

**Rahat Ali Vs. State**

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**Court :** Allahabad

**Decided On :** Aug-03-1956

**Reported in :** 1957CriLJ116

**Judge :** V.D. Bhargava, J.

**Appellant :** Rahat Ali

**Respondent :** State

**Judgement :**

ORDER

**V.D. Bhargava, J.**

1. This is an application in revision against an order of the Sessions Judge forfeiting the sureties of the accused who did not appear before the Court when he was trying the case. It appears that the accused had given surety bond when he was released on bail in the Court of the Magistrate, but later on he was ordered to be re-released on bail on furnishing a personal bond and two sureties of Rs. 560/- each by the Sessions Judge. No further surety bond was executed by the applicant and the old surety bond continued. That was strictly not very correct and there should have been another surety bond executed by the accused.

2. The accused did not come on the date of hearing and appears to have migrated to Pakistan. Thereupon the sureties were asked to produce the accused. But they

failed to produce the accused and, therefore, their sureties were forfeited, one of the sureties, Rabat All, has come up in revision to this Court.

3. The contention of learned Counsel for the applicant is that there being no surety bond of the accused himself, the sureties cannot be asked to pay the amount. It was contended that the sureties are liable only in the secondary stage. First the bond of the accused should have been forfeited and thereafter the sureties called upon to produce the accused and if they failed then and only then their bonds should have been forfeited. If there was no proper bond of the accused or there was no forfeiture of the bond of the accused, the proceedings for forfeiture cannot be taken. Reliance was placed by learned Counsel on the decision of this Court in *Brahma Nand Misra v. Emperor* : AIR1939 All682 .

4. That was a case decided by a single Judge of this Court where it was held that:

It is incumbent under Section 499, Criminal P. C. to get a bond executed by the person who is released on bail and unless that is done, there can be no valid bond by a surety alone.

I shall deal with this case later on as it has been dissented from in subsequent decisions of this Court The other cases on which reliance was placed are : *Baidyanath Misra v. Emperor* 48 CrI LJ 324 : AIR 1947 Pat 58 (B); *Govinda Chandra v. State* : AIR1951 Ori18 and *Chamra Meher v. State of Orissa* : AIR1951 Ori179 .

5. The last two cases are of Orissa High Court while the first is of the Patna High court. They supported the contention of learned Counsel for the applicant and are to the same effect as the decision reported in the case of *Brahma Nand Misra (A)* referred to above.

6. Subsequent to the case of *Brahma Nand Misra* there have been several cases of this Court, both bench decisions as well as single Judge decisions, and even before the case of *Brahma Nand Misra (A)* there was a case *Reoti Prasad v. Emperor* : AIR1934 All1046 which had taken the view that 'it is not necessary as a condition precedent that there should have been a bond executed by the accused

himself'.

7. In Nisar Ahmad v. Emperor : AIR1945 All389 a single Judge of this Court followed an old decision of this Court, viz. : AIR1934 All1046 and dissented from the decision arrived at in : AIR1939 All682 It was held by Malik J. (as he then was):

When an accused person has been released on bail merely on the undertaking of the surety and bond is executed by the surety, without the accused having been required to execute a personal bond, it may be that the officer or the Court has acted in an irregular manner and the accused should not have been released on bail, but the fact can in no way affect the liability of the surety who had Undertaken to produce the accused before the Court on the date or dates mentioned in the bond.

8. In Abdul Aziz v. Emperor : AIR1946 All116 a Bench consisting of Allsop and Malik JJ. followed the decision in Nisar Ahmad v. Emperor, (F), and Brahma Nand Misra's case (A) was again not followed. It was held:

Under Section 499, Criminal P. C., the surety does not guarantee the payment of any sum of money by the person accused who is released on bail but guarantees the attendance of that person. He is surety for attendance and not a surety for payment of money. His contract and the contract of the person released on bail are independent of each other. The fact that the person released on bail himself did not sign the bond for his attendance when called upon does not make the bond executed by the surety an invalid one.

I am not only bound by this decision but am in respectful agreement with the same.

9. Again in Sripal Singh v. The State : AIR1953 All187 a learned Judge of this Court held:

A bail bond by the surety and a personal bond by the accused under Section 499, Criminal P. C, are contracts independent of each other and the fact that the person released on bail did not himself sign the bond for his attendance when called upon

to do so does not make the bond executed by the surety invalid. Hence on forfeiture of the bond the liability of the surety can be enforced under Section 514.

10. So far as this Court is concerned the view appears to be unanimous and well settled that the contract by the surety is independent of and does not depend upon the bond executed by the accused. In the circumstances, if no bond has been executed by the accused that will not affect the position of the surety. The surety had executed the bond not for any payment by the accused but for his production, and if the accused has not been produced by him the surety bond is liable to be forfeited irrespective of the fact whether any action is taken against the accused or not.

11. The revision has no force and is accordingly dismissed. The stay order dated 25-5-1955 is discharged.

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