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Pritam Singh Vs. the State

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Court : Delhi

Decided On : Sep-29-1970

Reported in : 1972CriLJ1621a; 7(1971)DLT345

Judge : V.D. Misra and; Rajinder Sachar, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 499

Appeal No. : Criminal Revision Appeal No. 67 of 1970

Appellant : Pritam Singh

Respondent : The State

Advocate for Pet/Ap. : I.L. Chaudhary and; Dinesh Mathur, Advs

Judgement :

Rajinder Sachar, J.

(1) The question the arises in this case is whether the bond executed by a surety accused under section 499 old the Code of Criminal Procedure even when no bond has been executed by the accused under thal section is a valid band which can be forieited under Section 514 of the Code of Criminal Procedure.

(2) the The facts of the case are that one Banwan Lal who is a milk vendor was proceeded with under the Prevention old Food Adulteration Act, 1954. He was

produced before Shri C.D. Sharnia Magistrate 1st Class Delhi, who by his order dated 6th September, l968, directed Banwari Lal to furn sh a bail bond in the sum of Rs. 2,000.00 with one surety in the like amount for appearing in the court whenever required. In pursuance of this the petitioner, Priiam Stngb. executed a surety bond in the amount of Rs, 2,000.00 on l2th September, 1968, undertaking that Banwari Lal would be appearing in the court Irom time to time as may be required until the close oi the trial and if the accused defaults then the petitioner will be liable to forfeit a sum of Rs 2,000 -, Banwari Lal committed a default for appearing in the court on September 19, 1968 and the subsequent hearing The court forfeited the amount of surety bond and issued notice to the petitioner in this behalf. There, after the trial court by its order dated 10th March, 1969, came to the , conclusion that the petitioner had failed to show any cause and it thereforee, directed the petitioner to pay the penalty of Rs.1/000.00. Appeal against the said order was dismissed by the Additional District Magistrate Delhi on 26th July, 1869. There after the petitioner filed a revision before the learned Additional Sessions Judge The poiiit urged before the learned Additional Sessions Judge was that the bend had not been executed by Banwari lal and, thereforee, even though surety bond was duly executed by the petitioner the same was invalid and could not be enforced against him. The Additional Sessions Judge following certain authorities recommended to this court that as the bond bad not been executed by Banwarial, the petitioner could not be held liable on hs bend also and thereforee, recommended that the order by the learned Additional District Magistrate. Delhi, dated '26th July, 1969 be set aside, and the notice issued by the trial court requiring the petitioner to pay the penalty be discharged.

(3) the This matter came up before me sitting singly. I found that there was a confict of views amongst the various High Courts considering that the matter was of general importance and was likely to arise in future, I felt that this case should be decided by a larger bench. I thereforee, directed that the case be referred to a larger bench. This is how the said matter has now been placed before us.

(4) the Admimttedly the bond which was to be executed by Banwari Lal was not signed by him. This is clear from the printed form on the record. The surety bond, however, is duly executed by the petitioner; The only argument why it is urged that

proceedings for the forfeiture of the bond against the petitioner cannot be enforced is on the ground that as the bond was not executed by Banwari Lal the person who was to be released on bail, the surety bond though otherwise duly executed is not enforceable against the petitioner. It is the validity of this contention that has to be decided in the present reference.

(5) the Section 499 of the Code of Criminal Procedure provides that before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be. Form Xiii in Schedule V to the Code of Criminal Procedure gives the form of bail bond and is as under.

'I, (name) of (place) being brought before the Magistrate of (as the case may be) charged with the offence of and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and, should the case be sent for trial by the Court of Session to be, and appear, before the said Court when called upon to answer the charge against me; and in case of my making default, herein, I bind myself to forfeit to Government the sum of rupees. Dated this day of 18, 'Signature) I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the said (name that that he shall attend at the Court of on every day of the preliminary inquity into the offence charged against him. and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him. and in case of his making default therein I bind myself (or we bind ourselves) to forfeit to Government, the sum of rupees--- Deted this day of 18. (Signature)'

The form on the present record had been, as already indicated duly executed by the petitioner as a surety, though the form which was to be executed by the accused has been duty filed in, but some how for reasons not known, it was not

got executed by the accused. The result is that there is thus no bond executed by the accuse, Nanwari Lal The question thereforee that arises is that Banwari Lal having defaulted for appearingin court and proceedings having been taken against the petitioner for ferfeiture of the bond, is there anything illegal in proceeding against the petitioner on the sole ground that the bold has not been signed by the accused, Banwari Lal. This would be a proper stage to make a reference to the various cases which have taken conflicting views on this point

