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Court : Allahabad

Decided On : Mar-28-1974

Reported in : 1974CriLJ1407

Judge : Yashoda Nandan, J.

Appellant : Mohan Lal and anr.

Respondent : State

Judgement :
ORDER

Yashoda Nandan, J.

1. This is a revision under Section 439 of the Code of Criminal Procedure hereinafter referred to as the Code. Along with it, on application under Section 561A of the Code has also been filed. Since both, the revision as also the application, are directed against the same order and the prayer made in them is similar, they are being disposed of by this common judgment.

2. The material facts giving rise to this revision are that one Gokul Chamar was being prosecuted in the court of the learned Sub-Divisional Magistrate) Soraon, distcict Allahabad, for an offence punishable under Section 60 of the Excise Act. During the pendency of that case, bail was granted to Gokul and the applicants stood sureties and filed surety-bonds for his appearance in court on various dates

fixed for its hearing. On the 16th September, 1968, the accused failed to turn up in court and consequently the learned Magistrate passed an order cancelliag his bail bonds and issuing bailable warrants for his arrest and production in court. Notice was ordered to issue to the sureties either to show cause as to why the amounts of the surety-bonds filed by them be not realised from them or to produce the accused on the 4th October, 1968. The applicants failed to show satisfactory ceuse or to produce the accused before the learned Magistrate. Ultimately by an order dated 17th January 1969, the learned Magistrate ordered realisation of the amount of the surety-bonds executed by the applicants from them. Against the order dated 17th January 1969, the applicants filed an appeal before the teamed Sessions Judge, Allahabad. It was heard by tbe learned Second Additional District and Sessions Judge, who, by his order dated 30th August, 1969, dismissed the appeal. No revision appears to have been filed in this Court against the order of the learned Second Additional District and Sessions Judge, The orders passed by the learned Magistrate dated 17th January, 1939 and that of the learned Second Additional District and Sessions Judge dated 30th August, 1969 consequently became final.

3. Subsequently the applicants filed a petition on the 6th September, 1969 in the court of the learned Sub-Divisional Magistrate, Soraon, praying that the amounts of the surety-bonds be remitted in full. This application was made on the allegations that Gokul was in jail in the district of Pratapgarh dueing the material time and consequently the applicants, who stood sureties for his appearacce, were prevented by cause beyond their control from complying with the bonds filed by them. The learned Magistrate passed the following order:

The Sessions court has ordered the realisation of the pledged amount. the sureties are given time till 30-1.1970 to pay it.

Against this order, the applicants went up in appeal before the learned Sessions Judge, Allahabad. The learned Sessions Judge summarily rejected the appeal on the ground that in view of the order dated 30th August, 1969 passed earlier in the appeal which had been filed against the order of the learned Magistrate dated 17th January, 1969, the appeal was not maintainable. Against that order, the applicants

have tiled this revision.

4. Learned Counsel for the applicants has contended that the view taken by the courts below wag incorrect and legally unsustainable. He contended that under Section 514 (5) of the Code, it was open to the court to pass an order for the remission of any portion of the penalty mentioned in the earlier Sub-Sections of Section 514 any time before payment had actually been made. In support of this contention learned Counsel placed reliance on the decision by Dixit, J., in Balraj S. Kapoor v. The State of Bombay : AIR1954 Bom365 . The facts of that case were that one Shivraj S. Kapoor was granted bail in the case in which he was being prosecuted. The applicant before the Bom. bay High Court executed a surety-bond for his appearance in court on various dates fixed. The accused jumped bail and did not appear on some of the dates fixed in the ease. The learned trial Magistrate consequently passed an order forfeiting the surety bond executed by Balraj S. Kapoor and ordered realisation from him of the amounts of the bond executed by him. Against the order passed by the learned Magistrate, Balraj S. Kapoor went up in revision to the Bombay High Court, which was dismissed. Several arguments were advanced before the Bombay High Court in support of the revision. When none of the grounds urged in support of the revision appeared to find favour with the Court, learned Counsel applied before the High Court asserting that the amount of the bond was very large and praying that same should be made pay. able in instalments The learned Chief Justice, who was hearing the revision, directed that the sum of Rs. 20, 000/-, which was the amount for which the surety bond was executed, should be paid by four monthly instalments of Bs. 5000/- each commencing from the 17th August, 1903 and the subsequent instalments to be payable on the 17th of each succeeding month. Before some of the instalments had been paid, it appears from the report of the xase, the accused Shivraj S. Kapoor was arrested because of the efforts of Balraj S. Kapoor and because of the information he gave regarding the whereabouts of the accused. Balraj S, Kapoor then applied to the learned Magistrata praying that by reason of the discretion vested in the court under Section 514 (5) of the Code, the court should remit the amount of penalty or a sub. stantial portion thereof in view of the circumstances mentioned in the application. The learned Magistrate rejected the application. Against the order passed by the learned Magistrate, Balraj 8. Kapoor went up in

