Appanna Vs. State of Mysore

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Court : Karnataka

Decided On : Apr-13-1973

Reported in : 1974CriLJ421; (1973)1MysLJ539

Judge : M.S. Nesargi, J.

Appellant : Appanna

Respondent : State of Mysore

Judgement :
ORDER

M.S. Nesargi, J.

1. This petition is directed against the order passed by the First Class Magistrate, Hassan under Section 514 of the Criminal Procedure Code (to be hereinafter referred to as the 'Code'), in C. Mis. No. 123 of 1971 forfeiting the bond executed by the petitioner as surety for keeping an accused in C. C. No. 1508 of 1970 present in Court, in favour of that Court, and levying a penalty of the full amount of the bond, viz., Rs. 500/- and confirmed by the Sessions Judge, Hassan, in Criminal Miscellaneous Appeal No. 3 of 1972.

2. The few facts necessary for a decision in this matter may be narrated as follows:

The accused in C. C. No. 1508 of 1970 on the file of the First Class Magistrate, Hassan, was charge-sheeted for having committed an offence punishable under Section 379 of the Indian Penal Code read with Section 75 of the Indian Penal Code, and this petitioner and another person stood surety for the said accused. The petitioner executed a bond in favour of the Court stipulating that he would keep the accused present on each and every date of hearing of the said criminal case and if he failed to do so, he would forfeit a sum of Rs. 500/- in favour of the State. The said accused did not appear to take trial in the said criminal case and thereupon the Court called upon the sureties to keep the accused present, but they were unable to do so. Then the learned Magistrate issued a notice to this petitioner calling upon him to show cause as to why under the above narrated circumstances the bond executed by him should not be forfeited. The petitioner ultimately appeared and filed objections after engaging a counsel. He contended that he was a poor man and that a mutual friend had persuaded him to stand surety for the accused in the said case and, therefore, his bond should not be forfeited. He also contended that even if the bond is forfeited, no penalty should be levied on him, and in case it was decided to levy penalty on him, the amount should be restricted to a sum of Rs. 100/- only. The learned Magistrate after hearing the contentions of the petitioner passed the impugned order holding that the bond was forfeited and the petitioner was liable to pay the full amount of the bond, viz., Rs. 500/- as penalty. He then passed an order directing a notice to be issued to the petitioner to pay the penalty of Rs, 500/-. It is at that stage that the matter was taken up in appeal before the Sessions Judge, Hassan in Criminal Misc. Appeal No. 3 of 1972 and the Sessions Judge confirmed the order of the Magistrate.

3. Sri S. Raja Iyengar, the learned Advocate appearing on behalf of the petitioner, urged that the learned Magistrate was wrong in passing one consolidated order of forfeiting the bond and directing the petitioner to pay penalty of Rs. 500/- as such a course is not open under the provisions of Section 514(1) and (2) of the Code. He nextly contended that the learned Sessions Judge was wrong in observing in his judgment that the appellant was unable to argue before him that any fault in following the procedure, had been committed by the learned Magistrate. Sri Raja Iyengar placed reliance on the decision reported in : AIR1965 All605 (Uday Raj v.

The State), in support of his contention. The facts in the said decision were that the Sessions Judge had passed a consolidated order of forfeiting the bond executed by the surety and directing recovery of penalty of a particular sum as the surety had failed to keep the accused present before him in the concerned Sessions Case. This order had been passed without issuing any notice to the surety. H. C. P. Tripathi held that it was irregular to pass a single order, forfeiting a surety bond and directing its amount to be realised as penalty, as according to Section 514 of the Code two steps were essential, and these were : (1) an order to be passed forfeiting the bonds, and (2) a notice to be served on the sureties to show cause why the amount of the bond be not realised from them by way of penalty. The order in question was set aside.

4. I am unable to see how this decision is of any assistance to the petitioner, Admittedly a notice calling upon the surety to show cause as to why his bond should not be forfeited, had been issued by the learned Magistrate and the petitioner appeared and showed cause not only as to why the bond should not be forfeited, but also why penalty should not be levied, and in case it was decided to levy penalty, such penalty should be restricted to a sum of Rs. 100/- only instead of the whole amount of the bond, viz., Rs. 500/-.

5. Now it is to be considered whether the contention of Sri Raja lyengar that in any view of the matter, a single order of forfeiting the bond and levying penalty cannot be passed in law is sustainable.

6. In Ghulam Mehdi v. State of Rajasthan : AIR 1960 SC1185 , it is laid down as follows on the construction of Section 514(1) and (2) of the Code:

This provision shows that before a surety becomes liable to pay the amount of the bond forfeited, it is necessary to give notice why the amount should not be paid, and if he fails to show sufficient cause, only then can the Court proceed to recover the money.

It is, therefore, clear that before a surety, whose bond is forfeited, is called upon to pay a penalty, he is entitled to a notice calling upon him to pay the penalty or to show sufficient cause as to why penalty should not be levied on him.

7. A reading of Section 514(1) and (2) of the Code makes it plain that the law does not contemplate issue of a notice to a surety before the bond executed by such surety is forfeited. All that is required to be done by the concerned Magistrate or the Judge is that he should find that it is proved to his satisfaction that the bond had been forfeited, and record the grounds of such proof. After finding that a bond had been forfeited, he is required to issue K notice to the concerned surety intimating him that the bond had been forfeited and calling upon him to pay the penalty thereof or to show cause as to why it should not be paid. Form 45, Sch. V of the Code is the form in which such notice is required to be issued. It is only thereafter that the Judge or the Magistrate would be competent to levy the penalty and proceed to recover the same by issuing a warrant for attachment etc. if sufficient cause is not shown and the penalty is not paid'.

8. In the case on hand, the Magistrate erred on the safer side by issuing! a notice to the surety even before forfeiting the bond executed by the surety. Thereafter he has issued another notice to the surety viz., the petitioner calling him to pay the penalty of Rs. 500/- as decided by the order passed by him while forfeiting the bond. It is possible to construe this notice as a notice issued in Form 45, Schedule V. of the Code. But, a perusal of the contents of this notice shows that the contents are not the same. In view of the position in law as stated above, it is necessary that such a notice in Form No. 45 Schedule V of the Code is issued to the petitioner before proceeding against him for recovery of the penalty.

9. In view of the foregoing reasons, I hold that a notice in Form 45, Schedule V of the Code is necessary to be issued and, therefore, quash the notice calling upon the petitioner to pay penalty of Rs. 500/- now issued by the Magistrate and direct the Magistrate to issue a notice in Form 45, Schedule V of the Code and then proceed with the matter according to law. This revision petition is disposed of accordingly.