

Jeet Singh and ors. Vs. the State

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SooperKanoon Citation : sooperkanoon.com/464960

Court : Allahabad

Decided On : Aug-17-1983

Reported in : 1984CriLJ437

Judge : A.S. Srivastava, J.

Appellant : Jeet Singh and ors.

Respondent : The State

Judgement :

A.S. Srivastava, J.

1. The only question which arises in this appeal is whether on a date fixed for hearing of an appeal it is essential for an appellant to appear personally in the court and whether the bonds furnished by him and the sureties can be forfeited on account of his absence on that date.

2. The brief facts of this case are as under:

Jeet Singh (appellant No. 1) was convicted and sentenced in a criminal case (No. 1138 of 1977) to four months' R. I. under Section 60 of the U. P. Excise Act. He filed an appeal (Criminal Appeal No. 87 of 1977) against that order in the court of Sessions Judge, Nainital. He was also released on bail in that appeal on furnishing sureties and on executing a personal bond as ordered by the Sessions Judge,

Sardar Singh (appellant No. 2) and Mahendra Singh (appellant No. 3) were his sureties.

3. On 24-5-1977 the Sessions Judge fixed 19-7-1977 for hearing of the appeal and as provided in Section 385(1)(i), Cr. P. C. directed this date of hearing to be notified not only to the appellant No. 1 but to his counsel also. The order of the Sessions Judge dated 24-5-1977 did not further call upon the appellant No. 1 to appear personally on that date. It merely required that date to be notified to the appellant No. 1 and his counsel (Suchit Ho). On 19-7-1977 neither the appellant No. 1 nor his counsel appeared. In consequence thereof the bonds furnished by the appellant No. 1 and his sureties viz. appellants Nos. 2 and 3 were forfeited. After forfeiture notices were issued to them to show cause why penalties contemplated under the bonds be not realised from them. The three appellants entered appearance and filed objections which were rejected on 14-1-1978. The realisation of Rs. 500/- as penalty from each of the appellants under the bonds furnished by them were also ordered to be made. It is this order of the learned Sessions Judge which is now the subject-matter of this appeal.

4. It has been argued by the learned Counsel for the appellants that the learned Sessions Judge had no power to order the forfeiture of the bonds of the appellants on the basis of the absence of the appellant No. 1 in the court on 19-7-1977 because on that date the appellant No. 1 was not at all required to appear personally in his court. The notice issued to him under Section 385(1)(i), Cr. P. C. was meant for the appearance of the appellant No. 1 for arguing the appeal on that date. This appearance could be done by his counsel engaged for arguing that appeal

5. Section 385(1)(i), Cr. P. C. contains the provision under which the appellate court, after fixing a date of hearing, notifies it to an appellant by means of a notice. This Section says:-

If the appellate court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given -

(i) to the appellant or his pleader.

6. The object of this section is manifest from the section itself. Its purpose is to inform the appellant or his pleader to arrange for argument in that appeal on that date. The words 'or his pleader' in the section indicate that the information of hearing even to the 'counsel' of the appellant would serve the purpose. This being the object of this section, the personal appearance of an appellant in his appeal on a date fixed is not essential even though the notice is served on him unless of course the court further requires his presence in court on that date by a specific direction to that effect. After service of a mere notice issued under Section 385(1)(i), Cr. P. C. he has not to appear on such a date for getting the appeal argued. This object of the section is also apparent from its heading which is as under:

Procedure for hearing appeals not dismissed summarily.

Thus, it is clear that this section only lays down procedure for 'hearing appeals'.

7. Therefore, the absence of an appellant on such a date would not entail forfeiture of either his bonds or those of his sureties. It is also clear from the subsequent Section 386, Cr. P. C. which contain a provision to be followed by the appellate court when an appellant does not appear on the date fixed for hearing of the appeal. This section is as under:

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public prosecutor, if he appears, and in case of an appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may....

8. The words 'if he appears' in this section are significant. The hearing of an appellant in his appeal is envisaged only when 'he appears' on the date of hearing, notified to him by the notice issued under Section 385(1)(i), Cr. P, C. Other wise the court will proceed to decide it after perusing the record.

9. This matter may be put differently also. Under the terms of surety bonds or a bond of an accused, the bonds are to be forfeited only when the accused does not appear when he is called upon to do so. Mere intimation of a date fixed for hearing of an appeal sent to the appellant under Section 385(1)(i). Cr. P. C. does not by

itself constitute a direction of the court calling upon him to appear on that date personally. His absence on such a date cannot, therefore, be held to be a breach of the terms of the bonds of the accused and his sureties warranting their forfeiture.

10. Adverting now to the facts of this case, I find that the present Sessions Judge could have disposed of the appeal on 19-7-1977 after perusing the record when the appellant No. 1 did not appear before him despite notice of that date. Since the personal attendance of the appellant No. 1 was not necessary on that date, there was no justification for the forfeiture of his bonds and the bonds of his sureties on account of his absence on that date. Consequently the proceedings subsequent to the forfeiture of the bonds of the appellants are also unjustified and not warranted by law and they have to be set aside.

11. The appeal as allowed and the order dated 14-1-1978 of the learned Sessions Judge directing realisation of Rs. 500/- as penalties from the three appellants is set aside. The penalties, if deposited shall be refunded to the appellants.