

Roshan Lal Vs. State

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Court : Allahabad

Decided On : Jul-12-1957

Reported in : AIR1957All765; 1957CriLJ1206

Judge : V.D. Bhargava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 499 and 514

Appeal No. : Criminal Revn. No. 224 of 1956

Appellant : Roshan Lal

Respondent : State

Advocate for Def. : Badruzzaman, Adv.

Advocate for Pet/Ap. : H.D. Srivastava and ;Umesh Chandra, Adv.

Disposition : Application allowed

Judgement :

ORDER

V.D. Bhargava, J.

1. These are two connected revisions filed by two persons who had stood surety for one Lalta who had been convicted and sentenced Under Section 379 I. P. C. by a Magistrate of the 1st Class. He was convicted oh the 31-5-1955 and on the

same day an appeal was filed in the Court of Session. An application was then moved for bail. On the 1-6-1955 the learned Sessions Judge passed an order that the accused be released on bail on his furnishing a personal bail bond in the sum of Rs. 1000/- and two sureties in the like amount each to the satisfaction of the magistrate concerned. These two applicants filed surety bonds and on the execution of those bonds the accused was released on bail. After that Lalta appeared on the 19-7-1955 before the appellate court but thereafter he never appeared before the court of Session. According to the judgment of the Sessions Judge the notices were given to the sureties to produce Lalta and they took time to produce him but they failed.

Ultimately the appeal was heard on the 24-8-1955 in the absence of the appellant and was dismissed. Thereafter the sureties were required to show cause why penalty provided in their bail bonds be not imposed and after hearing the applicants the court ordered that the penalty provided in the surety bonds be enforced against the sureties and proceedings be taken to recover it from each of the sureties. Gokaran and Roshan Lal. Against that order both the applicants have come to this Court and have raised several points of law.

2. Firstly, it has been contended that proper proceedings as required Under Section 514 Cr. P. C. have not been taken. It was said that there was no order of forfeiture of the bonds nor a proper notice has been served upon the applicants to pay the penalty thereof or to show cause why it should not be paid. Secondly, It was urged that the terms of the surety bonds never contemplated the production of the accused before the appellate court and the surety bonds must be enforced strictly according to the terms of the bonds. It is in the nature of a contract and nobody can go out of the contract and enforce something which is not in the bond but it may be in contemplation of the parties. Reliance was placed by the learned counsel on the observations of their Lordships of the Supreme Court in *State of Bihar v. M. Homi* : 1955 CriLJ1017 wherein it was held that:

'in view of the clear provision in the bond the terms of which being penal in nature must be very strictly construed, it could not be said that the contingencies contemplated by the parties had occurred.'

In that case the bond was executed for the production of the accused before the hearing of the appeal in Privy Council but later on the case was transferred to the Federal Court by virtue of the Abolition of the Privy Council Jurisdiction -Act. Thus the accused appeal was got transferred to the Federal Court and in due course ultimately was heard by the Supreme Court. As there Was no judgment or order of the Judicial Committee upholding either in part or in whole the sentence against the accused, it was held that it did not come within the strict meaning of the bond.

3. Reliance was also placed on Emperor v. Chintaram, AIR 1936 Nag 243 (B), Judgment of Mr. Justice Vivian Bose, wherein his Lordship held that:-

'Ball proceedings are special proceedings about which there are specific directions in the Code and they must be strictly followed.

Where therefore there is no mention in a surety bond of the Court in which the accused is directed to appear and all that is mentioned is that the surety undertakes to produce the accused in 'the Court at B till the decision,' it is impossible to enforce vague and slovenly bond of this character. What the surety himself thought about his liability under the bond is immaterial for the terms of the surety bond have to be determined by the language used in the bond itself.'

