

Dal Chand Vs. State

Dal Chand Vs. State

SooperKanoon Citation : sooperkanoon.com/686125

Court : Delhi

Decided On : Mar-23-1973

Reported in : 1973RLR428

Judge : P.S. Safeer, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 514

Appeal No. : Criminal Revision Appeal No. 457 of 1972

Appellant : Dal Chand

Respondent : State

Advocate for Pet/Ap. : S.K. Agarwal and; P.P. Malhotra, Advs

Judgement :

P.S. Safeer, J.

(1) The petitioner had as surety executed. a bail bond on the 30th March, 1972 in the sum of Rs. 5,000.00 affirming that the accused Chantal Compagan wife of of Sobhraj resident of French Embassy, 2-Aurangzeb Road will continue to appear in the course of the trial and he filed the bond in the Court of Shri K. B. Andley, Additional Chief Judicial Magistrate, New Dehli. In case of default on the part of the accused to appear in terms of the bond executed by by him the petitioner incurred the liability of paying the amount of Rs. 5,000.00 to the state.

(2) The accused committed default in appearance. Proceedings under section 514 of the Criminal Procedure Code, hereafter called 'the Code' were initiated. The petitioner appeared before the Chief Judicial Magistrate, in the course of the proceedings on the 30th of August, 1972. On that date the following order was passed 'Surety wants one more adjournment to produce Mrs. Chantal Sobhraj. She be produced on 14/9'.

(3) The petitioner did not produce the accused on the 14th of September, 1972 and remained absent himself. Instead of acting in terms of section 514 of the Code and dealing with the bond so as to record his forfeiture, the Learned Additional Chief Judicial Magistrate passed the order that the surety being absent. be summoned by issuing non-bailable warrant of arrest. In terms of the warrant to be so issued the surety was to be apprehended for the 5th of October, 1972. On that date it was found that the surety remained unserved. The Additional Chief Judicial Magistrate passed the following order. "Surety not served. Be summoned again through w/o arrest non- bailable for 24/10.'

(4) A petition was filed under sections 435/438 of the Code and Mr. D.C. Aggarwal, Addl Sessions Judge, Delhi dealing with the same has recommended that the order dated the 5th of October, 1972 being unwarranted by section 514 of the Code be set aside. It is provided by section 514 of the Code that in proceedings there under whenever the Court is satisfied that the bond has been forfeited the grounds of the proof of forfeiture will be recorded and the person liable will be called upon to pay the penalty in terms of the forfeited bond. In the first instance, such a person is to be required to show cause why the penalty should not be realised. In case sufficient cause is not shown and the penalty is not paid the Court can then proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to the person whom he is liable to pay the amount covered by the bond. In any case there is no sanction in section 514 of the Code to issue a warrant of arrest for apprehending the person who on forfeiture of the bond incurs only the liability to pay the penalty i.e. the amount covered by the bond subject to the Court's discretion to remit any portion thereof. The order dated - the 5th of October, 1972 being outside the scope of section 514 of the Code was not appealable under section 415 thereof. The

recommendation made by the Additional Sessions Judge is accepted and (he order dated the 5th of October, 1972 passed by Additional Chief Judicial Magistrate is set aside without prejudice to the determination whether the bond executed by the petitioner has been forfeited or not On fresh determination the Additional Chief Judicial Magistrate may proceed in accordance with Section 514 of the Code. (Baldev Raj Madan, Adv.)

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com