(6) the In Wadhawa Singh v Emperor1 Zifar Ali J. set aside the order by which a bond executed by the surety had been ordered to be forfeited. In that case, however, the facts were that the accused had been ordered to be released on bail by the police officer apparently under the provisions of Section 496 of the Criminal Procedure Code Though Section 496 does not provide that the police officer has any power to demand that a person who is to he released on bail should furnish security, the police officer instead of taking a bond from the accused obtained a bond from a surety. The accused having absented himself the proceedirgs were started against the surety and it was in that connection that this order was set aside with the fallowing observations.-

'The police officer in the present case appears to have acted under S. 496, and what he had the power to do under that section was to demand a bail from Teja Singh or to accept his own bond without sureties. Under no provision of law the police officer could take a third party's bond for Teja Singh's appearance.'

This case. thereforee, does not deal directly with the point in issue. This case, however was distinguished and not followed in a latter Lahore case reported as Indar v Emperor. In that case also the accused did not execute any bind himself and when proceedings against the surety started objection was taken that as the accused did not execute, a bond the surety was not also bound and the bond could not be forfeited. This contention was repelled by Skemp J. and his lordship observed as follows - Section 496 does not state that a person so released must give a bond himself Nor is there anything, requiring such-a bond on first principles. The person giving bail enters into a contract with a penalty clause to produce the accused person before a Magistrate when called upon. The person giving bail .is

the principal. The person for whom bail is given is the subject of the contract. If the person givins but fails to perform his contract then the penalty clause may be put into operation against him, although as in other contracts with a penalty clause it is not necessary to exact the penalty in full. In 2 Lah 204 Mirtinear J. enforeced a bail bond although the arrest was illegal. In 3 1C. 470 Benson C.J. said : There is nothing to show that the accused has paid the amount of his own bail bond. Even if he had, I do not see how this would discharge the petitioner who is not a security in legard to the accused's bond, but has himself undertaken to produce the accused or in default to forfeit a sum of money.' This matter was again considered in Kundan Singh v. State.3 where Chopra J held that the validity to the surety bond does not depend upon the accused executing a personal bond for his appearance. It was observed as follows :-

'It is no doubt correct that when an accused person is released on bail, he must execute a bond himself for his appearance together with a bond on behalf of his surety to produce him. Section 499 does contemplate two bonds, one by the accused and another by the surety or sureties ; but that does not mean that if there was no bond executed by the accused the surety is discharged from bids liability and the bond executed by him was invalidated on that account. To release the accused on bail merely on an undertaking given by the surely, without the accused having been required to execute a personal bond, may be irregular, but I do not think that fact alone would affect the liability of the surety who had undertakpn to produce the accused before the Court in the case turn which the bond was meant '

His lordship preferred to follow the view of Skempt J. in Indar's case and did not follow the view of Zafar Ali J. in Wadhawa Singh's case. Chopra J. also preferred the subsequent view of Allahabad High Court as against the earlier view which had taken a contrary view. In Reoti Prasad v. Emperor Bajpai J. took the view that even if no bond is executed by the accused but the surety has executed a bond the surety is amendable to penalty in the event of hits failure to produce the accused as the two bonds (by the accused and the surety) contain different undertakings and the validity of the one does not depend on the validity of the other. A contrary view, however, was taken in Brahma Nand Misra v. Emperor6

where Mulla J. held that it was incumbent und?r Section 499 to get a bond executed by the person who is released on bail and unless that is done there can be no valid bond by a surety alone. In this decision however no reference is made to the earlier case of Allahabad i. e. Keoti Prasad case. The matter again came up for consideration in Nisar Ahmad v. Emperor* where Malik J. held that the surety was liable even if there was no bond executed by the accused. Later Ob this matter was also considered by a Division Bench of Allahabad High Court in Abdul Aziz and another v. Emperor7 and the view taken was that the surety bond does not become invalid simply because the accused had not executed a personal bond. It was observed as under :- In our judgment, a certain amount of confusion is created by the use of the word 'surety' in the Code of Criminal Procedure because there is a tendency to regard this word as meaning a surety for the payment of a sum of money by another person. It is quite clear from the terms of S. 499, Criminal P. C. and the form of the bail and security bond given in the schedule of form that the surety does not guarantiee the payment of any sum of money by the person accused who is released on bail bat guarantees the attendance of that person. He is a surety for attendance and not a surety for payment of money. His contract and the contract of the person released on bail are independent of each other, the simple fact is that the surety promise-, to pay a certain sum of money if the person accused does not appear at some time and place as required by law. If that person does not appear the money is forfeited' Their lordship? specifically disented from the view expressed by Mulla J. in Brahma Nand Misra's case'. They, however, approved of the view taken by Skemp J. in Indar's case. This authority of the Division Bench was followed in Sripal Singh and another v. The State. A similar view was also expressed by another Division Bench in Mewa Ram and another v. State where in it was again held that a bond executed by a surety under Section 499 even when no bond has been executed by the accused under that Section is a valid bond which can be forfeited under Section 514 Criminal Procedure Code. It was observed as under :-

