

Moola Ram Vs. State of Rajasthan

Moola Ram Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/754697

Court : Rajasthan

Decided On : Mar-29-1982

Reported in : 1982CriLJ2333; 1982()WLN95

Judge : Kalyan Dutta Sharma, C.J.

Appellant : Moola Ram

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. R.N. Bishnoi

Judgement :

Kalyan Dutta Sharma, C.J.

1. This is an appeal filed by Moola Ram under Section 449 Cr. P.C. against an order of the learned Sessions Judge, Bikaner, dated March 1, 1977, by which the appellant's application under Sub-section (3) of Section 446 Cr. P.C. for remission of the penalty sought to be recovered from him under the bond for appearance was rejected on the ground that acceptance of such an application would amount to review of the previous order dated July 3. 1976, for recovery of the whole of the penalty.

2. The short facts giving rise to this appeal may be briefly stated as follows:

3. The appellant was being tried in the Court of the Sessions Judge, Bikaner for offences punishable under Sections 364, 324 etc., of I.P.C. During the pendency of the trial bail was granted to the appellant. The appellant furnished his personal bond in the amount of Rupees 5000/-. One Ishwar Ram stood surety for the appellant and filed his surety bond in the like amount for appearance of the appellant in the Court. On September 17, 1975, the appellant did not appear in the Court of the Sessions Judge, Bikaner, and, consequently, his bail bonds were forfeited and warrant for his arrest and production in Court was issued. Notice was ordered to be issued to the appellant and his surety to pay the penalties under the bonds or to show cause why the amounts of the bond filed by them be not realised from them. It appears from the record that the appellant and his surety did not turn up in court to pay the penalties under the bonds or to show cause why they should not be paid. The learned Sessions Judge, therefore, passed an order on July 3, 1976 that the whole of the penalties under the bonds be recovered from the appellant and his surety. Thereafter, the appellant presented an application to the court of the Sessions Judge presumably under Section 446(3) Cr. P.C. for remission of the penalties under the bonds. The Sessions Judge rejected the application and refused to hear him on the ground that he was not empowered to review his previous order dated July, 3, 1976. Aggrieved by the rejection of his application, the appellant has come up in appeal to this Court, as stated above.

4. I have carefully perused the record and heard Mr. R.N. Bishnoi, learned Counsel for the appellant, and Mr. D.S. Shishodia Public Prosecutor, for the State. The short question that arises for determination in this appeal is whether under Sub-section (3) of Section 446 Cr. P.C. the court could pass an order for the remission of any portion of the penalty under the bond at any time before the payment has been actually made, Mr. D.S. Shishodia Public Prosecutor, strenuously urged before me that it is not open to the court to pass such an order after the date when the court has passed the order directing the recovery of such penalty and proceeded to recover the same. In support of his above contention Mr. D.S. Shishodia referred me to Mohan Lal v. State 1974 Cri LJ 1407 (All) wherein the following observations were made by his Lordship Hon'ble Yashoda Nandan, J. (at p. 1409):

A plain reading of the various Sub-sections of Section 514 leaves little room for doubt that an order remitting any portion of the penalty and enforcing payment of part of the amount of the surety bonds could be passed by the court only at the time it passed a final order forfeiting the surety bonds and for realisation of the amount thereof as penalty.

Mr. R.N. Bishnoi, learned Counsel for the appellant on the other hand placed reliance on *Sualal Kushilal v. State* : AIR 1957 MP231 and *Govindmal v. Kunj Biharilal* : AIR1954 Bom364 and contended on the strength of the observations made therein that the discretionary power under Sub-section (3) of Section 446 Cr. P.C. can be exercised by the Court even later on, and even after the final order for the recovery of the whole of the penalty under the bond is made, provided there are good grounds justifying the remission of the portion of the penalty.

5. I have considered the rival contentions mentioned above and carefully perused the authorities cited before me. It is no doubt true that the court is empowered to remit the penalty under the bond or reduce its amount on sufficient grounds at the time when court passes a final order directing forfeiture of the personal as well as surety bonds and the realisation of the amount thereof as penalty, out in my opinion, the court can remit any portion of the penalty at a subsequent stage also so long as the amount is not totally recovered. There is nothing in Sub-section (3) of Section 446 Cr. P.C. which may tend to show that an order remitting any portion of the penalty and enforcing payment of part thereof can be passed by the court only at the time it passed the final order directing forfeiture of the bail bonds and realisation of the amounts thereof as penalties. If the intention of the Legislature was that the power to remit any portion of the penalty must be exercised before the initial order for the recovery of the whole amount is made, it would have expressed it in so many words in Sub-section (3) of Section 446 Cr. P.C. with due respect to the learned Judge of the Allahabad High Court, I agree with the view expressed by the Madhya Pradesh High Court in the authority referred to above and hold that the power to remit any portion of the penalty under the bond for appearance can be exercised at subsequent stage also so long as the amount is not totally recovered and even after the final order for the realisation of the whole amount is made.

6. Judged from this background, the order under appeal passed by the learned Sessions Judge, Bikaner, is not sustainable in the eye of law, because he was empowered to exercise his discretion in the matter under Sub-section (3) of Section 446 Cr. P.C. even after the final order directing realisation of the entire penalty under the bond was passed by him on July 3, 1976. Ordinarily I would have sent the appellant's application back to the Sessions Judge for passing an appropriate order on it under Sub-section (3) of Section 446 Cr. P.C. but as the case has become very old and as the appellant has been subsequently acquitted of the offences with which he was charged at the trial and as he surrendered himself in the court on the next date fixed in the case. I do not consider it proper and reasonable to send the case back to the court of the Sessions Judge for consideration of the appellant's application for remission of the penalty.

7. For the reasons mentioned above I take a lenient view and remit the penalty under the bond to the extent of Rs. 4000/-. The remaining sum of Rupees 1000/- shall be recovered from the appellant as penalty under the bond furnished by him for his appearance.