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

Dilnawaz Khan Vs. the State

Dilnawaz Khan Vs. the State

SooperKanoon Citation : sooperkanoon.com/688029

Court : Delhi

Decided On : Mar-12-1980

Reported in : 1980CriLJ145; 17(1980)DLT437

Judge : M.L. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 446

Appeal No. : Criminal Appeal No. 212 of 1979

Appellant : Dilnawaz Khan

Respondent : The State

Advocate for Pet/Ap. : Dhanbir Singh and; N. Mehta, Advs

Judgement :

M.L. Jain, J.

(1) The appellant stood surety in the sum of Rs. 5000.00 on June 7) 1978 for ensuring appearance of Mohd. Yasin accused of offences under Section 363, 366 and 376 Indian Penal Code The accused jumped bail on July 25, 1979. The learned Addl. Sessions Judge on that date issued non-bailable warrants and also forfeited the bail bonds and directed issue of notice to the surety. The notice that was issued to the petitioner directed him 'to appear and show cause why necessary action be not taken against him as per law.' The notice is dated July 26,

1979.

(2) In response to this notice, the appellant appeared and filed a reply on September 5, 1979 that he will trace the accused and produce him before the court and sought an adjournment for that purpose. The learned Addl. Sessions Judge by his order dated September 7, 1979 held that the petitioner- appellant was unable to furnish any Explanationn why the accused was absent on 25thJuly, 1979 and imposed 'arfine' of Rs. 4000.00 Hence, this appeal.

(3) The learned counsel for the appellant made two contentions-In view of Ghulam Mehdi v. State of Rajasthan, : AIR 1960 SC1185 the proceedings should be quashed; or (2) The Petitioner has since then been able to have the accused arrested, only a nominal sum should be imposed as penalty. The accused is reported to be in custody and is facing trial.

(4) I have considered the matter. There is no doubt that the learned Addl. Sessions Judge has not strictly followed the procedure provided in Section 446 Cr. P.G. That Section provides that wherever it is proved to the satisfaction of the court that the band has been forfeited, it shall record the grounds of such forfeiture and call upon the person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. Now, the notice that was given to the appellant was not why he should not pay the penalty but it called upon him to show cause why necessary action be not taken against him as per law. According to Gulam Mehdi (supra) before a surety becomes liable to pay the amount of the bond forfeited, it is necessary to give him notice why the amount should not be paid and if ha fails to show sufficient cause, only then can the court proceed to recover the money. Before an amount can be penalised, forms of law have to be observed and an opportunity has to be given to a surety to show cause why he should not be made to pay. In the case before me, these provisions have not strictly been followed. The notice should have called upon the person to pay the penalty of the bond or to show cause why it should not be paid. This has not been. done. The notice was certainly defective. The learned Public Prosecutor submitted that when the judge said why necessary action be not taken as per law, he meant and the surety also understood that he was called upon to pay the penalty or to

show cause why it should not be paid. I am not much impressed by the submission of the learned Public Prosecutor and there is a considerable force in the argument that prejudice has been caused to the appellant because the notice was not strictly in accordance with the provisions of Section 446 Cr. P.C. For that reason and also for the reason that the surety has been able to have the accused arrested, a lenient view is called for in the matter and certainly a penalty of Rs. 4000.00 does not appear to be reasonable.

(5) I, thereforee, accept this appeal, modify the impugned order and direct that only a penalty of Rs. 400.00 shall be recovered and that shall meet the ends of justice. The appellant is allowed one month's time to deposit the penalty of Rs. 400.00 in the court below.

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