

Urmila Devi Vs. State

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Court : Delhi

Decided On : May-08-1989

Reported in : ILR1989Delhi135

Judge : R.L. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 449

Appeal No. : Criminal Appeal No. 21 of 1983

Appellant : Urmila Devi

Respondent : State

Advocate for Pet/Ap. : S.K. Agarwal, Advs

Judgement :

R.L. Gupta, J.

(1) This appeal under Section 449 Criminal Procedure Code is directed against the order dated 21st January, 1983 passed by Shri H. P. Bagchi, Additional Sessions Judge, Delhi by which he imposed a penalty of Rs. 5,000j- on the appellant. The appellant is the mother of Suresh Pal who was standing trial in a case based on Fir No. 51 of 1981 of Police Station Tilak Nagar. The appellant stood surety in the sum of Rs. 5,0001- for the due appearance of her son Suresh Pal before the court. The trial of the case against her son was going on and it appears that Suresh Pal

absented from the proceedings with effect from 28th July, 1982. It is then stated that because of the non-appearance of Suresh Pal, appellant received a notice for production of the accused on 15-10-1982. She accordingly appeared and made an application submitting therein that the whereabouts of her son were not known and, therefore, she pleaded for grant of some time. Time was accordingly granted to her. But she could not produce Suresh Pal and, therefore, in this manner she made two more similar applications. Ultimately the learned trial court forfeited the surety bond and imposed a penalty of Rs. 5,000/- upon her. The appellant feels aggrieved against that order for the reason that no notice was actually given to her as to why the amount of the bail bond be not recovered from her. A grievance was also made that the full amount of the bail bond should not be ordered to be recovered in view of the facts that she was an aged woman.

(2) I have heard the learned counsel for the appellant. None has appeared for the State.

(3) The main grievance made out by the learned counsel for the appellant is that the learned trial court did not issue any notice to the appellant under Section 446 Criminal Procedure Code to show cause as to why the amount of the bail bond be not realised from her. It is also stated that copy of any such notice alleged to have been served on the appellant is not in the file and, therefore, it must be presumed that no such notice was given to the appellant. I have perused the order sheet of the file of the learned trial court. It appears that no Presiding Officer presided in this court from 28th July, 1982 to 6th October, 1982. It was only on 6th October, 1982 that the learned trial court ordered the issuance of non-bailable warrants against the accused and also a notice to the surety. The appellant appeared in the court on 15th October, 1982 and made an application stating therein that non-bailable warrants had been issued against her for not producing the accused on that date. She tried her best to trace out the whereabouts of the accused and she requested more time to produce the accused and also that the non-bailable warrants against her may be cancelled. She was accordingly granted time. On 29th October, 1982 she prayed for one more month to be given to her to search the accused. On 22nd November, 1982 she sought two months' time stating herein that she was trying to search the accused but could not find him. Then on 3rd

January, 1983 she made another application to the court requesting for two more months' time to be given to her to trace out the accused and if the accused did not appear she will then deposit the surety amount in the court as directed by the court. It was then on 3rd January, 1983 that the trial court passed the following order :-

'SURETY is present. Surety was given last opportunity to produce the accused. But she failed to produce him. The bail bonds of the surety and the accused are being forfeited. Surety is directed to deposit the amount of Rs. 5,000.00 , but the surety has moved an application submitting that she is the mother of the accused and she must produce him on the next date. She requested for an adjournment. Heard. In the interest of justice the surety is given one more opportunity to produce the accused. No further opportunity will be given.'

The case was adjourned to 21st January, 1983. On that date also the surety was unable to produce the accused who was her son.

(4) A bare perusal of the order dated 3rd January, 1983 shows that the bail bond was ordered to be forfeited on that date and surety was directed to deposit the amount but in view of the fact that she prayed one more opportunity, the court in the interest of justice granted her final opportunity to produce the accused by the next date i.e. 21st January, 1983. The order date 21st January, 1983 against which this appeal has been filed clearly resulted from the forfeiture of the bail bond ordered on 3-1-83 in the presence of the appellant. In view of the facts stated above, I am of the opinion that it cannot be said by any stretch of imagination that notice was not given to the appellant by which the bail bond was, ordered to be forfeited. In fact, it was given to the appellant in her very presence in the court itself on 3-1-83.

(5) According to Section 446(1) of the Code of Criminal Procedure, 1973 a case, 'where a bail bond has been furnished for a due appearance of an accused presence and it is proved to the satisfaction of that court or the transferee court that the bond has been forfeited, the court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. The section itself clearly shows that after

forfeiting the bail bond, the court may either call upon the person bound by such bond to pay the penalty thereof or in the alternative it may prefer to issue show cause notice as to why it should not be paid. The main order dated 3-1-83 clearly shows that the bail bond was ordered to be forfeited and it was also directed that appellant shall deposit the bail bond amount of Rs. 5,000.00 . thereforee, reading the order dated 21-1-83 in isolation from the earlier order dated 3-1-83 would be simply a travesty of Justice because the full import of the order dated 21-1-83 can be inferred only from the earlier order dated 3-1-83 by which the bail bond was ordered to be forfeited and amount ordered to be recovered. I am, thereforee, of the view that in the facts and circumstances of the case, it cannot be said that no notice was given to the appellant directing the forfeiture of the bail bond and recovery of the amount.

(6) Learned counsel for the appellant drew my attention to a decision of the Supreme Court reported as Ghulam Mehdi v. State of Rajasthan. : AIR 1960 SC1185 . In that case a notice was not given at all to the surety and, thereforee, that authority is not applicable to the facts of the present case. Similarly, the other authority reported as Dilnawas Khan V. The State 1989 Cri LJ 145(2) is also not applicable.

(7) thereforee, upon a consideration of all the circumstances and facts of this case, I am satisfied that a due notice was given to the appellant firstly to produce the accused and when she was not able to produce the accused then the bail bond was forfeited and recovery was ordered.

(8) Learned counsel for the appellant also made a submission in the alternative that the accused Suresh Pal for whom the appellant had stood surety and who was her son as since died. He read out from a news paper report that Suresh Pal was killed by some deceits in November, 1983. In view of this fact, learned counsel for the appellant prayed that the bail bond may not be ordered to be forfeited for the full amount but some reduction may be made in that respect. Taking into consideration the above facts. I am inclined to reduce the amount of penalty to the extent of R.s. 2500 and I order accordingly. The amount shall be deposited within a month from today. Subject to the above modification in the

amount to be recovered from the appellant, I dismiss this appeal.

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