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Court : Allahabad

Decided On : Jun-26-1959

Reported in : AIR1960All419

Judge : D.S. Mathur, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 504 and 514;
[Contract Act, 1872](#) - Sections 56, 63 and 134

Appeal No. : Criminal Revn. No. 913 of 1959

Appellant : Inder Singh and anr.

Respondent : State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : J.N. Chaturvedi, Adv.

Disposition : Revision Dismissed

Judgement :

ORDER

D.S. Mathur, J.

1. This is an application in revision by Inder Singh and Makhan Singh against the order of the Sessions Judge of Meerut upholding the order of the Magistrate

directing each of the applicants to deposit in court Rs. 1200/- as penalty for being unable to produce the accused in court to undergo the trial.

2. The only point urged before me is that when the case was transferred from the court of one Magistrate to another in cases where the sureties had undertaken to produce the accused before the former court, the surety bonds stood discharged as soon as the case was transferred to another court, and that the bonds did not revive when the case was retransferred to the original court.

3. The facts of the case are not in controversy. One Gurbachan Singh was standing his trial under Section 304-A I. P. C. in the court of Shri N.C. Sharma, Magistrate of Meerut, and the present applicants stood surety for Gurbachan Singh and executed a surety bond whereby they undertook to pay the penalty if the accused failed to present himself in the court of Shri N. C. Sharma on every day of hearing for so long as the case remained pending for preliminary inquiry or was committed to the court of Session. The case was later on transferred to the court of Shri Jai Chand and in the end to that of Shri G. A. Farooqi. When the accused did not put in appearance in the court of Shri G. A. Farooqi, the case was retransferred to the court of Shri N. C. Sharma who forfeited the surety bond and called upon them to deposit the amount of the bond or to show cause why such an order be not passed. After concluding the inquiry Shri N. C. Sharma directed the applicants to pay full penalty of Rs. 1200/- each.

4. Two cases of Calcutta High Court had been brought to the notice of the lower appellate court. In one, namely. *Hem Lal Ganguly v. Emperor* : AIR1934 Cal101 a view favourable to the applicants was taken. This view was, however, not followed in the subsequent case of *Amulya Charan Pal v. Emperor* : AIR1934 Cal785 . The decision in the earlier case cannot be regarded as a good law chiefly because the learned Judge did not give any reasons for taking that view and merely applied the proposition laid down in *Shamsuddin Sirkar v. Emperor*, ILR 30 Cal 107 the facts of which were different. In ILR 30 Cal 107 the bonds were forfeited by another court to which the case was transferred and not by the court before whom the sureties had bound themselves to present the accused.

In : AIR1934 Cal785 the question was considered in general terms without reference to the provision of the Indian Contract Act. It was observed therein that the contract was between the Crown and the surety, that the surety had contracted with the Crown that he would produce the accused before the Magistrate till the case against the accused was disposed of, and that the case had not been disposed of and the surety had failed to produce the accused. It was thus held that the surety bond was still in force and the sureties could be penalised if they failed to produce the accused in court. I am in full agreement with the principle laid down in this latter Calcutta case.

5. The learned counsel for the applicants relied upon three sections of the Indian Contract Act, namely, Sections 56, 53 and 134. It was also said that on the application of the principle of equity, the contract should not be enforced once the case had been transferred to another court.

6. Section 56 of the Indian Contract Act runs as below :

Agreement to do Impossible Act: An agreement to do an act impossible in itself is void. Contract to do Act Afterwards Becoming Impossible or Unlawful : A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful becomes void when the act becomes impossible or unlawful.

Compensation For Loss Through Non-Performance of Act Known to be Impossible or Unlawful -- Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.'

The contract was to produce the accused in a particular Court. Production of the accused before any Court is independent of the court where the accused has to be produced, for example, the production would depend upon the influence of sureties in compelling the accused to attend the Court on every date fixed. It will not, in any way, be connected with or dependent upon the Court in which the case

is pending. Any court before whom the case is pending can issue summons or warrant for the appearance of the accused and they can all render assistance to the sureties to secure the attendance of the accused in court. Consequently, it cannot be said that by the transfer of the case to another Court it became impossible to any out the contract. Section 56 of the Indian Contract Act is applicable to only those agreements which relate to the doing of an impossible act or an act which had become impossible to do on account of certain events happening subsequent to the making of the contract.

7. Section 63 of the Indian Contract Act provides that every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit. In the case of surety bonds in criminal cases the promisee is the State and not the Court. Courts cannot be treated as agent of the State, otherwise Courts would be incompetent to decide cases instituted by the State. Consequently, the promisee cannot be said to have been responsible for the transfer of the case from one court to another. Further, by the transfer of the case it cannot be said by any stretch of imagination that the Court had dispensed with' the performance of the promise. The surety continued to be responsible for the production of the accused in Court referred to in, or contemplated by, the surety bonds.

8. Section 134 of the Indian Contract Act governs the discharge of surety by release or discharge of principal debtor. It provides that the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. By the transfer of the case to the court of another Magistrate the principal debtor namely, accused, is not discharged. He has to undergo his trial in one Court or the other. Further, by the transfer of the case there is no act or omission on the part of the Court or the State by which the accused is discharged.

9. In other words, there is no provision in the Indian Contract Act where under surety bonds executed by sureties they would stand discharged as soon as the

case is transferred to another court.

10. The principle of equity cannot also be of any help to the sureties. They had bound themselves to present the accused before a court of law till the conclusion of the trial. Consequently, their responsibility would continue for so long as the case is pending. Admittedly by the transfer of the case from one Court to another, the criminal case does not come to an end.

11. I am thus of opinion that the surety bond executed by the applicants was in force when the criminal case was retransferred to the file of Shri N.C. Sharma and he had the power to forfeit the bond and to impose penalty when the sureties failed to produce the accused in Court to undergo the trial.

12. Instances of accused persons absconding are on the increase and in the circumstances of the case the amount of penalty imposed cannot be said to be excessive,

13. The revision application is hereby dismissed summarily.

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