

Puttu Lal Vs. State

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Court : Allahabad

Decided On : Feb-15-1956

Reported in : AIR1956All705; 1956CriLJ1381

Judge : Mehrotra and ;Sahai, JJ.

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

Appeal No. : Criminal Revn. Nos. 853 and 907 of 1954

Appellant : Puttu Lal

Respondent : State

Advocate for Def. : D.P. Uniyal, Adv.

Advocate for Pet/Ap. : K.C. Saxena, Adv.

Disposition : Revisions allowed

Judgement :

Mehrotra, J.

1. This reference has been made to a Bench by a single Judge of this Court.

2. The facts of the revision are that one Nan-koo was prosecuted under Section 379, 1. P. C. in the Court of the Judicial Magistrate, Kaimganj, district Far-

rukhabad. He was released on bail on executing a personal bond for Rs. 500/- and furnishing two sureties, of the like amount. Puttu Lal and Jagannath, who are the applicants executed a joint surety bond on 17-12-1952 in which they undertook to produce the accused in the court of the Judicial Magistrate, Kaimganj during the hearing of the case or in the court of the Sessions Judge.

The case was subsequently transferred from the court of the Judicial Magistrate, sadar. After the transfer of the case, the accused appeared at several hearings in the court of the Judicial Magistrate, Sadar but on 26-5-1953, which was one of the dates fixed, he did not appear and the surety bond was forfeited Notice was issued to the sureties to show cause why the amount of the surety bond should not be realised from them. Puttu Lal appeared in response to the notice and contended that the accused had fallen ill was, therefore, unable to appear on the date fixed.

As no evidence was produced on behalf of Puttu Lal and Jagannath in order to prove that the accused was ill on 26-5-1953, this point was found by the Magistrate against them. The accused was however, subsequently arrested on 10-6-1953 and was sent to jail. The Magistrate, ordered that the amount of the surety bond be realised from the sureties. Against this order, an appeal was filed to the Sessions Judge of Farrukhabad who allowed the appeal to the extent that the amount was reduced from Rs. 500/- to Rs. 250/-. In other respects he main tained the order passed by the Magistrate.

In the revision it was contended that as under the terms of the bond the sureties undertook to produce the accused before the Judicial Magistrate, Kaimganj, the Judicial Magistrate, Farrukhabad had no power to order forfeiture and in any case the failure of the accused to appear before the Judicial Magistrate, Farruknabad did not amount to any breach of the terms of the bond and the bond cannot be forfeited and the applicants cannot be asked to pay the amount of the bond. The learned Single Judge, before whom the matter came up lor hearing in revision, observed that there appeared to be some conflict between several decisions of this Court and consequently he referred the matter to a Bench for decision.

3. In order to appreciate the point raised in this case, it is necessary to refer to the terms of the bond which is as follows:

'We jointly and severally declare ourselves sureties for the said Nanku Singh s/o Girwar Singh that he shall attend at the court of Shri J. O. Kaimganj at Fatehgarh on every day of the preliminary inquiry into the offence charged against him

From the terms of the bond it is clear that the sureties undertook to produce the accused before the Judicial Officer, Kaimganj during the preliminary inquiry and before the Sessions Judge when the case is committed to the Court of session. The words of the bond are very specific and the only undertaking given by the sureties was to produce the accused before the court of the Judicial Officer, Kaimganj before whom the preliminary inquiry was pending at the time when the bond was executed.

Reliance was placed on the case of Mahabir Pande v. Emperor AIR 1920 All 206 (1) (A) in Which it was held that where a person enters into a personal bail-bond binding himself to appear before the court of a particular Magistrate, the fact that he fails to appear before a Magistrate other than the one named in the bond is no ground for directing forfeiture of the bond.

The next case is Mustaqim Uddin v. Emperor, 24 All LJ 327 : AIR1926 All297 . In this case on the 22nd September an order was passed by the Magistrate directing the accused to give security for three years and ten days' time, up to 3rd October, was allowed to file the security. On the tenth day he absconded and the contention put forward by the surety was that his liability came to an end on the 22nd September. Owing to a change in the law the court of the Cantonment Magistrate ceased to exist in March, 1924 and all the cases from that court were transferred to the court of one B. Jai Narain, Special Magistrate.

Interpreting the terms of the bond in that case It was held that the terms of the bond were wide enough to include the successor of the court in which the case originally was pending. That case was decided on the terms of the particular bond in question and it cannot be said that in all cases where the terms of the bond are express that the surety has undertaken to produce the accused before a particular Magistrate, he has forfeited the bond if the accused fails to appear before some other court which is the successor of that court.

