

State of Rajasthan Vs. Lalsingh

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Court : Rajasthan

Decided On : Jan-22-1986

Reported in : 1987CriLJ269; 1986(1)WLN424

Judge : Mahendra Bhushan Sharma, J.

Appellant : State of Rajasthan

Respondent : Lalsingh

Judgement :

ORDER

Mahendra Bhushan Sharma, J.

1. It is a case where there appears to be glaring abuse of the process of the Court by the Executive Magistrate, but still the State has filed this application Under Section 482, Cr.P.C.

2. Proceedings in Case No. 43/78 Under Section 3 of the Rajasthan Control of Gppjdas Act, 1975 (for short 'the Act') are said to be pending against the non-petitioner Lalsingh before the 'Additional District Magistrate, Jodhpur, in Case No. 43/78. During the course of proceedings it is said that the non-petitioner jumped bail and therefore warrant of arrest 'was issued to secure his presence and he was arrested and was produced before the Additional District Magistrate, Jodhpur, The Magistrate ordered that the non-petitioner on furnishing a personal bond in the

sum of Rs. 30,000/- and a surety in the like amount, shall be released on bail. The personal and the surety bonds were submitted and an affidavit of the surety in respect of his fitness and status was also filed. The learned Magistrate ordered that the status of the surety be verified by the Tehsildar. The Patwari Bhanwarsingh is said to have verified the status of the surety to the extent of Rs. 30,000/-. The papers were placed before the Tehsildar on July 12, 1985, but the Tehsildar was not in the Court. The Tehsildar only verified the status of the surety up to Rs. 5000/-, Because it was given out on behalf of the petitioner that the Tehsildar has not gone to the spot on July 18, 1985, the learned Additional District Magistrate ordered the Tehsildar that he should himself go to the spot and verify the status of the surety.

3. A revision was filed against the aforesaid order of the Executive Magistrate and the learned Additional Sessions Judge No. 2, Jodhpur under his order dt. July 26, 1985 allowed the revision petition and ordered that the Magistrate should first verify the sureties produced on behalf of the non-petitioner and then if necessary he may forward the same for verification to the Tehsildar.

4. The District Magistrate, which term as per Section 2(a)(iii) includes Additional District Magistrate specially empowered by the State Government in that behalf, has powers; to require from a person against whom an order is proposed to be made Under Section 3 of the Act to enter into a bond with or without sureties, for securing his attendance before him. The provisions of the Cr.P.C. shall mutatis mutandis apply in relation to such bonds as they apply in relation to bond executed or required under the Cr.P.C. Thus having once failed to attend the Court of Additional District Magistrate in terms of the bond, the Additional District Magistrate could have issued, an arrest warrant by virtue of powers conferred on him Under Section 5 of the Act. If the personal bond and surety bonds are furnished and affidavit is filed of by the surety about his status generally the same should be accepted. If the Court has any doubt then the proper, course is to accept it as an interim measure, release the accused and then send it for verification and if on verification the status of surety is found to be less than the accused should be called upon to furnish fresh surety in the amount for which he has been ordered to furnish it. The procedure adopted by the learned Additional

district Magistrate that when the surety bonds were furnished along with the affidavit of the surety he did not release the accused, did not accept them, directed the surety to appear before the Tehsildar for verification of his status; that the Tehsildar slept over the papers for a few days thereby the accused-non-petitioner was kept in judicial custody, cannot be said to be in the interest of justice. The learned Sessions Judge in taking the view that the surety should be accepted as an interim measure and then the papers should be sent to the Tehsildar has placed reliance on *Bekaru Singh v. State of U.P.* 1963 (1) Cri LJ 335 (SC). Under Section 441 of the Cr.P.C. the Court may order the release on bail a person on his own bond or/and a bond for such of money as the Court may think fit. Sub-section (4) of Section 441 provides that for the purpose of determining whether the surety bonds are fit or sufficient, the Court may accept the affidavits in proof of the facts contained therein relating to the sufficiency or insufficiency of the sureties, or if it considers necessary may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court as to such sufficiency or fitness. Thus, if an affidavit is filed with regard to the Fitness of the surety, generally it should be accepted unless for reasons to be recorded the Magistrate is of the opinion that he thinks it necessary that an inquiry with regard to the sufficiency or fitness of the surety could be made by a Magistrate subordinate to him. Even in a case where he feels that an inquiry as stated earlier is necessary, he can make Inquiry himself which can be made immediately or within reasonable time or if he considers that the inquiry should be made by a Magistrate subordinate to him the proper course will be to release the accused accepting surety as sufficient as an interim measure, then make an inquiry and in case he considers that the surety is not sufficient or fit call upon the accused to furnish a fresh surety. But the practice of sending it for inquiry to the Tehsildar, not to a Magistrate, and the Tehsildar keeping the case pending for a few days and thereby denying the accused in whose favour an order releasing on bail was_ made cannot be appreciated. Even if the inquiry is to be made by the Tehsildar if he is a Magistrate, he must make it immediately or as far as possible without delay and should not postpone the same. In the instant case it will be clear that though the Patwari is said to have verified the status of the surety but the Tehsildar was of the opinion that the status of the surety was only Rs. 5000/-. The learned Magistrate under his order dt. July 18,

1985 again remitted the case with a direction that the Tehsildar should himself verify the surety. The Magistrate should have himself inquired into the matter, if the Tehsildar had not discharged his duties properly and if he thought that there was some substance in the statement made on behalf of the non-petitioner that the Tehsildar only verified the status to the extent of Rs. 5000/- without going to the spot he should have inquired into the status. The entire procedure adopted by the Additional District Magistrate was most 'uncalled for and it may give an impression to the non-petitioner that it was being adopted to continue him in jail though an order for release on bail had been made in his favour. In Bekaru Singh's case 1963(1) Cri LJ 335 (SC) (supra), the facts of that case were different inasmuch as the first surety had applied for being discharged and the ace used had prayed for acceptance of a fresh surety bond in place of the former. That ruling is not applicable. But as already stated earlier when the affidavit had been filed by the surety in support of the status the learned Magistrate if he was not accepting it, must have assigned reasons for it. He should have accepted the surety as an interim measure, release the accused and even could have sent it for inquiry to a Magistrate subordinate to him. but as already observed above, the entire procedure adopted in this cannot be said to be in the ends of justice. The ultimate object of all the Courts is to provide justice and the end produce of all proceedings, should Be nothing but justice.

5. I do not find any force in this petition Under Section 482, Cr.P.C. It is dismissed.

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