

Yashodha Vs. State

Yashodha Vs. State

SooperKanoon Citation : sooperkanoon.com/695743

Court : Delhi

Decided On : Apr-25-1994

Reported in : 1994IIAD(Delhi)469; 54(1994)DLT637; 1994(29)DRJ319

Judge : Jaspal Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 446

Appeal No. : Criminal Appeal No. 15 of 1994

Appellant : Yashodha

Respondent : State

Advocate for Pet/Ap. : K.L. Juneja and; R.D. Jolly, Advs

Judgement :

Jaspal Singh, J.

(1) In a case where a bond for appearance of the accused is forfeited, can penalty be imposed upon the surety without first serving upon him a notice to show cause? This is the precise question which needs to be answered in this appeal. However, before I proceed to deal with the question, let me provide the background.

(2) The appellant is none other but the daughter of Bihari Lal who is facing trial under section 21 of the N.D.P.S. Act. By an order of November 19, 1993 passed

by the High Court the accused was granted interim bail till November 15, 1993. The appellant stood surety for him in the required sum of Rs.25000.00 . It so happened that the accused surrendered in court, not on November 16, 1993 but on November 19, 1993. This invited the following order from the learned Additional Sessions Judge:

(3) File put up today on the application of the accused to surrender in court. He was on interim said bail till 15.11.93 as per order of Hon'ble Court dated 9.11.93 and he was to surrender before Superintendent Jail on 16.11.93. This shows that the accused has not complied with the order of Hon'ble High Court and surety has also failed to produce the accused on 16.11.93.

(4) Under these circumstances the surety bond is forfeited to the State. A penalty of Rs.25,000.00 (Rupees twenty five thousand only) is imposed on the surety. Accused be taken into custody. Bank concern be directed to deposit the amount in court to the extent of Rs.25000.00 on or before 15.12.93, as the fixed deposit is on record. Put up on the date already fixed.'

(5) Obviously, as would be borne out from the order reproduced above, the surety was not given any notice to show cause before the imposition of penalty.

(6) Section 446 of the Code of Criminal Procedure which deals with the procedure when a bond has been forfeited clearly lays down that once it is so forfeited, the court may call upon the person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. It would thus be clear that before any person bound by such bond becomes liable to pay the penalty thereof it is required of the court to give notice to him as to why it should not be paid and if he fails to show sufficient cause only then it can proceed to recover the amount of penalty imposed. Significantly no notice to the surety is contemplated before the forfeiture of the bond. Under the circumstances, sub-section (1) of section 446 of the Code which requires issue of the notice to the surety after forfeiture of the bond needs to be completed with strictly, the same being of a penal nature. It was observed by the Supreme Court in Ghulam Mehdi v. State of Rajasthan : AIR 1960 SC1185 :

'BEFORE a man 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

(7) Since, in the present case, no show cause notice as required was given, the impugned order cannot be said to be in accordance with law Consequently, it is set aside.

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