

MustaqimuddIn Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/476580

Court : Allahabad

Decided On : Dec-17-1925

Reported in : AIR1926All297

Appellant : Mustaqimuddin

Respondent : Emperor

Judgement :

Daniels, J.

1. This is an application in revision in a case in which sureties' bonds have been ordered to be forfeited under Section 514, Criminal P.C. Two points of law are raised: (1) That the bonds were given for attendance in the Court of the Cantonment Magistrate and that the liabilities of the sureties came to an end when the case was transferred to another Court. (2) That on 22nd September the Magistrate passed an order directing the accused in the case to give security for three years, but allowed him ten days' time, up to 3rd October, to file security. It was on this latter date that he absconded. The applicant contends that his liability came to an end on 22nd September.

2. Owing to a change in the law the Court of the Cantonment Magistrate ceased to exist in March 1924; and it appears from the Magistrate's order that all cases from that Court were transferred to the Court of B. Jai Narain, Special Magistrate. In my opinion the terms of the security bond given in Form No. 42 of the Fifth Schedule

to the Criminal P.C. are wide enough to include the successor of the Court in which the case originally was. Any other view of the law would produce most inconvenient results, since if an accused were on bail when a case was transferred, it would in every case be necessary before transferring the case to order his arrest or to require him to give fresh sureties.

3. As regards the second point, the terms of the bond include not only an inquiry before the Magistrate but also dates fixed in the Sessions Court if the case goes to that Court. In this case, the Magistrate could order the accused to give security for three years; but if the security was not given it was not in his power finally to dispose of the case. Final order under Section 123 of the Code could only be passed by the Sessions Judge. The Magistrate had power under Section 120 of the Code to postpone the date from which the security should take effect, i.e., to give the accused time within which to furnish it. Until it was seen whether the accused could give the security or an order would have to be passed referring the case for the final Orders of the Sessions Judge it cannot be said that the proceedings in the Magistrate's Court had finally terminated so as to put an end to the liability of the sureties who were responsible for the accused's attendance. I find therefore that the orders of the Courts below are correct, and I dismiss this application.