

Pratap Narain and anr. Vs. State

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Court : Allahabad

Decided On : Dec-02-1972

Reported in : 1972CriLJ950

Judge : S. Malik, J.

Appellant : Pratap Narain and anr.

Respondent : State

Judgement :

ORDER

S. Malik, J.

1. The learned Counsel for Pratap Narain and Bankey Lal conceded at the outset that as there is no provision in the Code of Criminal Procedure under which an appeal may lie to this Court against an order passed under Section 514 of the Code of Criminal Procedure, this case may be treated as a criminal revision. The case, therefore, is being treated as a criminal revision instead of as an appeal.

2. The relevant facts, as is apparent from the record, are that Rajendra Kumar an accused wanted in a murder case pending in the court of Shri V. P. Mathur, Additional Sessions Judge, Farrukhabad, did not put in an appearance on 19-4-1969 in that court which was a date fixed in the sessions trial. The learned Sessions Judge, therefore, ordered forfeiture of the surety bonds of the applicants

who stood as sureties for Rajendra Kumar when he was enlarged on bail. In the same order dated 19-4-1969 the learned Sessions Judge directed that the notices be issued to the applicants to show cause why they benotordered to pay the amounts mentioned in the bonds as penalty. The next date fixed was the 21st of April. 1969. From the order passed on the 21st of April it appears that later on the 19th of April a telegram was received to the effect that Raiendra Kumar was involved in some accident and, therefore. could not attend the court. It is not known whether the contents of the telegram were correct. The sureties i. e. the applicants appeared before the learned Sessions Judge on the 21st of April and prayed for a week's time to produce Rajendra Kumar or to furnish necessary information to the court regarding Rajendra Kumar. They were granted a week's time but were ordered to deposit the amounts stipulated in their bonds within that period and also to show cause why the entire amount be not realised. Ultimately on the 28th of April, 1969, the learned Sessions Judge directed the Additional District Magistrate (Judicial) to realise the amounts from the applicants as penalty.

3. It is true that the learned Sessions Judge ought to have discussed in his order the question as to whether the applicants were able to give any satisfactory reason for the absence of Rajendra Kumar on the 19th of April. But though more than two years have passed, the learned Counsel for the applicants could not even today show to the Court that either of the applicants had any good reason or explanation to offer for the absence of Rajendra Kumar on 19-4-1969 or on the dates subsequently fixed in the case by the court of session, It appears that Rajendra Kumar has not yet surrendered.

4. It was argued on behalf of the applicants that under the provisions of Section 514 of the Code of Criminal Procedure either the court, by which the surety bonds were taken, in this case the Additional District Magistrate (Judicial), or some 1st class Magistrate could have forfeited the bonds and passed an order under Section 514 of the Code of Criminal Procedure and that the court of session was not competent to pass the order under Section 514 of the Code of Criminal Procedure. I see no force in this contention. Section 514 (1) lays down, 'Whenever it is proved to the satisfaction of the Court by which a bondunder this Code has been taken..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.'

To my mind, it is very clear from the language of the section quoted that the surety bonds could be forfeited either by the Additional District Magistrate (Judicial), the court by which the bonds were taken if the accused had absconded or jumped bail before the case came to the court of session and after the case came to the court of session and was pending there, only the court of session could have forfeited the bonds and passed necessary orders under Section 514 of the Code of Criminal Procedure as was done in this case. It may be mentioned that a perusal of the bonds will show that the sureties undertook to pay the amounts stipulated therein as penalty in case Rajendra Kumar did not attend the court of the Additional District Magistrate (Judicial) or any court to which the case may be transferred or the court of session in case the case was committed to the court of session. It is nobody's case that Rajendra Kumar had attended the court of session on the dates fixed in the case.

5. Finally, it was argued that keeping in view the facts and the circumstances of the case. (the amounts ordered to be realised as penalty be reduced as it does not appear that the sureties were in any way instrumental to Rajendra Kumar in not attending the court. It was pointed out that the sureties took time and appear to have made genuine efforts to produce Rajendra Kumar.

6. Keeping in view the facts and the circumstances of the case while upholding the order passed by the court below, I reduce the amount to be realised as penalty from each of the applicants from Rs. 3000/- to Rs. 3000/-. If the applicants have deposited any amount in excess of Rs. 3000/-. the same shall be refunded.

7. The application is decided accordingly.