by any straining of the words 'such bond' it could be said that the bonds, though not falling under either of the two categories, can still be dealt with under Section 514.

4. It is not necessary for the purpose of this case to express any opinion as to whether the bond 'for appearance before a Court' can include within its meaning a bond not taken under the Code. I have assumed for the purpose of this case that a bond though not under the Code if it be for appearance before a Court may be within the meaning of the expression used in the second para of Sub-section 1 of Section 514. Even on that footing I do not see how a bond not taken under the Code and not for appearance before a Court can be treated as being within the scope of the section. It may be as the learned Magistrate points out that the

intention of the Legislature was to include even such bonds within the scope of Section 514 ; but we are concerned with the meaning of the words used. I am satisfied that the words are not susceptible of the construction put thereon by the Magistrate. If necessary the section can be amended by the Legislature so as to give power to the Presidency Magistrates to deal with such bonds as we have in the present case.

5. I am therefore of opinion that the Magistrate had no jurisdiction to direct any forfeiture of these bonds and that his order must be set aside as having been made without jurisdiction. Though this application is made by the surety only, having regard to our conclusion we must exercise our powers under Section 439, Criminal Procedure Code; and set aside the order not only as regards the present applicant but also as regards Clegg.

6. I may add that our order will be without prejudice to the rights and remedies, if any, of the Crown in respect of these bonds. The only point that is decided is that the remedy sought in the present Proceedings under Section 514 is not open to the Crown.

7. Before leaving this case, I desire to express my disapproval of the reference made to the opinions of the Public Prosecutor and the Advocate General by the learned Magistrate in his judgment. In my opinion no reference to these opinions should have been allowed by him.

8. The amount, if paid, must be refunded.

Marten, J.

9. I agree. As regards the intention of the Legislature I think, speaking for myself, that we can only ascertain that intention from the Code itself. With every desire to give a wide construction to the Code, I am quite satisfied that the bonds in question do not fall within Section 514. As regards the argument that the words ' the bond for appearance before a Court' include a bond taken under the City of Bombay Police Act for appearance before a Court, I agree with what my learned brother has said, viz., that it is unnecessary for us to decide that point, for the

bonds in question were not for appearance before a Court. I also agree that no reference should have been made in the learned Magistrate's judgment to certain opinions taken on behalf of the prosecution. The question of jurisdiction was for the Magistrate to decide, and counsel's opinion, whether correct or not, was irrelevant.

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