

Dhannu Lal Vs. the State

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Court : Madhya Pradesh

Decided On : Oct-06-1952

Reported in : 1953CriLJ634

Judge : Dixit, J.

Appellant : Dhannu Lal

Respondent : The State

Advocate for Pet/Ap. : Mr. Anand

Judgement :

ORDER

Dixit, J.

1. This is a revision petition from an Order of the District Magistrate of Shivpuri upholding an order of the Sub-Divisional Magistrate Shivpuri by which he directed the forfeiture of a bond furnished by the applicant for the appearance of certain persons who had been implicated for an offence under the Gwalior Opium Act, Smt. 1980. By the bond the applicant undertook to produce the accused persons before the police or the Customs Department or the Court on any day as directed. It appears that on 26.4.49 the applicant, who stood surety for the appearance of the accused persons in the sum of Rs. 4000/- was directed by the Superintendent Customs Department Shivpuri, to produce the accused persons before him, on

2.5.1949. The applicant failed to do so. Thereupon, the Superintendent, Customs Department made a report to the Magistrate for the forfeiture of the surety bond. The report was purported to be Under Section 58, Excise Act. The learned Magistrate held that the provisions of the Excise Act were not applicable to the forfeiture of a bond taken under the Opium Act. This order of the Magistrate was upheld by the Sessions Judge of Shivpuri. In a revision petition from that order of the Sessions Judge it was held by Shinde J., (as he then was) that as the Opium Act did not prescribe any procedure with regard to the forfeiture of the bond taken under that Act, the provisions of the Criminal Procedure Code 'would govern the forfeiture of the security taken under the Opium Act.' The learned Judge remitted the case to the lower Court for 'being dealt with according to law.' When the case went back the Magistrate following the procedure laid down in Section 514, Criminal P.C. found that the bond had been broken and made an order directing the forfeiture of the bond.

2. In this revision petition Mr. Anand learned Counsel for the applicant contends that the Magistrate had no jurisdiction to direct the bond to be forfeited under Section 514, Criminal P.C. as the bond in question was not taken under the Code and was not forfeited for appearance before a Court. On the other hand Mr. Mungre the learned Government Advocate for the State maintained that this question was concluded by the decision of Shinde J., in-State v. Darshan Lal Criminal Revn. No. 239 of 1949 when he held that the provisions of the Criminal Procedure Code would apply to the forfeiture of the bond and directed the Magistrate to dispose of the case according to law.

3. In my opinion, the contention of the learned Counsel for the applicant is well-founded and must be accepted. It is conceded that Section 514 is the only section in the Code under which, if at all the Magistrate would have jurisdiction to forfeit the bond. Sub-section (1) of this section provides:

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.

4. It is clear from this section that it is applicable only to those bonds which are taken under the Code and which are for appearance before a Court. It is not disputed that the bond taken in this case was not under the Code and though by that bond the applicant undertook to produce the accused persons before the police or the Customs Department as well as before the Court, the bond was forfeited for the applicant's default in producing the accused persons before the Superintendent of Customs. I fail to see how in these circumstances the bond in question can be dealt with under Section 514 on any straining of the language of the section. I do not think the decision of Shinde J., in-State v. Darshan Lal Cri. Rev. No. 239 of 1949 (Madh B) can be taken as deciding the question that the bond in the present case falls under Section 514 of the Code. It is obvious from the order passed in the Criminal Revision that the question whether the bond in this case fell within the scope of Section 514 was not considered in the revision petition, and no arguments were addressed on the question by the counsel then appearing in the case. The question which was considered in the former revision petition was a general question as to the applicability of the Code to the forfeiture of the bond taken under the Opium Act. The question whether a bond taken under the Opium Act not for appearance before a Court or forfeited for default in appearance not before a Court but before any other authority was not decided in that revision petition. I am quite prepared to assume on the basis of the decision of my lord the Chief Justice and for the purposes of this case that a bond taken under the Opium Act, if it be for appearance before a Court is included in para 2 of Sub-section (1) of Section 514. But even on this assumption I do not see how a bond not taken under the Code for appearance before the police or the Customs Department or the Court could be treated as being within the scope of Section 514 when it is sought to be forfeited on the ground of the failure of the accused persons to appear before the police or the Customs Department.

5. Learned Government Advocate contended that if such bonds are not included in Section 514 then there would be no procedure for enforcing such bonds and that therefore. Section 514 should be liberally construed and applied 'mutatis mutandis'

to bonds such as the one we have under consideration here. As to this argument it is sufficient to say that if there is no procedure for enforcing bonds such as the one we have here, the remedy is to amend the Criminal Procedure Code so as to give power to Magistrates to deal with such bonds. The difficulty cannot be removed by extending the application of Section 514 to bonds which In the face of the clear words of the sections are not covered by it. To do so would be to legislate and not to interpret the section. I am, therefore, of the view that the Magistrate had no jurisdiction to direct the forfeiture of the bond. I am fortified in the view I have taken by the decision of the Bombay High Court in the case of-In re Hubart Crawford AIR 1918 Bom 226.

6. For the above reasons I accept this revision petition and set aside the order of the Magistrate directing the forfeiture of the bond. The amount of the bond if already realised from the applicant must be refunded to him.

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