

Dayal Chand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-10-1981

Reported in : 1982CriLJ1008; 1981()WLN430

Judge : S.K. Mal Lodha, J.

Appellant : Dayal Chand

Respondent : State of Rajasthan

Judgement :

ORDER

S.K. Mal Lodha, J.

1. This revision Under Section 397/ 401, Cr.P.C. by the surety Dayalchand is directed against the order dated July 30, 1981 of the Additional Sessions Judge, Raisinghnagar, by which, he maintained the order dated August 27, 1980 of the Judicial Magistrate, Raisinghnagar.

2. A few facts leading to this revision petition may briefly be stated;

In Criminal Case No. 86 of 1979, the learned Judicial Magistrate, Raisinghnagar was trying the accused Amuntullah for the offence Under Section 3/6 of the Passport Act (No. XV of 1967) and Section 3/14 of the Foreigners Act (No. XXXI of 1946). He was ordered to be released on bail on furnishing two surety bonds in the

sum of Rs. 5000/-each. Petitioner Dayalchand and one had Prakash furnished personal bonds in the sum of Rs. 5000/- each in the court of Judicial Magistrate, Raisinghnagar. The accused failed to appear in the court of the Judicial Magistrate, Raisinghnagar. Thereupon, the learned Judicial Magistrate, forfeited the amount of the personal bond and the surety bonds and directed for issuance of the notice to the sureties. The learned Judicial Magistrate by his orders dated August 27, 1980, ordered for the realisation of the amount of the bonds of both the aforesaid sureties. Feeling aggrieved, the petitioner and Ved Prakash preferred appeal and the learned Additional Sessions Judge by his order dated July 30, 1981 maintained the order of the Judicial Magistrate. Hence this revision by the petitioner Dayalchand.

3. learned Counsel for the parties stated that as the revision petition involves a short point, the arguments may be heard and it may finally be disposed of.

4. I have heard M/s. S. N. Deedwania and B. R. Arora, learned Counsel for the petitioner and Mr. M. D. Purohit, Public Prosecutor for the State.

5. Before the learned Additional Sessions Judge it was submitted that the accused was sent to his country by the Central Government of India and, therefore, he could not appear and as such, no liability can be festened on the surety. It was also urged that both the sureties are poor persons and, therefore, the amount should be reduced, The learned Additional Sessions Judge, however, repelled the aforesaid two contentions raised on behalf of the sureties on the ground that there is no evidence to support them.

6. The only contention raised by the learned Counsel for the petitioner in this revision is that the amount which has been forfeited is excessive and that the petitioner is not in a position to pay the entire amount. The learned Public Prosecutor strongly opposed the revision petition. It may be stated here that in the stay application, the petitioner has stated 'that the amount involved in the question is very much heavy and the whole property of the petitioner will b taken away in the execution proceedings and, therefore, it will be in the interest of justice that the recovery of the amount in question may be stayed.' An affidavit has also been filed by the petitioner on August 7, 1981. In the affidavit, the petitioner has stated that

the accused has left India and it is difficult for him to produce him (accused) in the court. He has also stated that he is a poor man and that if the amount of Rs. 20,000/- of four surety bonds of Rs. 5000/- each are realised from him, he and his family will be put to great hardship and it will be difficult to maintain himself and his family.

7. Section 446(3), Cr.P.C. is as under:

(3) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

No indication is to be found in Section 446(3), Cr.P.C. as to the circumstances under which the Court will be justified in making an order in conformity with Section 446(3), Cr.P.C. When a person executes a bond, there are certain factors which are taken into consideration in determining the amount of the bond. Among these may be mentioned (a) the nature of the offence for which the accused is prosecuted; (b) the status and the position of the accused and (c) the nature of the sentence which in the case of a conviction, is likely to be imposed upon an accused person.

8. It was observed in *Balraj S. Kapoor v. State* : AIR1954 Bom365 :

The purpose of the bond is to secure the presence of the accused or the attendance of the accused and the position of a surety is nearly always not an easy one. The surety makes himself responsible for the conduct of the accused and often enough the surety has no control over the conduct of the accused. The surety expects the accused to act properly, but the accused, often enough, does not choose to stand by the surety and sometimes jumps bail and this is exactly what has happened in the present case.

9. It is settled by various decisions, of the High Courts that a case for the exercise of the discretion Under Section 446(3), Cr.P.C. will properly arise in cases where the accused has been subsequently arrested or the amount forfeited is excessive and the surety is unable to pay. While exercising discretion Under Section 446(3), Cr.P.C. it is not irrelevant to consider in such cases whether the surety did not act

irresponsibly and there was no connivance or negligence on the part of the surety. It is clear from the affidavit of the surety Dayalchand (petitioner) that as the accused had left India, it is difficult for him to produce him (accused). The learned Judicial Magistrate has forfeited the surety bond for Rs. 5000/- and ordered for the recovery of the aforesaid amount. In *Bachan Singh v. State of Rajasthan* (Criminal Revn. No. 412 of 1980, decided on February 18, 1981) and *Bantasingh v. State of Rajasthan*, (Criminal Revn. No, 413 of 1980, decided on February 18, 1981, it was argued that the forfeiture of the entire amount of Rs. 5000/- of the surety bond was excessive and that the petitioners in those cases were poor persons. It was held that the recovery of Rs. 4000/- from each of the petitioners will meet the ends of justice. In the present case, no negligence or connivance has been suggested against the surety-petitioner. Keeping in view the facts that the accused had left India and it is not possible for the surety-petitioner to cause his attendance in the Court of Judicial Magistrate, Raisinghnagar and that there is nothing to show that the surety-petitioner had acted irresponsibly or there was connivance or negligence on his part, I am inclined to take the view that in this case, the ends of justice will be met by requiring the surety to pay a sum of Rs. 4000/-.

10. The result is that the revision-petition is allowed in part and the order dated July 30, 1981 of the Additional Sessions Judge, Raisinghnagar, by which he maintained the order dated August 27, 1980 passed by the Judicial Magistrate, Raisinghnagar. is modified. It is directed that the petitioner will pay Rs, 4000/- and not the entire sum of Rs. 5000/- which is the amount of penalty mentioned in the bond.