

Sadananda Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-02-1985

Reported in : ILR1985KAR2813

Judge : Narayan Rai Kudoor, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279 and 338; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 446

Appeal No. : Cr.R.P. No. 241 of 1984

Appellant : Sadananda

Respondent : State of Karnataka

Advocate for Def. : K.H.N. Khuranga, Addl. State Public Prosecutor

Advocate for Pet/Ap. : M. Gopalakrishna Shetty, Adv.

Judgement :

ORDER

1. This Criminal Revision Petition is directed against the judgment and order dated 17-1-1984 passed by the Sessions Judge of Dakshina Kannada, Mangalore, in Cr. A. No. 63/83 confirming the order passed by the J.M.F.C. III Court, Mangalore, in M.C. No. 13/83 dated 28-10-1983 by which the petitioner herein was directed to pay the entire sum of Rs. 2,000/- covered under the bond executed by him as

penalty.

2. The matter arises in this way :

The accused in C.C. No. 7164/81 appeared before the Court of the J.M.F.C. III Court, Mangalore, in pursuance of the summons issued to him, on 23-2-1982. The accused was enlarged on self-bond of Rs. 2,000/- on the condition that he should give solvent surety on the next date of hearing. The accused remained absent on 8-3-1982, but his presence was exempted on an application filed on his behalf. Thereafter, the case stood adjourned to 15-3-1982 on which date the accused remained absent and N.B.W. was issued to him. On 25-3-1982 the Counsel for the accused filed an application to recall the N.B.W. issued to the accused by offering the petitioner herein as the surety for the accused. The Court accepted the petitioner as the surety on his executing a bond for Rs. 2,000/- and recalled the N.B.W. issued to the accused. Again the accused remained absent on 31-12-1982 and once again N.B.W. was issued to him and the case stood adjourned to 19-1-1983. On that day, the N.B.W. issued to the accused was returned unexecuted and the Court has ordered that the bond executed by the surety was forfeited and directed to register a case against the surety. In pursuance of the said order, M.C. No. 13/83 was registered against the petitioner and a notice as required under law was issued to the petitioner called upon him to pay the bond amount of Rs. 2,000/- as penalty or show cause why the payment of the said sum should not be enforced against him within 21-2-1983. Thereafter, the trial Court directed the petitioner to pay the entire bond amount of Rs. 2,000/- as per its order dated 28-10-1983. The petitioner carried the matter to the Court of Session, Dakshina Kannada, Mangalore, in Cr.A. No. 63/83. The learned Sessions Judge dismissed the appeal and confirmed the order of the trial Court as per his judgment and order dated 17-1-1984. Hence, this revision petition is by the petitioner challenging the order of the Courts below.

3. Heard Sri Gopalakrishna Shetty, the learned Advocate for the petitioner and Sri Khuranga, the learned Addl. State Public Prosecutor for the State. Perused the records and also the orders of the Courts below which are under challenge.

4. Action was taken against the petitioner under Section 446 of the Code of Criminal Procedure (for short 'the Code'). It is undisputed that the petitioner offered surety in a sum of Rs. 2,000/- by executing a bond for the accused in C.C. No. 7164/81 in which the accused was charge-sheeted for offences under Sections 279 and 338 I.P.C. The petitioner offered surety on 25-3-1982. On 31-12-1982 the accused remained absent. N.B.W. was issued against the accused returnable by 19-1-1983. On 19-1-1983 N.B.W. issued to the accused was returned unexecuted and the Magistrate passed an order forfeiting the bond executed by the petitioner and directed to register a case against him. Accordingly, a case in M.C. No. 13/83 was registered against the petitioner. Final order was passed on 28-10-1983 after issuing a show cause notice to the accused. These are the undisputed facts.

5. Section 446 of the Code does not provide for any notice to be issued to the surety before forfeiting the bond executed by him for failure of the terms of the bond executed by him. The wordings of Section 446(1) clearly show that if a term of a bond is violated or breach of a term of a bond is committed, the bond automatically stands forfeited. All that is required is that the Magistrate has to satisfy himself that the bond has been forfeited. Therefore, the issue of the notice to the surety before forfeiting the bond is not necessary (see *Madhu v. State of Karnataka*, ILR (1981) 2 Kant 1138 : (1982 Cri LJ NOC 9)).