'The section does not make it necessary that only one bond shall be taken which will be executed both by the accused is well as by the sureties. There is nothing to prevent two bonds being taken, one by the accused and one by the ureties. The form of the bond in the form No 42 of Sch. 5, indicates that the bonds are to be

separate. Again, the section does not lay down that the bond or bonds which are to be executed by the sureties shall have any reference to the bond executed by the accused. The phrase 'time and place' mentioned in the section must, in our opinion, refer to the time and place mentioned in the particular bond executed hy the accused or the sureties, as the case may be. The bond executed by the sureties is not intended to have refererce to the date- and place mentioned in the bond executtd by the accused. It is clear that a bond which is taken from the sureties and which has no reference to any of the terms mentioned in a bond executed by the accused himself is one taken in pursuance of the provisions old S. 499. Such a bond doe? not cease to be taken under that Section merely because no bond has been taken from the accused. It is true that S. 499 requires a bond to be taken from the accused but there is nothing in S. 499 which makes the execution of the bond by the surety or sureties to be dependent upon the execution of a bond by the accused. When the terms of the bond executed by the sureties are contravened S. 514 comes into play. The phrase 'under this Code' in S. 514, is fully applicable to the bond executed by the sureties even when no bond has been executed by the accused,'

Their lordships further observed as follows :-

'A surety under the Code of Criminal Procedure is not an ordinary surety under the civil law. A surety under the civil law guarantees the payment of a certain sum of money by a debtor, and guarantees that a certain sum of money shall be paid in the first instance by the debtor and if he does not pay it, the same amount shall be paid by the sureties themselves. In such a case, in order that a surety may be bound to pay the amount, it is necessary that the debtor must be bound to pay the amount, the sureties are not liable to pay, either. Under the Criminal Procedure Code, however, a sureiy is for the appearance in Court of an accused person on a particular date or dates. When a Court orders an accused person to appear on any date, the accused is bound to appear on that date whether the accused has executed a bond to that effect or not. The effect of a bond executed by an accused is merely to make him liable in a certain sum of money if he does not appear on the dation which he is ordered to appear. The agreement of the surety to produce an accused on a particular date or dates is wholly independent of any agreement

by the accused to pay a certain sum of money in case he does not appear on a certain date "

The contrary view expressed in Brahma Nand Mishras case was specifically dis-approved by this Division Bench authority. In bahar Husain and others v State Mukherji J. followed the Division Bench judgment of Abdul Aziz and another and differed from the earlier view of that court expressed in Brahma Nand Misra's case. In Chamra Meher and another v. State of Orissa the Division Bench consisting of Ray and Narasimham JJ. held that a bond executed by the surety and not by the accused is not a bond contemplated by Section 499(1) of the Criminal Procedure Code and, thereforee, the summary procedure for forfeiture of the bond provided by Section 514 Criminal Procedure Cede will n3t be applicable to such a bond. The earlier case of Govinda Chandra v. .State,12 decided by Ray C. J. was followed, It is worth noting that in this case no reference is made to any of the cases of Allahabad or Lahore which have taken a contrary view. In Baidyaneaih Misra v. Emperor Sinha J. held that a bond by the surety alone is not contemplated by the Code and there is no power in the Code to forfeit such a bond. In coming to the conclurion that a bond which is not executed by the accused, but executed by the surety is not valid, his lordship relied on Brahma Nand Misra's case, where it was observed that this authority had relied upon the decision of Nagpur High Court in Emperor v. Chintaram, for this proposition. His lordship, however, distinguished Indar's ease Baidyanath Misra's case was specifically dissented by a Division Bench of the same High Court in Keshav Narain Choudhary and others v. The State, ' where the view taken was that even if the accused did not execute the bond the surety was not discharged from his liability and his bond could be enforced against him. In Dina Nath v. State 1964 2 Cri. L. J. 617 Wazir C. J. held that even if the accused does not execute the bond for his appearance it does not invalidate the other bond executed by the surety for, the payment of penalty on default of appearance of the accused This case followed the later Allahabad decisions and dissented from the earlier Allahabad decision in Brahma Nand Misra's case. In Sailesh Chandra Chakraborty v The State : AIR1963 Cal309 , Division Bench of Calcutta High Court took the view that where the bond is not executed by the accused but. only by the surety, the same cannot be enforced against the surety as it is not a bond contemplated by the

