

Om Prakash Sharma Vs. State

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Court : Allahabad

Decided On : Feb-02-1971

Reported in : 1971CriLJ865

Judge : H. C.P. Tripathi, J.

Appellant : Om Prakash Sharma

Respondent : State

Judgement :

ORDER

H.C.P. Tripathi, J.

1. Applicant stood surety for one Achal Singh who was being prosecuted for an offences Under Section 7/16 of the Prevention of Food Adulteration Act. Achal Singh did not appear in spite of issue of processes. Applicant was then directed to produce the accused on 2-11-19(8 or to show cause why the action should not be taken against him. Notice was served on the applicant on 27-10.1968 personally. He, however, failed to show cause although several dates were fixed for the purpose. The Magistrate therefore, forfeited his bond and directed for the realisation of Rs. 1U00 as penalty for the forfeiture.

2. Applicant came up in appeal before the learned Sessions Judge but it was dismissed.

3. The learned Counsel for the applicant has argued that the bond executed before the Food Inspector could not be forfeited by the court. Reliance was placed on the case of Kameshwar Bhartia v. State of Assam : 1953 CriLJ163 .

4. Bhartia's case (A.I.R. 1052 SO 405) is distinguishable on facts. That was a case in which bond was forfeited for not producing, the property in the Court.

5. Under Section 10 Clause 8 'Any Food Inspector may exercise the powers of a police officer Under Section 57 of the Criminal P.C., 1898 for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized.'

6. Section 57, Clause 2 gives power to the police officer to release the delinquent on his executing a bond with or without sureties, to appear before a Magistrate, if so required. It is, therefore, obvious that Under Section 10 (8) of the Prevention of Food Adulteration Act read with S 57 of the Criminal P.C., a food inspect may obtain a bond with or without surety from the suspect to appear before a Magistrate when so required.

7. Section 514 (1) of the Criminal P.C. reads :-

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.

8. Under the aforesaid Section when the bond is for appearance before a Court, if it is proved to the satisfaction of such court that such bond has been forfeited, the Court shall record the grounds for 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. In this case, the bond was for the appearance before the court of [Magistrate. The Magistrate had, therefore, jurisdiction to pass the impugned order.

9. In the case of Sailesh Chandra v. State : AIR1963 Cal309 a Division Bench of the Calcutta High Court distinguished the aforesaid decision of the Supreme Court and it was held that in respect of appearance by an accused before the Court, it is sufficient Under Section 514, Criminal P.C. that the bond is taken by the police and it is not necessary that it should be taken by the court itself.

10. I am, therefore, satisfied that the Magistrate had jurisdiction to forfeit the bond.

11. Applicant had stood surety for a person, who has been prosecuted for an offence Under Section 7/16 of the Prevention of Food Adulteration Act. It has come in evidence that he has surrendered himself. That' being so, I think the interest of justice will be served if the penalty imposed on the applicant is reduced to Rs. 100 only.

12. Accordingly, this revision is allowed in part. The amount of penalty to be realised from the applicant is reduced to Rs. 100 from Rs. 500 and the remaining amount of penalty is remitted, Applicant to pay the penalty imposed on him within two months from today. In default of payment of penalty, it shall be realised from him in accordance with law and he can be sent to jail for one month only.