There is no doubt that the bonds before many of the magistrates are taken without looking at them carefully. I had occasion previously also to remark in some of the cases that the attention of the magistrates should be drawn that they should be careful in such cases. In this particular case the bond is in the following terms:-

'Ham musammian mustarkan wa munfardan is tahrir ki ru se iqrar karte hain ki ham musam-mi Lalta ki taraf Se zamin is bat ke hain ki mus-ammi Lalta mazkoor har roz jab tak us ilzam ke babat jo us .par lagaya gaya hai, ibtidai tahquqat hoti rahegi adalat barabar hazir rahtga aur sgar wah muaadma tajweez ke lie adalat seshart men supurd ho jae to musammi Lalta mazkoor adalat seshan me bhi waste jawabdehi us jurm ke jo us par lagaya gaya hai, .maujud aur hazir rahega aur agar hazir hone men qasur kare to ham mub-ligh Rs. 1000/_ rajya ko tawan ke taur par ada karense.'

Mubarika 1 mah June San 1955.'

This bond is really in the form prescribed in the Code of Criminal Procedure as Notice No. XLII in Schedule V of the Criminal Procedure Code. That bond is a bond meant to be executed by a parson at the preliminary inquiry stage before a magis-trate but this form was used for execution of the surety bonds when actually the person had already been convicted and the case was pending at the appellate stage. There was no question of the production of the accused before the - magistrate or before the Sessions Judge on commitment and this form was really wholly inapplicable to the facts of the present case but the magistrate who took this surety bond did not care to see whether the bond was a proper bond or not. Moreover, in the blank space where the court where he was to be produced has been left blank.

4. It was argued on behalf of the State thatwhen the applicants executed this bond theywere fully aware of the fact that the accused hadbeen convicted and really it was their productionin the Sessions Court in appellate stage for whichthey had stood surety and if by mistake an improper bond had been executed they should not be allowed to escape the liability. The State is notenforcing any implied undertaking. It is theundertaking which has been reduced to writingwhich is being enforced and in the circumstancesI do not think that they can take any advantageof it.

5. In re, M S. Rangarathnam 1957 CrI LJ 138 (Mad) (C) a learned Judge of the Madras High Court has held:-

'what the surety thought or did not think is immaterial; and it is not for a surety to show that, the bond is illegal, but for the State to show that the document it wishes to enforce against him is one which can be so enforced under the law.'

That judgment is a very considered judgment and the learned Single Judge held that

'A surety bond in criminal cases must be strictly construed and a surety cannot be re-quired to pay the amount of his bond as the resuic of an opinion held by a court

as to what was in his mind when he signed it. He can be re-quired to forfeit the amount only if the terms expressed in the bond are broken.'

For this proposition the learned Judge had relied on *Nga Potin v. Emperor* 23 Cri LJ 68: (AIR 1922 UB 8) (D); *Vithaldas v. Emperor* AIR 1932 Bom 290 (E), *Maurtg Nge v. Emperor* 26 Cri LJ 380: AIR -1925 Rang 153 (F).

6. The another error in the bond is as I have already pointed out, that the name of the court where the accused was to be produced is altogether missing. It was imperative, according to Section 499 of the Cr. P. C., that the time and the place had to be mentioned in the bond and if the place of the court where the attendance was required was not at all mentioned, that surety bond will be an invalid agreement.

7. Another matter that does require a serious consideration is that while forfeiting the bonds the magistrates and sometime Sessions Judges do not take proper care in issuing proper notices. Under the Code of Criminal Procedure notices are provided for forfeiting the bond as Notices No. XLVI of Schedule V of the Criminal Procedure Code. From the perusal of the record it does not appear whether any such notice was given to the accused or not though from the judgment of the-learned Sessions Judge it appears that some kind of notice had been given to them. It would be-unfortunate that in this case though there were two sureties who had stood to produce Lalta yet they cannot be made liable but the fault in this case is entirely of that magistrate who took the surety bonds in a most slovenly and vague fashion and which was not applicable to the facts of thecase at all. I would like the attention of the Government to 'be drawn' to this fact so that a circular might be issued to all the magistrates that proper surety bonds should be taken from the accused in different case in different forms applicable to the facts of the case.

In cases of forfeiture proper steps should be taken in strict compliance with Section 514, Cr. P. C. These observations I have to make because due to improper execution of bonds in many cases the accused has escaped without any penalty being imposed on the sureties. Let a copy this judgment be sent to the Home Department U. P. Government for such necessary action as they deem fit.

The present revisions are allowed and the order of the Sessions Judge forfeiting the bond is set aside.

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