Code. For this proposition their lordships relied upon an earlier case of that Court reported as Narendra Nath Majumdar v. The State, In that case in the first instance there was difference of opinion between Guba Ray J. and Sen J. Guha Ray J. had taken the view that a bail bond which is not executed by the accused was invalid and cannot be enforced against the surety whereas Sen J. was of the opinion that the omission of the accused to execute the bail bond is at best an irregularity and is not such an illegality as to vitiate the bond and it can be enforced against the surety. The matter was then referred to Lahiri J. who agreed with Guha Ray J. and held that such a bail bond not executed by the accused was not contemplated by the Code of Criminal Procedure and was not enforceable against the surety. Thus Calcutta High Court has taken the view that a bail bond not executed by the accused is not executable against the surety. They preferred to rely on the earlier Allahabad case i.e. Brahma Nand Misra's case, and did not follow the later Allahabad case. Thus we have decisions by the different High Courts and also of the same High Court holding that even if a bond is not executed by the accused but has been validly executed by the surety the same is enforceable against him as the two bonds one by the accused and the other by the surety ; are distinct and separate This proposition has been consistently accepted in the High Court of Allahabad excepting one dissenting view in Brahma Nand Misra's case. In the High Court of Patna the contrary view that if the bond is not executed by the accused the same cannot be enforced against the surety was held by a single judge in Baidyanath Misra's case. This view was specifically dissented by the latter Division Bench of the same High Court in Keshav Narain Choudhry's case. In Bajdyanath Misra's case the learned judge has relied on Brahma Nand Misra's case and Emperor v Chiniaram's case for this view. As already pointed out Brahma Nand Misra's case has not been followed by that court in subsequent decisions. Chintaram's case does not deal with this matter. In that case what was found was that in the bond there was no mention in the Surety bond of the court in which the accused was directed to appear and, thereforee, it was held that no liability is attached to the surety if the accused did not appear in a court for which no undertaking has been given by the surety High Court of Jammu and Kashmir has followed the latter Allahabad decisions. High Court of Orissa has taken a contrary view but the same was commented upon in Keshav Narain

Choudhary's, case. Dealing with the observations made in Govinda Chandra v. State it was observed in Keshav Narain Choudhary's case as under :-

'WITHvery great respect, I think this reasoning confuses the relationship between a principal arid a surety in civil law with that between an accused person and his surety or bailor in criminal law It a bond is not taken from an accused person himself for his appearance in Court, I see no reason why a bond taken from a surety for his production in Court should be held to be invalid. The learned Chief Justice also referred to section 499 of the Criminal Procdure Code, and observed rightly, if I may say so with respect, that the section contemplates two cases ; one when the accused is to be released on his own bond and the other when the accused is released on bail The execution of a bond by the accused is imperative, and in the case of release of the accused on bail, a bond by sureties has to be executed in additional. But if a bond is not taken from the accused himself but only from a surety, and the accused is released on bail, this would, in my opinion, be an irregularity, but it would not make'the bond executed by the surety invalid.' surety invalid.'

It was further observed :-

'that in such a circumstance all that can be said is that the release of the accused on bail was irregular, and not warranted, but that the position of the surety as expressed in the bond executed by him remains unaltered.'

