

Harwari Lal Vs. State

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Court : Allahabad

Decided On : Sep-22-1958

Reported in : AIR1959All751; 1959CriLJ1380

Judge : M.C. Desai, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 439(5) and 514

Appeal No. : Criminal Revn. No. 1704 of 1956

Appellant : Harwari Lal

Respondent : State

Advocate for Def. : G.A.

Advocate for Pet/Ap. : Yasoda Nandan, Adv.

Disposition : Application dismissed

Judgement :

ORDER

M.C. Desai, J.

1. One Narsing was being prosecuted (it is not known for what offence) in the Sessions Court and during the pendency of the trial he applied for being released on bail on the ground of his wife's death and the Sessions Judge ordered him to

be released on parole for a fortnight on 4-5-1956 on his furnishing two sureties for Rs. 8000/- each to the satisfaction of the committing Magistrate. Accordingly Narsingh produced two sureties, the applicant and another, before the committing Magistrate (Judicial Magistrate, Powayan) on 7-5-56.

The applicant executed a bond on that date stating that Narsingh will appear in court every day during the pendency of the commitment proceedings or during his trial in the Court of Session if he was committed there to answer the charge, and that if he failed to appear he will pay the penalty of Rs. 3000/-. On execution of the bond by the applicant and by another surety Narsingh was released on parole. On 15-5-56 he appeared before the Sessions Judge and applied for bail and the learned Sessions Judge extended the period of parole by one week.

No fresh bonds were executed by the applicant and the surety on 15-5-56. Narsingh did not appear before the Sessions Judge on expiry of a week and thereupon proceedings for forfeiture of the bond were taken in the court of the judicial Magistrate, Poyawan. Neither of the sureties appeared before the Magistrate to show cause and, therefore, the Magistrate ordered the applicant to pay the penalty of Rs. 3000/-. He filed a revision application in the court of the Additional District Magistrate who dismissed it. Actually it was an appeal filed by him but since it was barred by time it was treated as a revision by the Additional District Magistrate.

2. This revision application is not maintainable because an appeal lay against the order but was not preferred. Section 439 (5) Cr. P. C. lays down that 'where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed'. Filing an appeal which is barred by time is as good as not filing any appeal and Sub-section (5) of Section 439 Cr. P. C. will apply. The Additional District Magistrate had no jurisdiction to treat the appeal as revision against the clear language of Sub-section (5). In any case, I cannot accept this revision application, it being barred by Sub-section (5).

3. On merits also there is no force. It was contended that since the bond was for appearance before Sessions Judge, only he could forfeit it and direct recovery of

the penalty. Reliance is placed upon the following words of Section 514(1) of the Code of Criminal Procedure :

'Whenever it is proved to the satisfaction of the court by which 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 etc.'

4. The contention is that when a bond is for appearance before a court only that court has the power to proceed under Section 514 and not the court which took or accepted the bond. Here the bond was for appearance before the Sessions Judge but was taken or accepted by the Judicial Magistrate, Poyawan and the proceedings under Section 514 were held by the latter; this was alleged to be illegal. The words 'to the satisfaction of the court by which the bond under this Code has been taken' are general words which apply in the case of every bond taken under the Code, including a bond for appearance before a court; the proceedings for forfeiture of such a bond can be taken in the court by which the bond had been taken or the court of a Presidency Magistrate or the court of a Magistrate, First Class.

A bond for appearance before a court is a particular kind of bond taken under the Code; proceedings for the forfeiture of such a bond can be taken in addition to the courts previously mentioned in the Code before which the persons was to appear. There is nothing, whatsoever, in the language to suggest that proceedings for the forfeiture of a bond for appearance can be taken only before that court and that the opening words of Section 514 (1) do not govern it.

What the whole provision means is that when it is proved to the satisfaction of the court by which a bond under this Code has been taken, or of the court of the Presidency Magistrate, or of a court of the Magistrate of first class, or of the court before which a person bound for appearance is to appear that the bond had been forfeited it can start proceedings under Section 514.

In *Mir Husen Abdul Rahman In re*, 15 Cr. L.J. 295: (AIR 1914 Bom 3), the Bombay High Court held that a certain Magistrate had no Jurisdiction to make an order under Section 514 in respect of a bond for appearance because 'he was not the Magistrate who had taken the bond or before whom the petitioner had to appear;' this supports the view that a bond for appearance can be forfeited not only by the court before which the accused was to appear but also by the Court which had taken the bond. Directly contrary view was taken by the Calcutta High Court in *Hira Lal Sahu v. Emperor*, 10 Cri. L.J. 246 (Cal).

It was recognised in that case that the opening clause of Section 514 deals with bonds generally and the subsequent clause with a bond for appearance before a court, but it was laid down that a bond for appearance before a court can be forfeited only by the court before which the accused was to appear and by no other court. With great respect I disagree. The learned Judges do not explain how the opening clause dealing with bonds generally, that is, with all bonds including a bond for appearance before a court, does not apply.

In the case of all bonds a choice of three courts is given but in the case of a bond for appearance before a court a choice of the fourth court, namely, the court before which the appearance is to be made is given. The word 'or' occurring just before the words 'when the bond is for appearance before a court' performs the function of adding one more alternative, though only in the case of a particular kind of bond, viz a bond for appearance before a court. The Judicial Magistrate was, therefore, competent to forfeit the bond and levy the penalty.

5. There is no substance in the contention that the bond did not remain in force in the extended period of parole. The bond was not for any period at all and no date was specified for the appearance of Narsingh. The applicant bound himself to pay Rs. 3000/- whenever he failed to appear in any court. He did not undertake to pay Rs. 3000/- only if he did not appear on the expiry of the period of parole; had that been the case it could be argued that as the period of parole was extended without his consent his bond did not enquire for the extended period.

Then it was contended that because the commitment proceedings had already been finished and Narsingh had been committed to the Court of Session before

the bond was executed it did not apply. The undertaking of the applicant was that Narsingh would appear not only during the commitment proceedings but also during his trial in the Court of Session, if the case was committed to it. This does not mean that it was not to apply if the case had already been committed to the Sessions court,

He himself had signed the bond knowing that the applicant had already been committed to the Court of Session. The bond must be construed in the light of the knowledge in the possession of the applicant. I think it was a printed bond executed by the applicant and the Magistrate had not taken the trouble of seeing that inapplicable or inappropriate words had not been struck out. Really it was for Narsingh and his sureties including the applicant to score out the inapplicable or inappropriate words but when they failed to do so, the Magistrate should have read the bond and seen that it was all right, but he failed to discharge his duty.

There is, however no doubt about the under-taking given by the applicant; it was to pay a penalty of Rs. 3000/- whenever Narsingh failed to appear in any of the courts, namely, that of the committing Magistrate, or of the Magistrate trying him or of the Sessions Court trying him. Here Narsingh failed to appear in the Sessions Court and the applicant became bound to pay the penalty. I was referred to *Roshan Lal v. State* : AIR1957 All765 in which it was observed by my brother V. D. Bhargava that a bond similar to the bond in question is not meant to be executed by a person who has been convicted and sentenced to imprisonment and has been ordered to be released on bail during the pendency of the appeal.

The real question is not whether a particular bond is applicable in a particular case or not but whether the condition on which a person undertook to pay a certain sum of money has been fulfilled or not. If an undertaking is given to pay a penalty on the fulfilment of any one of three conditions, he becomes liable to pay the amount when any one of the three conditions is fulfilled and it becomes irrelevant to consider whether the other conditions were applicable to him or not. Moreover, there was one more defect in the bond executed by Roshan Lal and that case is distinguishable from the present case. The application is dismissed.