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Abdul Rehman Vs. State

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Court : Rajasthan

Decided On : Apr-15-1964

Reported in : AIR1965Raj1; 1965CriLJ78

Judge : D.S. Dave, C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 499(1)

Appeal No. : Criminal Revn. No. 75 of 1963

Appellant : Abdul Rehman

Respondent : State

Advocate for Def. : S.N. Gurtoo, Dy. Govt. Adv.

Advocate for Pet/Ap. : R.N. Vishnoi, Adv.

Disposition : Revision allowed

Judgement :
ORDER

D.S. Dave, C.J.

1. This is an application in revision by Abdul Rehman against the order of the District Magistrate, Ganganagar, dated the 16th October, 1962.

2. The facts giving rise to it are that on a complaint for an offence under Section 313 I. P. C. filed by one Gangabishan, accused Doshu Mohd. was required to furnish a personal bond for Rs. 1000/- together with one surety for the like amount. The accused accordingly executed a personal bond on 22nd May, 1962 for his appearance in the Court on 12th June, 1962 and the following dates, if any, which were to be fixed by the Magistrate. The present petitioner Abdul Rehman stood surety for him. The accused failed to put in his appearance in the Court of Tehsildar who was Second Class Magistrate at Hanumangarh on 12th June, 1962. The said Magistrate, therefore, forfeited the bond and imposed a penalty of Rs. 1000/- on the petitioner. Aggrieved by that order dated the 31st July, 1962, the petitioner filed an appeal in the Court of District Magistrate, Ganganagar.

3. In the Court of Second Class Magistrate, it was urged by the petitioner that the accused was suffering from typhoid fever and it was on account of that reason that he was unable to attend the Court on 12th June, 1962. In support of this plea, he examined the Sarpanch and a few other witnesses. The Second Class Magistrate did not believe this evidence, though no evidence was produced from the other side in rebuttal. A perusal of the order of the District Magistrate shows that he was vacillating and could not come to a firm decision whether the evidence produced by the petitioner was reliable or not. It appears from his order that, at one stage, he did not rely upon the petitioner's evidence, but, at the later stage, when he was considering the question of penalty, he made an observation to the effect that the petitioner was entitled to a lenientpunishment in view of the illness of the accused. He, therefore, reduced the penalty from Rs. 1000/-to Rs. 600/-.

4. It is urged by learned counsel for the petitioner that the bond, which was got executed from his client, was not in accordance with law, and therefore, it was not liable to be forfeited. It is pointed out that, according to the language of the bond which was executed by the petitioner, the accused was required to be present in the Court of Sub-Divisional Magistrate, Hanumangarh on 12th June, 1962, that on the said date the case never reached the Court of Sub-Divisional Magistrate, and, therefore, even if the accused were hale and hearty, the terms of the bond could not be observed. It appears from the orders of the Second Class Magistrate and the District Magistrate that their attention was perhaps not attracted towards the

lacuna in the bond which has now been pointed out in this Court.

A perusal of the personal bond and also the surety bond shows that in the title of the case, it was the Court of Sub-Divisional Magistrate which was first mentioned, but, later on, it was struck out and the name of the Tehsildar and Second Class Magistrate was mentioned. There is nothing on the record to show who made this correction and at what stage. If the matter had rested only here, I would have remanded the case for inquiry into this change, but the perusal of the body of the document shows that both the accused and his surety were required to appear in the Court of Sub-Divisional Magistrate Hanumangarh, and not in the Court of Tehsildar (Second Class Magistrate) who forfeited the bond.

In the State of Bihar v. M. Homi, (S) AIR 1955 SC 478, the accused, who was sentenced to rigorous imprisonment, had submitted to the Provincial Government a petition praying for suspension of his sentence in order to enable him to prefer an appeal against his conviction and sentence to the Judicial Committee of the Privy Council. The Provincial Government granted the prayer subject to his furnishing security worth Rs. 50,000/- with two sureties of Rs. 25,000/- each to the satisfaction of the Deputy Commissioner of Singhbhum. The sureties executed a bond undertaking to pay Rs. 50,000/-.

'only in case the accused fails .....to surrender to the Deputy Commissioner of Singhbhum within three days of the receipt of the notice of the order or judgment of the Judicial Committee if by the said order or judgment the sentence is upheld either partly or wholly'.

As a result of the constitutional changes, the jurisdiction of the Privy Council came to be transferred to the Federal Court and, later on, to the Supreme Court. The Supreme Court dismissed the appeal and thereafter the Deputy Commissioner of Singhbhum issued notice to the sureties and on their failure to produce the accused, they were called upon to show cause why their bonds should not be forfeited. The matter regarding the forfeiture of the surety bonds was taken to the Supreme Court. It was held by their Lordships that

'in view of the clear provision in the bond, the terms of which being penal in nature must be very strictly construed, it could not be said that the contingencies contemplated by the parties had occurred. There was no order or judgment of the Judicial Committee upholding either in part or in whole the sentence against the accused. As the terms of the bond so construed could not be said to have been fulfilled, the penalty stipulated had not been incurred. It must, therefore, be held that the proceedings taken against the sureties were entirely misconceived.'

It is clear from the observations of their Lordships, quoted above, that the terms of the bond which are penal in nature, have got to be construed very strictly. In the present case, the petitioner, according to the terms of the bond executed by him, was required to produce the accused in the Court of Sub Divisional Magistrate, Hanumangarh and not in that of the Second Class Magistrate, and therefore, the Second Class Magistrate was obviously in error in forfeiting the bond and imposing a penalty upon him.

5. The order of the Second Class Magistrate and that of the District Magistrate cannot be upheld under the circumstances. The revision application is, therefore, allowed. The orders of the Second Class Magistrate and the District Magistrate are set aside and the penalty is hereby remitted. The fine, if realised from the petitioner, will be refunded to him.

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