

Abdul Shakur Vs. State

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Court : Rajasthan

Decided On : Aug-16-1951

Reported in : AIR1952Raj54

Judge : Ranawat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 109 and 499

Appeal No. : Criminal Ref. No. 163 of 1951

Appellant : Abdul Shakur

Respondent : State

Advocate for Def. : Ram Avtar Gupta, Govt. Adv.

Judgement :

ORDER

Ranawat, J.

1. This is a reference of the Additional Sessions Judge, Jhalawar. A chalan was presented in the Court of the Sub-Divisional Magistrate, Jhalawar, by the police against one Fakir Mohammad under Section 109, Criminal P.C., on the 13th of February 1950, the Sub-divisional Magistrate made an order under Section 112, Criminal P.C., calling upon Fakir Mohammad to show cause why he should not be asked to furnish security for good behaviour. At the same time, an order under

Section 117 (3) Criminal P.C., was also made demanding Security from Fakir Mohammad for good behaviour until the conclusion of the proceedings under Section 109, Criminal P.C. Fakir Mohammad who was in detention at that time agreed to furnish security as was desired by the Court and Abdul Shakur stood surety for him. Fakir Mohammad was released after a bond was executed by Abdul Shakur both for his good behaviour and for his attendance in Court during the further proceedings in the case. On the next date which was fixed in the Court of the Sub-divisional Magistrate, Fakir Mohammad failed to appear and it was found that he had gone to Pakistan. Abdul Shakur was therefore ordered to show cause why his surety bond be not forfeited. After taking the explanation of Abdul Shakur the Sub-Divisional Magistrate forfeited the security bond in part to the extent of Rs. 105/- only. An appeal was filed in the Court of the District Magistrate, Jhalawar, which was dismissed. The petitioner Abdul Shakur then applied to the Court of the Additional Sessions Judge Jhalawar who has made this reference. The learned Additional Session? Judge has held that the security bond for the attendance of Fakir Mohammad was not in accordance with any order of the Court and hence it has been recommended that the bond ought not to have been forfeited.

2. The security bond which was executed by Abdul Shakur is both for security for good behaviour of Fakir Mohammad and also for his attendance in the Court of the Sub-divisional Magistrate during the enquiry of the case under Section 109, Criminal P.C. The order of the Sub-divisional Magistrate demanding security from Fakir Mohammad was silent as regards the arrangement for the attendance of Fakir Mohammad in Court during the enquiry. It simply referred to the security bond regarding good behaviour of Fakir Mohammad. It is, therefore, urged on behalf of Abdul Shakur that the condition of his bond regarding the attendance of Fakir Mohammad should not be enforced against him.

3. It may be observed that even though the Court of the Sub-division did not record in its proceedings expressly anything on the subject regarding attendance of Fakir Mohammad during the course of the enquiry yet, in accepting the bond which was executed by Abdul Shakur the action of the Court clearly indicates that it accepted the bond and considered the arrangement therein stated regarding the

attendance of Fakir Mohammad during the further proceedings against him. Simply because no express record of the proceedings was made regarding the fact of taking a surety bond from Fakir Mohammad under Section 499, Criminal P. C., the security bond executed by Abdul Shakur and accepted by the Court should not be considered to be void. Abdul Shakur is bound by the terms of his security bond and he cannot escape the liability on account of any defect in the record of the proceedings, of the Court. The proceedings against Fakir Mohammed related to Section 109, Criminal P. C., and after he had left India and had gone to Pakistan there remained no necessity for continuing the proceedings against him. In view of this fact it was no longer necessary for the Court of the Sub divisional Magistrate to hold any further enquiry or to require the attendance of Fakir Mohammad. The proceedings could be shelved at that stage on that account. This should be considered a good in favour of Abdul Shakur. The amount of Rs. 105/- appears to be excessive in the light of the aforesaid observation. A nominal amount only need be recovered from Abdul Shakur. The security bond has been forfeited and in pursuance of it an amount of Rs. 20/- only need be recovered from the surety in place of Rs. 105/- ordered to be collected from him by the Courts below. With this variance the order of the first Court is confirmed and this reference is partly disallowed.

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