

Prohit Anandi Prasad and ors. Vs. Rex.

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SooperKanoon Citation : sooperkanoon.com/458129

Court : Allahabad

Decided On : Oct-01-1948

Reported in : 1949CriLJ516

Judge : Agarwalla, J.

Appellant : Prohit Anandi Prasad and ors.

Respondent : Rex.

Judgement :

ORDER

Agarwalla, J.

1. This is a revision against an order of the learned Sessions Judge dismissing an application in revision presented to him by the applicants against the order of the learned District Magistrate of Dehra Dun dated 2nd July 1946, which in its turn upheld the order of Mr. M. P. Tripathi, Sub-divisional Magistrate of Dehra Dun, dated 23rd March 1946.

2. The facts appear to be as follows. Mahant Paras Bam is an influential person of Rishikesh. Prohit Paras Earn another gentleman, (not to be confused with Mahant Paras Earn), was prosecuted at the instance of Mahant Paras Earn through one Jagannath, probably his servant, under 8.107, Criminal P. O, While this case was proceeding Prohit Paras Earn was ordered by the Court to enter into

a bond to keep the peace during the pendency of those proceedings with two sureties in the sum of Es. 100 each. This was done. On 23rd March 1946, an incident was alleged to have happened in which Mahant Paras Earn was said to have been assaulted by Prohit Paras Earn. Thereupon an application was made to the learned Sub-divisional Magistrate that Prohit Paras Earn had forfeited the bond entered into by him and that action be taken against him and the sureties under Section 514, Criminal P. C. On that date two witnesses were examined behind the back of Prohit Paras Earn and the sureties by the learned Magistrate and he felt satisfied that the bond had been forfeited and issued an order to all the parties concerned to show cause why the amount of the bonds be not realised. When this notice was issued, cause was shown by the parties concerned and evidence was taken by the learned Magistrate de novo. On behalf of the complainant several witnesses were examined including Mahant Paras Earn. Upon a consideration of the entire evidence the learned Magistrate confirmed his previous order and further directed that the amount of the bonds be realised in full.

3. Then one appeal was filed against the order dated 23rd March 1946, by which it was said that the bonds had been forfeited and notice was issued to the parties concerned to show cause why the amount of the bonds should not be realised. Another appeal was filed against the final order passed by the learned Magistrate confirming his previous order of 23rd March 1946, and ordering that the full amount of the bonds be realised. In the former appeal the point raised before the learned District Magistrate was that the learned Sub-divisional Magistrate had no power to forfeit the bond without first issuing a notice to the parties as to whether there was reason enough to hold that the bond had been forfeited or should be forfeited. The learned District Magistrate dismissed this appeal on the ground that it was still open to the parties to satisfy the Magistrate that the bond had in fact not been forfeited. He further held that no appeal lay from that order.

4. In the other appeal filed against the subsequent order of the learned Magistrate confirming his previous order, the District Magistrate held that the learned Magistrate was justified in passing the order of forfeiture and of realising the amount of the bonds. The evidence, in his opinion, was sufficient to warrant the passing of that order.

5. Against both the orders of the learned Magistrate, two revision applications were filed in the Court of the learned Sessions Judge. These were heard together and one order was passed by the learned Sessions Judge. The learned Sessions Judge held that although the learned Magistrate should have issued a notice before he passed the order of forfeiture, nevertheless, since all the evidence that could be given by the parties was in fact taken by him at a subsequent stage and a final order was passed by him, it was not necessary to set aside the order of 23rd March 1946. In the opinion of the learned Sessions Judge the materials before the Court were sufficient for the passing of the order that was actually passed ultimately. Against this order of the learned Sessions Judge the applicants (Prohit Paras Earn and others) have come up in revision to this Court.

6. learned Counsel appearing for the app 1 cants has argued the case at great length. He has urged that the original order of the learned Magistrate dated 23rd March 1946, by which he ordered the forfeiture of the bonds and issued notice to show cause why the amount of the bonds should not be realised was illegal and without jurisdiction. According to learned Counsel the Court should have first issued notice before it decided that the bond had in fact been forfeited.

7. The matter has to be decided upon a -consideration of the language of Section 5U, Criminal P. C, which runs as follows:

(1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate, or Magistrate of the first class.

or when the bond is for appearance before a Court, to the satisfaction of such Court.

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show oases why it should not be paid.

(2) If sufSoient cause is Dot shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of

the moveable property belonging to such person or his estate if he be dead.

It would appear that this section contemplates that there must first be proof to the satisfaction of the Court that a certain bond has been forfeited. When this proof is adduced, the Court is directed to record the grounds of such proof and then to call upon any person bound by such bond to pay the penalty thereof, or to show Cause why it should not be paid. The subsequent paragraphs of the section relate to what is to happen if cause is not shown and the penalty is not paid, and deal with the procedure for realising the amount of the bond or the penalty imposed. The section does not lay down that any notice is to be issued, in the first instance, when proof is adduced before the Court that a bond has been forfeited. learned Counsel argues that, although it is not so laid down in so many words, yet on the principle of natural justice that no order should be passed against a party unless he has been given an opportunity to show cause against the proposed order, the Court should have, in the exercise of its inherent jurisdiction, issued the notice and should have then passed an order of forfeiture. There is no doubt that this general principle is founded upon good reason, and I have no doubt that in this case if the Court actually proceeded to find as a fact that the bond had been forfeited it should have first given notice to the parties to show cause why the bond should not be forfeited. As I read the section, however, I do not think that it contemplates the passing of an order of forfeiture before issuing of notice to show cause why the amount should not be paid. I think what the section requires is that when the Court is prima facie satisfied that a bond appears to have been forfeited, then it shall issue notice to the person bound by the bond either to pay the penalty thereof or to show cause why it should not be paid. The section does not authorize the Court to pass an order of forfeiture straightway. The Court is required merely to record the grounds of the proof and not its final decision that the bond has in fact been forfeited. That conviction of the Court will have to be recorded after the party has shown cause in pursuance of its notice.

8. In this case although the learned Magistrate should not have passed a definite order that the bond has been forfeited and should have, merely recorded the grounds of the proof adduced before it and then issued notice to the parties to show cause why the amount of the bonds should not be paid, nevertheless what

was actually done was in substantial compliance with the provisions of the section. When notice was issued to the parties and they showed cause, the learned Magistrate did take all the evidence that the parties adduced and considered the matter de novo and arrived at the conclusion that the bond had in fact been forfeited and then passed the order that the amount of the bond should be paid. In my opinion there was no substantial mistake so far as the procedure is concerned in the method adopted by the learned Sub-divisional Magistrate.

9. learned Counsel has argued that, upon the merits as well, the order of forfeiture should not have been passed. I think I am not called upon, in revision, to review the evidence recorded in the case. It is not the contention of the learned Counsel that upon the evidence recorded by the Courts below no case was made out for forfeiture. What he wants to show is that upon a proper appreciation of the evidence the order should not have been passed. This was the function of the appellate Court. The lower appellate Court has considered the evidence and has come to the conclusion that the order passed by the learned Magistrate was fully justified upon the evidence on record. I therefore do not propose to interfere with the orders passed by the Court below. The revision is rejected.