

Mohd. Idris Khan Vs. the State

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Court : Punjab and Haryana

Decided On : Dec-21-1961

Reported in : AIR1962P& H422

Judge : J.S. Bedi, J.

Acts : Sea Customs Act - Sections 173; Code of Criminal Procedure (CrPC) , 1908 - Sections 514

Appeal No. : Criminal Revn. No. 180-D of 1961

Appellant : Mohd. Idris Khan

Respondent : The State

Judgement :

ORDER

(1) One Mohammad son of Hasan Refi, a Pakistani national, was arrested on the 21st March, 1958 under section 173 of the Sea Customs Act on the suspicion that he was a smuggler of gold. He was produced before Shri K. P. Gupta, Magistrate 1st Class, Delhi, on the next day, who ordered his release on his executing a bond in the sum of Rs. 10,000/- with two sureties in the like amount.

(2) On the 26th March, 1958, Mohammad executed the bond and Abdul Salam and Mohd Idris Khan petitioner stood sureties for his appearance in court on every date as and when the case against him was taken up. On the 25th November,

1959 a complaint against Mohammad was lodged by the Collector under section 167 of the Act. Notices were issued to Mohammad on the 15th December 1959 and then again on the 30th December, 1959 by Shri H. D. Sharma, Magistrate 1st Class, Delhi, to appear in his Court, but Mohammad did not do so and was said to have absconded. Notices were, therefore, issued to the sureties under section 514, Criminal Procedure Code, as to why their bonds should not be forfeited. The Magistrate, Shri H. D. Sharma, vide his order dated the 31st August, 1969, forfeited the surety-bonds and imposed a penalty of Rs. 10,000 on each of the two sureties. The sureties went up in appeal to the Court of Shri M. W. K. Yusafzai, Additional District Magistrate, Delhi, who, vide his order dated the 19th December, 1960, reduced their penalty from Rs. 10,000/- to Rs. 5,000/- each. Out of the two sureties, only Mohd. Idris Khan petitioner went up in revision to the Court of Session. The case came up before Shri D. R. Dhameja, Additional Sessions Judge, Delhi, who, on the 14th June 1961, recommended that the order of the Additional District Magistrate be set aside and the petitioner be relieved of the penalty of Rs. 5,000/- imposed upon him.

(3) The learned Additional Sessions Judge after discussing the provisions of section 175 of the Sea Customs Act came to the conclusion that it was clear from the operative portion of this section that the time for which the Magistrate could keep the person arrested in jail or in police custody was limited to that time which was necessary to enable the Magistrate to communicate with the proper officers of Customs, and from that it followed that the proviso to this section was also similarly limited in its scope, and that the surety for appearance was to ensure till the Magistrate was able to communicate with the Customs Officer concerned and, therefore, the proviso could not enlarge the scope of the section itself. The learned Judge following *State of Bihar v. M. Homi*, AIR 1955 SC 478, held that as the provision was penal, it had to be strictly construed. In the Supreme Court case, the surety, who was to be liable in the sum of Rs. 50,000/- in the event of the default of the convict of surrender to the Deputy Commissioner concerned within three days of the receipt of the notice of the order or judgment of the Judicial Committee in the event of the sentence being upheld, whether partially or wholly, was held not to be so liable because the appeal was ultimately rejected not by the Judicial Committee but by the Supreme Court, as this did not infringe the terms of the bail-

bond and, therefore, the forfeiture was set aside.

(4) The learned counsel for the petitioner in this case also drew my attention to section 175 of the Sea Customs Act and the other sections following it, and particularly to section 187-A and submitted that the scope of section 175 is very limited. The Magistrate could release an offender on bail under section 175 of the Act only for a limited period and before a complaint was lodged against him by the Chief Customs Officer or any other officer of the Customs so authorised. He also relied on *State v. Hebatkhanji*, AIR 1951 Sun 66 and *Bholu v. The State*, AIR 1952 Punj 228, and submitted the Mohammad accused was never asked to appear in Court on any particular date till after a year and a half when notices were given to him on the 15th December, 1959 and again on the 30th December, 1959 but those notices could not be served upon him. Under the circumstances the terms of the bail-bond were defective and Mohammad had not, therefore, incurred any liability, and if that was the position, his sureties naturally would not be liable for any penalty.

(5) The learned counsel for the State, on the other hand, submitted that the sureties in this case undertook to produce Mohammad in that Court or in any other Court to which his case went and they were, therefore, responsible for this breach of contract and consequently for forfeiture. This argument, in my opinion, cuts no ice for the reasons already given above. In AIR 1952 Punj 228--the sureties undertook to produce the accused before the police and not before any Court, but the principles enunciated in that authority equally apply to this case. Similar is the case of other authorities quoted by the petitioner's counsel which fully apply to this case.

(6) For the reasons given above. I accept the recommendation of the learned Additional Sessions Judge and setting aside the order of the Additional District Magistrate, relieve the petitioner of the penalty of Rs. 5,000/- imposed upon him.

(7) Reference accepted.