

**V. Sampath Vs. State**

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**Court :** Karnataka

**Decided On :** Sep-29-2006

**Reported in :** 2008(1)KLJ100

**Judge :** K. Ramanna, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 446(3)

**Appeal No. :** Cri. A. No. 2159 of 2006

**Appellant :** V. Sampath

**Respondent :** State

**Advocate for Def. :** Marbul Ahmed, HCGP

**Advocate for Pet/Ap. :** V.N. Jagadeesh, Adv.

**Judgement :**

**K. Ramanna, J.**

1. Though this matter is listed for admission with consent of both counsel the matter is heard and disposed of with the following order.

2. This is an appeal filed against the order dated 20-9-2006 passed by (he Fast Track Court V in S.C. No. 414/06 directing this appellant to suffer imprisonment for a term of six months for non-payment of penalty amount.

3. Heard the learned Counsel for the appellant and the State Public Prosecutor-II for respondent-State.

4. It is an admitted fact that the appellant-Sam path happens to be a public servant has executed a surety bond for a sum of Rs. 30,000/- on behalf of the accused in Criminal No. 145/04 (CC. No. 12978/05) before the IIInd Addl. C.M.M., Bangalore. After filing the charge-sheet summons were issued by the IIIrd Addl. C.M.M., Bangalore, in C.C. No. 12978/05. Later he was present on 22-4-2006 and was committed to Sessions Court which was registered in S.C. 414/2006 and made over to Fast Track Court-V. It is argued by the learned Counsel for the appellant that without forfeiting bond and without registering the case as miscellaneous case the Court below straightway committed the appellant-surety to suffer imprisonment in civil prison for a period of six months is illegal. Further the trial Court without forfeiting the bail bond and surety bond, presuming that the surety amount cannot be recovered from the surety, has straightway directed to send the appellant to prison is illegal and incorrect. Therefore the impugned order under challenge is liable to be set aside.

5. On the other hand the learned State Public Prosecutor submitted that when the appellant fails to keep the accused present before the Sessions Court then he is liable to pay the penalty amount i.e. Rs. 30,000/-. It is argued that since the appellant, neither kept the accused present before the Court nor deposited the penalty amount therefore the Sessions Judge has rightly sent the appellant-surety to the civil prison to suffer imprisonment and, therefore, the impugned order passed by the Sessions Court is in accordance with law and this appeal is liable to be dismissed.

6. I have carefully examined the materials placed on record as well as the certified copy of the order sheet maintained by the Fast Track Court-V, Bangalore. The appellant executed a surety bond at the initial stage i.e., when the accused was arrested in Crime No. 145/04. According to the records available before the Court this appellant has executed a surety bond on 30-7-2004 for a sum of Rs. 30,000/- before the IIInd Addl. C.M.M., Bangalore. Of course he was present when the case was committed by the IIInd Addl. C.M.M., Bangalore, to the Court of Sessions, but

when the matter was pending before the Sessions Court, he remained absent. Therefore, the trial Court issued non-bailable warrant to the accused and notice to the appellant-surety. When the appellant-surety was present and sought time to secure and produce the accused before the Court the time was granted on two or three occasions. But without forfeiting the bond or surety bond the trial Court passed the impugned order on 20-9-2006 on the ground that the surety has expressed his inability to produce the accused and he has not deposited the surety amount is highly illegal and incorrect. Since the trial Court failed to pass an order forfeiting of surety bond the question of payment of bond amount or penalty amount does not arise. When the appellant-surety failed to produce the accused it is the duty of the Court to pass an order forfeiting the bail and surety bonds executed by the surety. The trial Court has committed an error in sending the appellant surety to the civil prison to undergo imprisonment for a period six months, without forfeiting the bail bond and surety bond, amounts to curtailment of liberty of a citizen. When the accused remained absent on hearing dates, it is the duty of the Court to secure the accused by issuing non-bailable warrant and notice to the surety through the higher authorities of the police department after forfeiture of bail bond and surety bond. Of course, subsequently, the trial Court has made an attempt by issuing proclamation against the accused but it is pertinent to note that on the same date i.e., on 20-9-2006 the appellant herein filed an application under Section 446(3), Cr. P.C. with a prayer to discharge him by imposing nominal penalty. But the trial Court held that it has no power to recall its own order. The order sheet discloses that the appellant-surety stated to have expressed his inability to produce the accused but he has nowhere stated that he is unable to deposit the surety amount before the trial Court. Therefore the impugned order passed by the trial Court in S.C. No. 414/06 without following the principles of natural justice and without following the procedures as contemplated in Chapter XXXIII of the Code of Criminal Procedure is a perverse finding recorded by the trial Court. Therefore, the impugned order, so far as sending the appellant-surety to the civil prison to suffer imprisonment for a period of six months, is liable to be set aside.

7. The appeal is allowed in part. The impugned order dated 20-9-2006, so far as committing the appellant-surety to the civil prison for a period of six months, is

hereby set aside. The matter is remitted back to the trial Court with a direction to dispose of the case of the appellant-surety as per the provisions contemplated under Chapter XXXIII of Cr. P.C. and also on the basis of the observations made by this Court in this judgment. The Superintendent of Central Prison, Bangalore, is directed to release the appellant forthwith. The appellant-surety is directed to appear before the trial Court on 13-11-2006 and he is permitted to file necessary application in accordance with law.

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