6. However, it is clear from the last portion of sub-section (1) of Section 446 that once the bond has been forfeited, the Court shall call upon the surety, bound by such bond to pay the penalty thereof or to show cause why it should not be paid and at that stage the Court shall record the grounds of the proof of the forfeiture of the bond. In other words, at the stage of issuing the notice to the surety after forfeiting his bond, the Court shall record the grounds of the proof of the forfeiture of the bond and call upon the surety to pay the penalty or to show cause why it should not be paid. Obviously law enjoins upon the Court to record the grounds of forfeiture of the bond at that time of issuing the notice to the surety calling upon him to show cause why it should not be paid so as to enable the surety to show cause, if any against payment of the bond amount by way of penalty. This is particularly to be so, because no notice is contemplated under Section 446 to the surety before forfeiting his bond. This being the position in law, it seems to me that

strict compliance of the provision relating to the issue of the notice to the surety after forfeiting the bond should be insisted upon because action to be taken against the surety in this proceeding is of a penal nature.

7. Bearing these principles of law in mind, let me now consider the case on merits.

8. It is not the case of the petitioner that he was not served with a notice as required under Section 446 of the Code. Sri Gopalakrishna Shetty made available to the Court a certified copy of the notice issued to the petitioner calling upon him to pay the bond amount as penalty or to show cause why the payment of the said sum should not be enforced against him. The bond executed by the petitioner was forfeited as he failed to keep the accused present either on 13-12-1982 or on 19-1-1983 as undertaken by the terms of the bond executed by him. The Court should have recorded this ground as the proof for forfeiting the bond in the notice issued to the surety as required under the last para of sub-section (1) of Section 446. Instead, what was stated in the notice issued to the petitioner was that the bond was forfeited as the surety failed to keep the accused present before the Court on 25-3-1982 which was patently an inaccurate ground as could be seen from the records of the case which show that the petitioner offered himself surety for the accused by executing bond on 25-3-1982. Thus, it is seen that the notice issued to the petitioner was not in strict compliance with the terms of the last para of sub-section (1) of section 446.

9. The next question for consideration is what should be the proper order to be made in this case. Normally, in view of the defective notice issued to the petitioner, the matter should have been remanded to the Court of the first instance setting aside the orders under challenge to dispose of the matter in accordance with law after giving a notice in accordance with the provisions of S. 446. However, Sri Gopalakrishna Shetty made an earnest appeal to the Court in view of the facts and circumstances of the case that such a course need not be followed as it would amount to an unnecessary harassment to the petitioner. In this connection, he pointed out that the petitioner had offered himself as a surety to the accused in the very same case on 26-2-1983 in a sum of Rs. 1,000/- by executing a bond which was accepted by the Court. Thus, the petitioner has undertaken to keep the

accused present during the trial of the case. Besides considerable time has elapsed since the orders under challenge were made. On these grounds he submitted that the matter may be closed which would subserve the ends of justice.

10. It seems to me Sri Gopalakrishna Shetty is right in his submission in the circumstances of the case. The first order was made on 28-10-1983. The petitioner has fought an unsuccessful battle in the lower appellate Court challenging the said order and come to this Court. The bond was forfeited for failure to keep the presence of the accused before the Court on 19-1-1983. The order directing him to pay the entire bond amount as penalty was made on 28-10-1983. In between 19-1-1983 and 28-10-1983 the petitioner has offered himself as surety to the very accused in the very case on 26-2-1983 undertaking to keep the accused present during the course of the trial by executing a fresh bond in a sum of Rs. 1000/-. The photostat copy of the order sheet produced by Sri Shetty shows that the accused has been attending the Court without fail on subsequent dates. All these circumstances, in my view, are sufficient to accept the submission made by Sri Gopalakrishna Shetty and close the matter once for all.

11. In the result, for the reasons stated above, the revision is allowed. The orders under challenge both of the learned Sessions Judge as well as the learned Magistrate are set aside. If any amount in pursuance of the orders of the Courts below was realised from the petitioner, the same is directed to be refunded.

12. Revision allowed.