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SooperKanoon Citation : sooperkanoon.com/757300

Court : Rajasthan

Decided On : Sep-17-1970

Reported in : 1970WLN533

Judge : Kan Singh, J.

Appeal No. : S.B. Criminal Revision No. 200 of 1970

Appellant : Kali Charan

Respondent : State

Disposition : Application dismissed

Judgement :

Kan Singh, J.

1. This is a revision application by one Kali Charan against the order forfeiting his surety bond in a sum of Rs. 2000/--executed by him in connection with the appearance of one Mahavir Prasad in a case under Section 366 Indian Penal Code. The relevant facts are briefly these.

2. On 28.3.69, Kali Charan executed a surety bend undertaking to produce Mahavir Prasad accused on 3.4.69 in the court of the Munsif Magistrate. Dholpur and in any other court to which the case may be transferred, failing which he would pay Rs. 2000/--and the Government could recover the same from him. The

bond was verified by the Additional Sessions Judge, Dholpur in whose it was produced. On 26.5.70 the accused was absent though his surety, the petitioner, was present. The learned Additional Sessions Judge forested the entire amount of the bond and gave 15 days time to the petitioner to deposit the amount.

3. In assailing the legality of this order it was contended by learned Counsel for the petitioner that the first place, the bond was for appearance in the court of the Munsif Magistrate or to such other court to which the case might be transferred but was not for appearance in the court to which the case might be committed. In the second place. it was submitted that no opportunity was afforded to the petitioner to show cause against the for feature of the bond. Lastly, it was urged that the entire amount of the bond has been forfeited and this was excessive. It was pointed out that there was no connivance or negligence on the part of the petitioner for the non-appearance of the accused.

4. Considerable argument centered round the words of the bond:

Ya Us Nyayalayu Men Jismen hi Uska Mukdama Sthanantrit Kar Diya javega

Learned Counsel for the petitioner argues that these words might include a court to which the case might be transferred, but will not include the court to which the case might be committed. No direct authority was placed before me by learned Counsel which could be of assistance in dealing with the point. He, however, referred me to *State of Bihar v. M. Homi* : 1955 CriLJ1017 . It was pointed out by their Lordships that the terms of the bond being penal in nature must be very strictly construed. The contingency that came up for consideration in that case was held not to have been contemplated by the parties. In that case the accused had been convicted of an offence under Section 120B read with Section 420 Indian. Penal code by a special. Tribunal and sentenced to four years rigorous imprisonment. The conviction was upheld by the Patna High Court. Thereafter the accused made a prayer before the provincial Government of Bihar to suspend the sentence to enable the accused to take an appeal to the Judicial Committee of the Privy Council in England. The provincial Government suspended the sentence and a surety bond was filed before the Deputy Commissioner concerned that the accused would surrender to the Dy Commissioner within 3 days of the receipt of

the notice of the order of judgment of the Judicial Committee if by the said order or judgment the sentence is upheld either partly or wholly. The appeal was, no doubt, lodged before the Judicial Committee of the Privy Council in England, but on account of subsequent constitutional changes resulting in the abolition of the jurisdiction of the Judicial Committee of the Privy Council and the same being vested in the Federal Court and further on account of the Federal Court being replaced by the Supreme Court the appeal came to be heard and disposed of by the Supreme Court. After the judgment of the Supreme Court the question arose whether the surety could be held liable on account of the breach of the bond. It was in this context that their Lordships were pleased to observe that the contingency of the transfer of jurisdiction and the consequent transfer of appeal from the Judicial Committee to the Federal Court and then to the Supreme Court was not contemplated by the parties and consequently there was no question of forfeiture of the bond. This case is clearly distinguishable.

5. It is no doubt true that the terms of the bond have to be strictly construed, as the consequences of non-compliance thereof are penal. In the present case, however, the simple question is one of interpreting the terms of the bond and in particular the words:

Ya Us Nyayalaya Men Jismen ki Uska Mukdama Sthanantrit Kar Diya Javega

The nub of the matter is whether the parties can be said to have contemplated the commitment of the case to the court of Sessions and whether such court will be taken to have been included in the above quoted words. To my mind, these words will cover the case of the appearance of the accused in the court of the Additional Sessions Judge as well. These words have to be interpreted in their ordinary connotation. The case may go to another court on account of the orders of a superior court or according to the process of law itself. When a case is transferred, it may be so transferred either to another court of coordinate jurisdiction or it may go before even a superior court. All the same that will be the transfer of a case. In the present case the fact is that the bond itself is addressed to the court of the Additional Sessions Judge (wrongly described as Additional District Judge). The mis-description is not material, as the Additional District Judge is also the