revision before the High Court at Bombay. Learned Counsel who represented the applicant before the High Court relying upon Section 514 (5) urged that an application for the remission or the reduction of the penalty could be made under that provision even after the data when the court had made the order directing the surety to pay the penalty of the bond. In the alternative, it was urged that even if Section 514 (5) of the Code did not apply to the facts of the case, relief should be granted to the applicant before the court under Section 531-A of the Code. The contention based on the construction of Section 514 (5) does not appear to have found favour with the learned Judge who decided AIR 1954 Bom 385 : 1954 Cri L J 1044 (suprs), as would appear from the following observations contained in the judgment.

The question whether the discretion con. templated by Sub-Section (5) is to be exercised at a subsequent stage or at the stage when the Court calls upon the surety to pay the amount of the penalty is, I think, not free from difficulty. It is, I think, possible to take the view that the Court may, in its discretion, remit a portion of the peralty and enforce payment in part only even at a subsequent stage. But I would prefer to say that Court can insist upon the payment of the entire amount of the penalty or may make an order remitting a portion of the penalty as soon as the bond if forfeited and the Court is called upon to apply its mind to the matter. However, I will assume in favour of Mr. Jahagirdar that the Court can exercise its power under Section. 514 (5) even at a subsequent stage, and even if Mr. Jahagirdar were wrong in saying that the power can be exercised under Section 514 (5) at a subsequent stage, t see no difficulty in holding that the High Court oan make a suitable order under 8. 581A.

The observations mentioned above merely show that Dixit, J. decided the case on the assumption that the Court passing an order of forfeiture of surety-bonds and for realisation of the penalty thereof could exercise the power under Section 514 (5) even after its orders had been affirmed by the superior courts and had thus become final. The above, mentioned decision, to my mind, is not an authority for the proposition that a Court has power to aot under Section 514 (5) after its orders forfeiting the surety bond and for realisation of the amounts thereof as penalty have become final. A plain reading of the various Sub-Sections of Section 514

leave little room for doubt that an order remitting any portion of the penalty and enforcing payment of part of the amount of the surety bond could be passed by the Court only at the time it passes a final order forfeiting the surety bonds and for realisation of the amount thereof as penalty. In the instant case the order dated 17th January, 1969 by which the learned Magistrate had ordered realisation of the amount of the surety bonds had been confirmed in appeal by the learned Second Additional District and Sessions Judge and that order not having been challenged in revision became immune from modified by the learned Sub-Divisional Magistrate. I have no doubt in my mind that after the dismissal of the appeal by the learned Second Additional District and Sessions Judge which was directed against the order dated 17th January. 1969, it was not open to the learned Sub-Divisional Magistrate to reduce the amount ordered to be realised from the applicants and thus to modify an order which had become final.

5. Learned Counsel next contended that in any case, in the circumstances of the case, it is open to this Court, in exercise of its powers under Section 581-A of the Code, on being satisfied that at the relevant time Gokul Chamar was in jail so that it was impossible for the applicants to produce him. to pass an order remitting the realisation of the entire amount of the surety bonds. It was urged that since on the date when the learned Magistrate passed the order forfeiting the surety-bonds Gokul was in jail, the order itself was a nullity and consequently this Court is competent in exercise of its inherent power to order that the amount of penalty be remitted. In support of this submission also reliance was placed on AIR 1954 Bom 365 : 1954 Ori L J 1014 (supra) with respects to the learned Judge who decided the abovementioned case. I am unable to concur with the view expressed therein with regard to the scope of Section 561-A of the Code. The inherent power of the High Court under that provision, to my mind, cannot be pressed in aid for the purposes of indirectly undoing or modifying an order which is appealable or revisable and has become final because no appeal or revision was filed against it or having been filed were dismissed thus giving finality to the same. The order of the learned Magistrate dated 17th January, 1969 and the appellate order therefrom are not in challenge in these procaedings.

6. Assuming that there is such a power in this Court under Section 561A in spite of his best efforts learned Counsel for the applicants has not been able to produce any material showing that on the dates when Gokul failed to appear in court, he was in jail in connection with some other offence. There is consequently, in any case, no ground made out for exercise of powers under Section 561-A of the Code by this Court for remitting any portion of the amount directed to be realised from the applicants as penalty for their default.

7. The revision as also the application Under Section 561A of the Code lack substance and are hereby dismissed. Interim order dated 1st April, 1970, is hereby recalled.

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