

In Re: Jesa Bhatha

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Court : Mumbai

Decided On : Oct-20-1919

Reported in : (1920)22BOMLR190; 55Ind.Cas.857

Judge : Shah and ;Hayward, JJ.

Appeal No. : Criminal Application for Revision No. 322 of 1919

Appellant : In Re: Jesa Bhatha

Judgement :

Shah, J.

1. In this case seven persons including Dhula Bhatha and Mangal Chuna were ordered by the Sub-Divisional Magistrate on the 18th of December 1918 to execute a personal recognizance for Rs. 100 and to furnish two solvent and respectable sureties for the same amount each for good behaviour for a period of one year. On the same day they were ordered to suffer rigorous imprisonment for one year or until within such period the security required was furnished, as no sureties were furnished by the persons concerned on that day. On the 16th of April last an application was made by the relations of these two persons Dhula and Mangal offering the necessary sureties on their behalf. The persons offered as sureties were two brothers, Purshotam and Gangashankar. The Sub-Divisional Magistrate referred the matter to the Police and on the 3rd of May last a report was made by the Sub-Inspector of Umreth that the sureties offered had land in the

village of Araj, and that they were ordinary men. The matter was further referred to the Sub-Inspector of Police at Dakore who made a report on the 12th of June last that the persons concerned had land at Araj and that they intended to employ the two persons Dhula and Mangal to work on their fields, that the sureties lived at Umreth and were not in a position to exercise control over the two persons, that the outlaws, for harbouring whom Dhula and Mangal along with others were called upon to furnish security for good behaviour, were still at large and that it was desirable not to accept any sureties until those outlaws were arrested. On this correspondence an order addressed to the Sub-Inspector was endorsed by the Sub-Divisional Magistrate in Gujarati on the 5th of July as follows :-'Under the circumstances stated by you bail cannot be granted. Please inform the applicants to that effect and report.' The relations of the two persons made an application against the said order to the District Magistrate who refused to interfere. They have made an application now to this Court. At the outset I desire to point out that this application should have been filed in the names of the persons concerned. In view of the fact that the order now in question was made on the application of the present petitioners, we do not consider it necessary to postpone the matter in order to have the application formally in the names of the two persons concerned. The matter has been brought to our notice, and it seems desirable to make the proper order without any further delay.

2. It is clear that according to the order made by him on the 18th of December 1918 the Sub-Divisional Magistrate had to inquire Whether the two sureties offered were solvent and respectable. Under Section 122 he could refuse to accept these sureties if they were unfit persons for reasons to be recorded. In the present case I cannot accept the conclusion reached by the Sub Divisional Magistrate, nor can I approve of the procedure followed by him. The materials before the Sub-Divisional Magistrate clearly showed that the sureties offered were solvent persons. There was nothing against them and they were apparently respectable persons. The other reason given in the Police report for not accepting them was that the persons in jail should not be released until the outlaws were arrested. It is hardly a reason for not accepting these sureties. The Sub-Divisional Magistrate has simply endorsed the report made by the Police. He has given no reasons of his own, and having regard to the state of the original papers in this case it seems to me that he

has not treated the matter judicially. Under Section 122 when a surety is offered, the Magistrate is required to consider the matter judicially and to state his reasons for not accepting a surety. In the present case he has failed to do so. He does not seem to have realised that according to his previous order he had only to consider R. 25 whether the sureties were solvent and respectable and he took a little over two months and a half to decide this simple question.

3. The District Magistrate recognized the defects in the order but refused to interfere on the ground that he doubted whether the sureties offered were of sufficient standing. It seems to me that that reason is vague. In dealing with the question of sureties under Section 122 it must be remembered that the object of the order for furnishing security for good behaviour is the prevention of crime and not to secure imprisonment of the persons concerned: see *Emperor v. Jiva Natha* : (1914)16BOMLR138 . The report of the Sub-Inspector of Police clearly shows that he has put forward a reason for not accepting sureties which really has the effect of diverting the preventive provisions to a punitive purpose. I am of opinion that the Sub-Divisional Magistrate was clearly wrong in accepting such a reason and that the sureties offered ought to be accepted in this case.

4. I would accordingly make the rule absolute, set aside the order of the Sub-Divisional Magistrate and order that the sureties may be accepted.

Hayward, J.

5. I agree. The acceptance of the sureties ought to be ordered. It was directed in the preliminary order that two solvent and respectable sureties for Rs. 100 each should be furnished. Two sureties named Gangashankar and Parshotam were produced. They were reported to be solvent and respectable. They owned houses and lands and they were prepared to employ the persons required to give sureties upon their land. It was, however, suggested that they would not be satisfactory sureties as the lands were at a place called Araj which would appear to be about six miles from their residence at Umreth. It was also suggested that it would be unwise to release the men from prison owing to the presence of outlaws in the neighbourhood. The sureties were therefore refused by the Sub-Divisional

Magistrate, and though it was recognized that the refusal was not quite in order, it was not interfered with by the learned District Magistrate.

6. It seems to me that the discretion to refuse sureties was not properly exercised. The sureties were within the description of the sureties required. They would, in my opinion, have proved as satisfactory as any sureties to be offered in that they would have taken the men required to give sureties as their own tenants and would therefore have had good opportunity of preventing them from getting into mischief. The distance of six miles of the land from their residence would not seem to me to be really material in the mofussil. It was obviously no good reason in law to refuse to release the men from prison that there happened, to be other outlaws in the neighbourhood.

7. It seems to me necessary also to observe that the scrappy order in vernacular refusing the sureties gave no reasons whatever for the refusal, and to point out that an order refusing sureties ought to be passed as a judicial order upon proper materials and that it has been specifically provided that reasons for refusal should be recorded. These provisions have been overlooked by the Sub-Divisional Magistrate and ought to have been set right, if he had jurisdiction to do so, by the District Magistrate under Section 122 of the Criminal Procedure Code. It seems to me desirable also to repeat that sureties for good behaviour and not imprisonment were the primary objects of the preventive provisions of Chapter VIII of the Criminal Procedures Code.

8. It is perhaps unnecessary to press the point as the matter is before us and would seem to require the orders proposed but it is unusual to proceed on petitions received merely from the relations of parties and should not be taken as a precedent under Section 439 of the Criminal Procedure Code.