The next case referred to is the case of State v. Ballabh Dass : AIR1950 All667 . In this case a case was pending against an accused before the City Magistrate's court and a surety bond was executed undertaking to produce the accused in court whenever called upon to do so and in the event of his failure to do so, to pay a specified amount to the State, and subsequently the case having been transferred to the Judicial Magistrate, the Judicial Magistrate ordered the applicant by notice to produce the accused on a fixed date which the applicant failed to do and it was held by a Single Judge of this Court that the court which had taken the bond, had primarily the jurisdiction to enforce forfeiture, but in the circumstances of that case, it was held that the Judicial Magistrate or any other Magistrate of First Class was competent to enforce the forfeiture which had occurred under Section 514, Criminal P. C. In that case It was observed by this Court that

'the notice issued by the Judicial Magistrate was served upon him personally; so he knew full well that the case had been transferred to, and was pending in the court of the Judicial Magistrate. Consequently, in terms of the surety bond the applicant was bound to produce Khemchand in the latter court as well. That being so, there was forfeiture of the bond and the applicant became liable to pay the penalty.'

This case was also decided on the terms of the bond. The last case of this Court referred to is the case of Prem Chand v. State 1955 All LJ 146 (D). In that case it was held that where a surety binds himself to produce the accused person before a court whenever required until the completion of his trial, his undertaking applies, to all courts of competent jurisdiction to which the case might go for trial. It was observed at page 147 of the Report as follows :

'I am of opinion that where a surety binds himself to produce the accused person before a court whenever required until the completion of his trial, his undertaking applies not only to that court but to all other courts of competent jurisdiction to which the case might go for trial.'

Reference has been made to a decision of their Lordships of the Supreme Court reported in the State of Bihar v. M. Homi : 1955 CriLJ1017 . In that case the accused was convicted under Section 120B read with Section 420, I. P. C. by the

First Special Tribunal, Calcutta and sentenced to four years' rigorous imprisonment and a fine of rupees one lac. The conviction was subsequently upheld by the Patna High Court and a petition was submitted by the accused to the Provincial Government for suspension of his sentence in order to enable him to prefer an appeal against the said conviction and sentence to the Judicial Committee of the Privy Council.

The prayer was granted by the Provincial Government and the execution of the sentence was suspended pending the hearing of the proposed appeal before the Privy Council. The accused furnished security worth Rs. 50,000/- with two sureties of Rs. 25,000/- each to the satisfaction of either the Sub-Divisional Officer Jamshedpur or the Deputy Commissioner of Singhbhum and undertook to furnish proof by the 1-12-1946 of his having taken all necessary steps for the filing of the appeal and also to surrender to the Deputy Commissioner of Singn-bhum within three days of the receipt of the notice of the order or judgment of the Judicial Committee.

The sureties, who executed the bond, undertook to pay a sum of Rs. 50,000/- only in case the accused failed to surrender to the Deputy Commissioner of Singhbhum. As a result of the constitutional changes the jurisdiction of the Privy Council came to be transferred to the Federal Court and the case was then heard by the Supreme Court. The Supreme Court dismissed the appeal in November, 1950.

In the meantime, the accused, who had gone to London to look after his appeal there, migrated to Pakistan and thus placed himself beyond the jurisdiction of the courts in India. In December, 1950, the Deputy Commissioner of Singhbhum issued notice to the sureties to produce the accused within three days. On their failure to do so, the Deputy Commissioner called upon the sureties to show cause why their bond should not be forfeited. In view of the clear terms of the bond, the undertaking given by the sureties was only to produce the accused when the sentence passed against the accused was upheld by the Privy Council and as the appeal had been ultimately decided by the Supreme Court, it could not be said that the sureties forfeited the bond. It was expressly held in this case that the

terms of the said bond being penal, they should be strictly construed. Section 514(l) of the Code of Criminal Procedure provides that:

'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 cause why it should not be paid.'

This Section provides for the procedure as to how a bond has to be forfeited and how has the money to be realised and the undertaking given by the sureties to be enforced. The court, which has taken the bond, is authorised to decide if the undertaking given by the sureties has been violated so as to entitle the court to realise the amount from the sureties.

A Presidency Magistrate or any Magistrate of the First Class has further power to investigate into the matter and decide if the bond has been forfeited. The court, before whom the sureties have undertaken to produce the accused, is also entitled to see whether the terms of the bond have been violated but none of these courts can order forfeiture of the bond unless it is found that any of the terms of the bond has been violated by the sureties. In order to decide whether the undertaking given by sureties has been violated, the terms of a bond have got to be strictly construed and if under the terms of the bond, the undertaking given by sureties is to produce the accused before a particular court specified therein, the failure of tureties to produce the accused before any other court, to Which the case has been transferred, cannot be regarded as any breach of the terms of the bond.

In the present case, as we have said, on the plain language of the bond, the sureties had only undertaken to produce the accused before the Judicial Omcer, Kaimganj and consequently the failure of the sureties to produce the accused before the Judicial Magistrate, Farrukhabad cannot amount to any breach of the terms of the bond and the bond cannot be forfeited.

4. We, therefore, allow these revisions and set aside the orders of the Magistrate and the Sessions Judge in appeal asking the applicants to pay the amount of the bond.

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