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Harbilas Vs. the State

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Court : Madhya Pradesh

Decided On : Aug-13-1951

Reported in : 1952CriLJ142

Judge : Dixit, J.

Appellant : Harbilas

Respondent : The State

Judgement :
ORDER

Dixit, J.

1. This is an application in revision against the order of the District Magistrate of Morena, confirming an order of the Sub-Divisional Magistrate, Joura, directing the recovery of money forfeited by the petitioner who stood surety for the appearance of Jahar Singh and Punit Ram accused of the offence under Section 302, I.P.C.

2. On behalf of the applicant Mr. Anand first contended that the surety bond executed by the applicant was not valid in that it did not mention the time and place for the attendance of the accused persons. There is no force in this contention. It is quite true that the surety bond executed by the applicant does not mention the exact time and the place for the attendance of the accused. But the terms of the bond are: 'I shall produce the accused wherever and whenever called

upon to do so by the Court or the police until the conclusion of the case.' A reference to Form 25, Schedule 5, Criminal Procedure Code will show that in a bond for appearance, the surety can under take to produce an accused person whenever and wherever called upon to do so instead of at a specific place and time. From the terms of the bond executed in the present case, it is very clear that the surety undertook to produce the accused persons before the Sub-Divisional Magistrate whenever and wherever called upon to do so. The applicant was asked to produce the accused in the very Court in which the surety gave the bond. It cannot, therefore, be maintained that the bond was invalid as the applicant was asked to produce the accused persons at a place and time not stipulated in the bond.

3. It was next urged that the Sub-Divisional Magistrate's order forfeiting the bond and directing the recovery of money forfeited, from the applicant, was illegal as no notice was given to the applicant to show cause against the forfeiture of the bond and the realization of the penalty of the bond. I am unable to accept this contention as correct. Under Section 514(1) of the Code a bond for appearance is forfeited whenever it is proved to the satisfaction of the Court that the accused has failed to appear and the notice that the Court may give to the person bound by the bond, is a notice to show cause why the penalty of the bond should not be paid by him. Section 514(1) of the Code does not require the Court to issue notice to show cause why the bond should not be forfeited. Again, the issue of notice to show cause why the penalty of the bond should not be realized is discretionary and not. mandatory. It cannot, therefore, be maintained with any degree of force that an order of the forfeiture of the bond or the recovery of the penalty of the bond passed without giving notice to the surety is illegal. It is no doubt, true that in order to avoid a failure of justice, a notice should ordinarily be given to the surety to show cause why the penalty of the bond should not be realized from him. The question, therefore, to be determined, is, whether if no notice was given to the applicant, any prejudice was caused to him on account of this irregularity. In the present case, the accused persons failed to appear before the Sub-Divisional Magistrate, on 5.12.1950. Thereupon, a notice was given to the applicant to produce them before the Sub-Divisional Magistrate on 14.2.1951. The notice issued to the applicant also stated that if he failed to produce the accused persons

on 14.2.1951, the bond would be forfeited. This notice was served. on the petitioner on 13.1.1951. On 14.2.1951, the accused persons were not produced before the Court by the petitioner. The applicant also did not; a. appear in the Court on 14.2.1951 to explain hit; failure to produce the accused persons. The Sub-Divisional Magistrate, therefore, forfeited the bond on 14.2.1951 and directed that the penalty of the bond be realized from the petitioner. On 27.2.1951, the applicant presented an application stating that on 14.2.1951, the accused had gone to attend a wedding and for that reason he could not intimate to them the date of appearance in the Court and further, that as he himself had to attend a wedding on 14.2.1951, he could not appear in the Court to explain the non-appearance of the accused persons. In the above circumstance I find it difficult to accept the contention of the learned Counsel for the applicant that the petitioner was not given any opportunity to show cause why the bond should, not be forfeited and why the penalty of the bond; should not be realized. The petitioner was served with a notice to produce the accused persons nearly a month before the date on which the attendance of the accused was required. It was also indicated to him in the notice that in the event of the non-appearance of the accused persons, the bond would be forfeited. If, therefore, the applicant failed to produce the accused persons even after he had a notice and also failed to appear himself in the Court to explain his difficulty in not producing the accused person, the applicant cannot with any degree of force say that he was given no opportunity to show cause against the forfeiture of the bond or realization of the penalty. The reasons subsequently stated by the petitioner for the non-appearance of the accused persons on 14.2.1951 and of his own failure to show cause on that day, are not in my opinion, sufficient. In the villages, marriages are not celebrated suddenly. If the accused and the surety had to attend a wedding on 14.2.1951, the applicant could have asked the Court at any time before 14.2.1951 to adjourn the case and to give him time to produce the accused persons. The absence of the accused persons on 14.2.1851 on the reason shown by the applicant himself was voluntary. It cannot be said that by their voluntary attendance at a marriage, the accused were prevented from appearing in the Court or that the petitioner was prevented for unavoidable cause to appear in the Court to show cause against the forfeiture of the bond on the recovery of the penalty thereof.

4. Lastly, the counsel for the applicant made a plea for remitting a part of the penalty. I do not think the applicant is entitled to any consideration in the matter of the enforcement of the bond. If he had appeared on 14.2.19131 and asked the Court to give him further time to produce the accused persons, he would have been entitled to stones consideration in the matter of the enforcement of the bond for the actual failure of the accused persons to appear on 14.2.1951.

5. For the above reasons I am not inclined to interfere in the order of the District Magistrate. The result is that this petition is dismissed.

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