It will now be useful to make a refrence toBekaru Singh v. State of Uttar Pradesh and to the obserations made in para 12 to which attention was drawn by both the counsel. This case, however, is distinguishable and was not dealing with the point which arises sin the present case before us. What had happened was that one Bekaru Singh who had not executed a surety bond subsequently had not executed it on the back of the bond executed by Ram Narain accused. When proceedings for forfeiture of the surety bond were taken against him he had taken the objection that as he had not executed the bond on the back of the bond executed by the accused, proceedings could not take place against him. This contention was negatived by the Supreme Court an 1 it was obsereved that surety bonds were good by themselves and no procedure required that the surety must necessarily

execute the bond printed in the back of the bond on which the accused had signed. This authority, thereforee, does not deal with the situation where the surety had executed the bond but no bond had been executed by the accused. The cases which have taken a view that if a bond is not executed by the accused, the bond executed by the surety is not valid and is not bound under Section 499 of the Code of Criminal Procedure. proceed on the basis of the following two assumptions;

(I)that Section 499 of the Code of Criminal Procedure requires that the bond taken under the Code should be signed by the accused as well as by the surety and in case the bond is not signed by the accused the same cannot be said to be a bond within the meaning of Section 499 of the Code of Criminal Procedure and, thereforee, Section 514 of the Code does not apply to such a bond (ii) that section 514 (B) provides that when the person required by any court to execute a bond is minor, the bond can be executed by the surety only and this shows that the bond must necessarily bs signed by both the surety as well as the accused. In our opinion those cases, with respect, proceed on a mis-apprehension of the correct position in law. Now Section 499 of the Code requires that before any person is released on bail of released on his own bond, a bond for such sum of money as the police officer or the court, as the case may be, thinks sufficient shall be executed by such person and when he is released on bail by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond. What this section means is that before a person is released on bail, the court will require a bond to be signed by him to attend the court and a separate bond also to be signed by the surety undertaking that the accused shall attend at the time and place mentioned until otherwise directed by the court. Form 42 in Schedule V to the Code of Criminal Procedure brings this out clearly. The first form which is to bs executed by the accused provides for an undertaking by the accused to appear before the said court and in case of default in binding himself to forfeit to the Government, the named sum. This is an independent undertaking and an agreement by the accused Similarly the second part of the form which is to be executed by the surety binds the surety to see that the accused appears before the court and in case of the accused making a default the surety bin's himself to forfeit to the government the named sum. 'I his again is

an independent contract with the Government and is not dependant on the execution of the bond by the accused. As a matter of fact in the form prescribed and which is to be executed by the surety it is nowhere mentioned that this undertaking is dependant on the accused having given a similar undertaking separately. It is thereforee difficult to accept the reasoning of those cases which lay down that simply because the accused had not executed the bond, the bond though executed by the surety and otherwise valid in all respect must nevertheless be invalid on this ground alone. There is no warrant for such an interpretation either in general principles or any known principles of cririminal law. It is not as if no accused can be released on his executing a personal bond and, thereforee, surety is necessary in every case. In case where an accused is released on a personal bond it would be obvious that the bond will be executed only by the accused. It is only when a bail is granted and a surety bond is to be executed that second party of the form requiring the execution of bond by the surety is necessary. Their lordships of the Supreme Court have also stated that the surety bonds are good by themselves and that there is no provision in the Code of Criminal Procedure that the two bonds one to be executed by the accused and the other by the surety have to be on the same sheet of paper. (This clearly thereforee suggests that the two bonds one by the accused and the other by the surety are independent of each other. The undertaking given by the accused can be enforeced against him if the bond is valid and similarly the undertaking given by the surety can be enforced against him if the bond is valid and it cannot be held that one is dependant on the other. It may be that the accused would not have been released on bail had it been brought to the notice of the court that the bond had not been executed by the accused. it may be an irregularity and may show laxity but that cannot effect the validity of the bond which has been properly executed by the surety. The bond executed by the surety must be found to be valid or otherwise on its inherent nature and cannot be made to depend on the invalidity or the validity of the bond executed by the accused. In our opinion the view of those cases taking contrary view seems to have been affected by the fact that form 42 in Schedule V of the Code of Criminal Procedure gives both the forms to be executed by the'accused and the surety and it seems to have, thereforee, been assumed that because the forms are mentioned in one place, thereforee,

they are necessarily inter-dependant. There is nothing in Section 499 and in the forms to show that one is dependent on the other and, thereforee, with respect we cannot agree with the view taken in those cases.

