Ajudhya Prashad Vs. the State

Ajudhya Prashad Vs. the State

SooperKanoon Citation : sooperkanoon.com/497473

Court : Madhya Pradesh

Decided On : Mar-19-1952

Reported in : 1953CriLJ119

Judge : Shinde, C.J.

Appellant : Ajudhya Prashad

Respondent : The State

Judgement :
ORDER

Shinde, C.J.

1. The only point raised in this case is that, the Sub-Divisional Magistrate was wrong in forfeiting security without issuing notice to the parties concerned. It appears that on 13.11.1950 the surety was asked to produce the accused before the court on 22.12.1950. On that date, neither the accused nor the surety was present in the court. Hence the Sub-Divisional Magistrate forfeited the security. Against that order, an appeal was preferred before the District Magistrate. That appeal was dismissed, and the order of the trial court was confirmed. Consequently the surety has filed this revision.

2. Section 514, Sub-section (1) of the Criminal Procedure Code reads as follows:

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 of the 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.

There are thus two stages which have to be followed according to Section 514. First is that it must be proved to the satisfaction of the court that the bond has been forfeited whereupon the court is to record the grounds of such proof, and the second is that the court, on being satisfied as aforesaid, may call upon the person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. The first stage, therefore, is that the court should come to a finding based on some evidence that the bond has been forfeited, and then, it has to record the grounds of such proof. It is only when this is done, that a notice is to be issued to show cause why the penalty should not be realised. The court in this case has not recorded the grounds of forfeiture. Therefore, the stage of giving notice has not yet arrived. The view I have taken is supported by - Mt. Taro v. The Crown AIR 1949 EP 221 - Mon Mohan v. Emperor AIR 1928 Cal 261 and - Ram Bilas v. Emperor AIR 1940 Pat 375. The revision, therefore, has no force.

3. It appears, however, that directly after the order of forfeiture was passed, the accused presented himself before the court and paid the penalty. If that be so, the trial court was wrong in realising the penalty without giving notice to show cause why it should not be paid. There does not appear any order on record calling upon the surety to pay the penalty or to show cause why it should not be paid. Penalty, therefore, was illegally realized. In - Mt. Taro v. Crown AIR 1949 EP 221S it has been held that where the action, under this Section (514 Cri. Pro. Code) to recover the penalty is taken before the person bound by the bond is called upon to pay the penalty or to show cause why it should not be paid, it is illegal. The same view has been taken in - Mon Mohan v. Emperor AIR 1928 Cal. 261. In these circumstances, realization of penalty without giving notice to show cause, was illegal.

4. Accordingly, invoking the powers under Section 43) of the Code of Criminal Procedure, it is directed that the penalty realized be refunded and after giving notice to the surety to pay the penalty or to show cause why it should not be paid, suitable orders be passed according to law. The revision petition is allowed.