

Khursheed Begum and Another Vs. State (Delhi Admn.)

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Court : Delhi

Decided On : Jul-20-1999

Reported in : 1999VAD(Delhi)140; 81(1999)DLT248; 1999(51)DRJ61

Judge : K.S. Gupta, J.

Appeal No. : Crl. A. No. 137/95

Appellant : Khursheed Begum and Another

Respondent : State (Delhi Admn.)

Advocate for Def. : Sh. Pawan Behl, Adv.

Advocate for Pet/Ap. : Sh. K.K. Sud, Adv

Judgement :

ORDER

K.S. Gupta, J.

1. This appeal under Section 449 Cr. P.C. by Mrs. Khursheed Begum and Mahender Kumar, sureties of Khyal Asghar, accused in Sessions Case No. 205/85 is directed against the order dated 26th July 1995 of a learned Additional Session Judge by which warrants of attachment against the movable and immovable Properties of both sureties were ordered to be issued for recovery of the balance amount of Rs.44.467/- from each of them.

2. In the memo of appeal it is alleged that the appellants stood surety for Rs. 2 lakhs each for Khyal Asghar in March 1991 and deposited a sum of Rs. 1 lakh each by way of F.D. in the bank which F.D.R'S were kept by the court at the time of acceptance of the surety bonds. Said accused after appearing on certain dates failed to appear in the trial court. Appellants were, therefore, asked to appear in person and they informed the court that they had information that the accused had died in Pakistan. However, the Additional Session Judge before whom the case was pending, was not satisfied about the accused having died in Pakistan and imposed penalty of Rs. 2 lakhs each on the appellants by the order dated 4th July 1991. Cr. Appeal No. 90/91 taken out by the appellants against that order was accepted by this court by order dated 31st March 1992 and the matter was remanded to the trial court to proceed in accordance with law in the light of observations made in the said order dated 31st March 1992. Thereafter the trial court issued notices afresh to both the appellants to file their replies and it again imposed penalty of Rs.2 lakhs each on the appellants vide order dated 8th May 1995. By the order dated 26th July 1995 after appropriating the amount of Rs. 1,55,533/- each being the maturity amount of the FDR's, court had issued warrants of attachment for recovery of the balance amount of Rs. 44,467/- against each of the appellants. Thereafter the appellants filed a joint application on 31st July 1995 for remitting the said amount but the same was dismissed summarily. It is stated that as the said accused had died in Pakistan long back in 1991 the court ought not to have imposed the said penalty on the appellants. It was prayed that the aforesaid order dated 26th July 1995 may be set aside and the amount already recovered from the appellants be remitted.

3. I have heard Sh. K.K.Sud for the appellants and Sh. Pawan Behl for the State and have been taken through the record of the trial court.

4. Accused Khyal Asghar was facing trial for the offences under the NDPS Act Along with Abdul Baki and Rahmat Ali, Co-accused. During the pendency of trial he was admitted to bail by this court on furnishing personal bond of Rs. 2 lakhs with two sureties in the like amount and the surety bonds furnished by the appellants were accepted on 8.3.1991 by the trial court and the FDR's of Rs. 1 lac each submitted with the surety bonds were retained. As the said accused failed to

appear before the court after his release on bail he was declared proclaimed offender and the evidence against him was ordered to be recorded under Section 299 Cr. P.C. by the order dated 4.7.91. By this order Rs. 2 lakhs each were also imposed by way of penalty on the appellants. In CrI. A.No. 90/91 taken out against that order, by the order dated 31.3.92 the case was remanded by this court to the trial court for proceeding against the appellants in accordance with law. Thereafter, after considering the replies filed by the appellants a sum of Rs. 2 lakh each was imposed by way of penalty on them by the order dated 8th May 1995 by the trial court holding that the appellants had not filed any document in respect of the alleged death of the said accused. It was also observed in this order that the due date of maturity of the FDR's deposited with the court was 8th June 1995 and if the amount is realised from the bank on 8th June 1995 or thereafter the State will be getting a sum of Rs. 1,55,533/- from each surety. Bank was, therefore, directed to remit the amount of the FDR's on maturity through cheque (s) and the case was postponed for directions to 8th June 1995. Two cheques received were deposited in the treasury and the case was taken up on 26th July 1995 and on that date the order under appeal was passed in regard to issue of warrants of attachment against the moveable and immoveable properties of both the appellants for recovery of the aforementioned balance sums. Thereafter, on 31st July 1995 both the appellants filed a joint application, inter alia, alleging that now the death certificate of accused Khyle Asghar has been received by the counsel of the appellants and a copy of the same has also been received by the court; that the appellants could not have produced the accused as he had died on 12.4.1991 as is evident from the death certificate received by the counsel of the appellants. Photostat copy of the death certificate was also filed Along with application. It was prayed that the entire forfeited amount be remitted. This application was summarily dismissed by the trial court on 1st August 1995. On the file of the trial court envelope and the death certificate allegedly issued by Health Clerk, Health Department, Lahore Metropolitan Corporation are also placed. Envelope is addressed to Sh. S.M. Aggarwal, the then Additional Sessions Judge, Patiala House Courts, New Delhi, and the name of the sender is noted as Lal Baz, House No. F-15, Mohalla Chari Marran, Andrun Lohari Gate, Lahore, Pakistan. It is significant to note that this envelope neither bears any postal stamp nor the postal

seals of any of the Post offices either of Pakistan or of New Delhi.

5. As is manifest from the aforesaid order dated 8th May 1995, by the time it came to be passed the appellants had not filed any documentary evidence whatsoever in support of the alleged death of accused Khyal Asghar on 4.4.91 as reflected in the said death certificate despite repeated opportunities being afforded to the appellants from time to time over a period of about 5 years after the accused started absenting in 1991. It was for the first time that photostat copy of the death certificate came to be filed Along with the application dated 31.7.95 by the appellants. The way the death certificate was received in the trial court and the photostat copy thereof filed Along with the application dated 31.7.95 immediately after the passing of the aforesaid order dated 26/7/95 raises doubt about the genuineness of that certificate. During the course of arguments it has been brought to my notice that the co-accused who were being tried Along with accused Khyal Asghar, were acquitted of the charges on merit by the order dated 18th July 1992 by the trial court. Taking note of this fact and the circumstances of the case I feel that without disturbing the recovery of the amount of Rs. 1,55,533/- from each of the appellants, the amount of Rs. 44,467/- still due against each of them now deserves to be remitted. Ordered accordingly.

6. The appeal is disposed of accordingly.