(7) the Another argument accepted in those cases is that Section 5l4(B) of the Code provides that if the accused is a minor who has to execute a bond the court may accept in lieu a bond executed by a surety. It seems to have been held that because this provision provides that it the accused is minor a bond may be executed by a surety it follows that if an accused is not a minor and has not executed a bond the bond executed by a surety is invalid. With respect we are not iropiessed with this reasoning. Section 514(B) of the Code is an independent provision which covers an eventuality when a bond is to be signed by a minor. This would even cover a case where the person is ordered to be released on a bond without surety and lays down that instead of the bond by the minor a bond executed by a surety may be accepted (his is a whole some provision providing for a special case where a bond is to be executed by a minor. But this has no relevency or connection with when a bond is to be executed by an accused who is not a minor and by the surety when the accused is being released on bail. If it has any relevancy it is only this that in case a bond is to be executed by the accused who is a major it must be done by him and the court cannot accept in lieu a bond executed by a surety. Thus it only lays restriction on the court not to accept a bond from a surety in a case in which the accused is not a minor. This does not determine the question of the validity of a bond executed by a surety in a situation where the bond has not been executed by the accused. With respect, thereforee, we do not see any relevancy of Section 514(B) of the Code on the question before us

(8) The reason on which it is assumed that the bond executed by the accused and the bond executed by the surety are inter-dependent on each other must assume that purpose of both the bonds is a joint one and the interests to be served are also joint. Now if the interests were joint then it would be passible for an accused to have an agreement with the surety that if he was to default and the bond executed by the surety was forfeited the latter will be re-imbursed by the accused. In a normal case where two persons Lave a common interest in giving a joint

undertaking such an agreement would be valid and no objection could be found to it. But if the whole object of taking a bond from the accused and that of taking from the surety is independent and separate one, then such an undertaking given by the accused to reimburse the surety would be opposed to public policy and it would be defeating the object of the Act which is to bind the accused and the surety separately to the undertaking to see that the accused appears before the court. It has now consistently been held by courts of England as well as in India that an agreement by an accused with the person surety who stands for him that he would indemnify the surety if the bail is forfeited on account of the accused's non- appearance, is void. In Jodhrai v. Bisanlal, it has been held as under :-

'Sureties on a bail bond are required in order that the failure of the principal to appear may be at the peril of other besides himself, and the whole object to that provision is defeated if the principal and surety are allowed to relieve the latter of the peril and confine it to the former by an arrangement among themselves.'

In this case reference is made that such an agreement has been held to be void by a full bench of the Chief Court of Punjab in Sunder Singh v. Kishen Singh and also by the Bombay High Court in Laxman Lal v. Mulsiianka'. In the matter of Babu Suraja Narain, Mukhiear, a special bench of three judges held as under ;-

'A contract is illegal, whereby a defendant in a criminal case, who has been ordered to find bail for his good behavior during a specified period deposited money with his surety upon the terms that the money is to be retained by the surety during the specified period for his own protection against the defendant's default, and at the expiration of that period is to be returned. English cases ref.'

Similarly in Bhupali Charm Nandi v. Go/am Ehihar Choudhury of Salka it was held that a contract to indemnify a surety against loss in the event of the surety bond being forfeited is illegal and cannot be enforced These cases further support the submission of the learned counsel for the respondent that the undertakings given by the accused and that by the surety are independent of each other and are not infer-dependent. We are thus of the view that the mere fact that the bond has not been executed by the accused is not sufficient to discharge the surety when the bond executed by him is otherwise valid. In our view such a bond being an

independent agreement be the surety can be enforced against him and proceedings for forfeiture can be taken against him under Section 514 of the Code of Criminal Procedure. We find ourselves in agreement with the view expressed in the latter Allahabad cases, Keshav Narain Choudhary's case and Dina Nath's case. We have already given our reasons way we cannot agree with the reasoning given by the High Court of Orissa and Calcutta.

(8) the For the reasons given above, we are, thereforee, not in a position to accept the recommendations made by the learned Additional Sessions Judge by his order dated January 27, 1970 and we, thereforee, decline it. No reasons were given to us to show that the penalty of Rs. 1,000.00 imposed by the Magistrate and up-held by the Additional District Magistrate was in any manner illegal or improper. The order, thereof, directing a penalty of Rs 1,000.00 would stand.

(9) Thbefore we part with the case we must emphasize our unhappiness at the carelessness shown in the courts below when the bonds were accepted. The bond executed by the surety and the printed form which was to be executed by the accused are on one punted .sheet of paper. The order accepting the bond is signed by the Magistrate in the middle of this very printed sheet. It is regrettable to notice that while accepting the bail care should not have been taken to see whether the accused had also exesated the bond or not. Such laxity denotes some-what mechanical approach to the problem which is hardly to be commended.

(10) the The result is that the reference is declined and the revision petition is. thereforee, dismissed.

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