Additional Sessions Judge and through out Rajasthan there is no such bifurcation of Additional District Judges and Additional Sessions Judges. While verifying the bond the Judge has put below signature the designation Additional District and Sessions Judge, Dholpur. It appears that the accused Mahavir Prasad was bailed out by the learned Additional Sessional Judge and accordingly the bail bond was executed in his Court. Learned Counsel for the State could refer me to one case digested in A.I.R. 85 Years' Digest Vol.6 page 1182. The following is the summary of the case:

Section 514--Surety bond stating that accused shall present himself in Court of Magistrate or in any other court to which case is transferred--Commitment of case to Sessions Court-Commitment amounts to transfer of case and surety is liable on failure to produce accused in court- 1964 All. Cr. Rule 472: 1964 All. W.R. (HC) 662.

The cited reports were unfortunately not available in our Library and, therefore I could not have the benefit of going through the case itself, but the view taken in that case, though its ratio decidendi is not available, corresponds, if I may say so with respect, with my own view. As already observed by me the word

Sthanantarit.

has to be given a comprehensive and sensible meaning. Therefore, I am satisfied that on account of the absence of the accused on a date of hearing before the Additional Sessions Judge the surety bond could be forfeited by the Additional Sessions Judge.

6. The next question is whether any opportunity had been given to the petitioner to have his say against the contemplated forfeiture of the bond. Perusal of the proceedings of previous dates shows that the accused had absented himself as back as in November, 1969. On 19.11.69, the petitioner Kali Charan made an application before the Court that the accused was ill and was in a dangerous state. It was further averred in the application that in despair the accused had left his bed in the hospital and gone somewhere and it was not known to the surety whether the accused was dead or still alive. He also added that the petitioner had made a

through search for the accused, but was not able to produce him and further he was still in search of him and therefore, the bond be not forfeited. After this application the case came before the learned Judge on 17.3.70. On that day the petitioner asked for 15 days further time saying that he was still searching for the accused. The learned Judge consequently adjourned the case to 1.4.70. On 1-4-1970 also on adjournment for a month was sought by the petitioner and that was allowed. The case then came up for hearing on 1.5.70. On this date also an adjournment was prayed for and the same was granted and the case was ordered to be taken up on 25.5.70. on 25.5.70 the petitioner was present, but the accused was absent. This time the learned Judge did not grant any more time and ordered that the bond would stand forfeited and the petitioner was called upon to pay the amount of the bond and for that he asked for 15 days time which was allowed. In these circumstances it cannot be said that sufficient time was not allowed to the petitioner.

7. In the last resort learned Counsel for the petitioner submitted that the petitioner was not a person of sufficient means and the amount forfeited and ordered to be recovered was excessive particularly when it cannot be said that there was connivance or negligence on the part of the petitioner in connection with the non-appearance of the accused. Learned Counsel cited *Balraj S. Kapoor v. State* AIR 1954 Bom. 366. The learned Judge in that case considered the combined effect of Sub-sections (1) and (5) of Section 514 Criminal Procedure Code as also the provisions of Section 561A Criminal Procedure Code. The learned Judge observed:

No indication is to be found in Section 514(5) as to the circumstances under which the Court will be justified in making an order in conformity with Section 514(5). But it is clear that a case for the exercise of the discretion under Section 514(5) 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. It is also relevant 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.

In that case the accused had appeared later on and that was taken as a mitigating circumstance by the learned Judge. In the present case, however, the accused has not appeared so far. The case was one under Section 366 Indian Penal Code, exclusively triable by the court of Sessions. The amount of the bond was Rs. 2000/--. The position might have been different if the accused had been called upon to produce a bond for an amount which would be beyond his means. This does not appear to be the case, looking to the gravity of the offence and also bearing in mind that the accused was not a resident of Rajasthan.

8. Consequently looking to the fact that the accused has not appeared so far and must have jumped off the bail and had become scarce the amount forfeited cannot be said to be excessive. From the endorsement of Shri Kedar Nath, Advocate, in verification of the status of the surety it was mentioned that the petitioner had cattle and 25 bighas of land and a well which were Valued at Rs. 4000/--. Looking to all the facts and circumstances of the case therefore, I am unable to hold that the order of the learned Additional Sessions Judge was wrong or unjust.

9. The revision application has no force and I consequently dismiss the same.

10. Learned Counsel for the petitioner orally prayed for grant of a certificate for sopealing to the Supreme Court. I do not find that the case raises any questions of law of sufficient public importance to warrant the grant of a certificate. The prayer for certificate is consequently refused.