

Santokh Singh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jan-16-1985

Reported in : 1985(1)WLN359

Judge : Gopal Krishna Sharma, J.

Appeal No. : S.B. Criminal Revision Petition No. 130 of 1979

Appellant : Santokh Singh

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. Jain

Disposition : Petition dismissed

Judgement :

Gopal Krishna Sharma, J.

1. This revision petition has been preferred against the order of the Addl. Sessions Judge, No. 2 Alwar, dated 12th April, 1979.

2. One case was registered on the report of one Heera, for taking away one tractor No. RJA 1910 by Darshansingh. On this report, the said tractor was seized by the police, and it was given to Darshansingh, on Supardginama. The learned Judicial Magistrate Kishangarhbaas ordered that the tractor be returned to Darshansingh

on his furnishing a surety-bond in the sum of Rs. 15,000/-. He further ordered that the plough and the 'Chhatri' be also given to Darshansingh on Supardginama on his furnishing a surety bond in the sum of Rs. 2,000/-. The petitioner, Santokhsingh stood surety for the tractor as well as the plough etc. On his furnishing surety-bonds, the tractor and the other articles were handed over to Darshansingh. When they were required to be produced before the court, Darshansingh failed to produce them. As such a notice forfeiting the surety-bonds, was issued to Santokhsingh petitioner He failed to satisfy the court. Therefore, the learned Magistrate directed that the surety-bonds of Rs. 15,000/- with regard to the tractor; and that of Rs. 2,000/- regarding the plough etc., be forfeited. Against that order of the learned Magistrate, Santokhsingh petitioner preferred an appeal before the Sessions Court, Alwar, which was disposed of by the learned Additional Sessions Judge No. 2 Alwar. The learned Additional Sessions Judge while partly accepting the appeal of the petitioner, ordered to forfeit Rs. 10,000/- instead of Rs. 15,000/- for the tractor from the surety-bond of Rs. 15,000/-; and Rs. 1,500/- instead of Rs. 2,000/- for the plough etc. from the surety-bond of Rs. 2,000/-. Against that order of the learned Addl. Sessions Judge, the present revision petition has been preferred.

3. Mr. Jain the learned Counsel for the petitioner argued that by the surety bonds dated 24th April, 1968, Santokhsingh did not bind himself for forfeiture of the amount to the Government, as mentioned in the said bonds, and as such, those bonds were not bonds executed under the provisions of the Code of Criminal Procedure, and that, penalty could not be realised from him under Section 514(2), Cr. P.C. (old), which is now Section 446, Cr. P.C. He argued that the surety-bonds were executed on 24th April, 1968, when the old Code of Criminal Procedure, was in force at that time, relevant Section 514 was there in the Code and under that section could be forfeited. Under that Section, whenever it was proved to the satisfaction of the court by which a bond under that Code had been taken that such bond had been forfeited, the court should record the grounds of such proof and might call upon any person bound by such bond, to pay penalty thereof or to show cause as to why it should not be paid. Under the new Code of Criminal Procedure, the corresponding section of Section 514 is Section 446. According to Section 446, where a bond is for production of property before the court, and it is

proved to the satisfaction of that court that bond has been forfeited the court shall record the grounds of such proof and may call upon any person bound by such bond to penalty thereof or to show cause as to why it should not be paid Thus, the provisions laid down in Section 514(old) and in Section 446(new) are similar. The present bonds were executed on 24th April, 1968, while the old Code of Criminal Procedure, was in force. So, the bonds were executed according to the old Code of Criminal Procedure. Thus, the present case is being examined in view of Section 514(old) of the Code of Criminal Procedure. Under the old Code Criminal Procedure, in Schedule-V, specimen forms for such bonds are given. No specific form for bond with regard to production of seized property, has been given in the said schedule. Under Section 555, Cr. P.C. (old), the forms set forth in Schedule-V with such variations as the circumstances of each case require, may be used for respective purposes wherein mentioned, and if used shall be sufficient. So, a surety bond should be in substance, in the form prescribed in Schedule-V with such variations as were necessary. Except such variations, the forms used must conform, to the pattern given in Schedule-V. The Schedule-V is given in the Code of Criminal Procedure, and it is a part of the Code, and this schedule cannot be ignored. In all the forms, mentioned in Schedule-V, there is one important ingredient, i.e. in all these forms, it has been mentioned that the surety binds himself to forfeit the amount mentioned in the bond, to the Government. The bond executed by the surety is simply an undertaking, and this undertaking must be in favour of the Government, where the surety undertakes to make payment to the Government if the conditions of the bond are violated. So, as mentioned above, the important ingredient is that the from should be in favour of the Government, and if the bond is not executed in favour of the Government, then, that bond is not a bond under the Code of Criminal Procedure. According to Section 514, the bond should be as mentioned in the Code of Criminal Procedure (old). So, where the bond is not in according with the provisions of the Code of Criminal Procedure, the bond cannot be termed as a bond, to which, Section 514 Cr. P.C. (old) may be attracted. The Court is to take the words mentioned in the bond as they are. The court is not to interpret the language of the bond. The court is not to find out the intention of the surety-bond when the bond was produced. So, it is not open for the court to construe a bond which is not in favour of the government. It is not open for

the court to interpret it that by general tenor or looking to the circumstances, the bond was treated to be executed in favour of the Government. Therefore, the bond is to be construed as it is, and the court has nothing to do to interpret the bond in any other manner.

4. The bonds in question in this case, were perused by me. It says that for the tractor RJA 1910 which was given to Darshansingh on Supardginama, he (surety) undertook that the tractor would be produced in court whenever needed by the court, and as case of penalty, the court would be entitled to recover Rs. 15000/- from him. The mere words reveal that by the surety-bonds, Santokhsingh had given power to the court to recover Rs. 15,000/- in case, Darshansing failed to produce the tractor in the court. Similarly, the other surety bond is dated 28th May, 1968. In the said bond, Santokhsingh had given undertaking that Supardar Darshansing would produce the plough and the umbrella in court whenever ordered by the court, failing which, a sum of Rs. 2,000/- would be recovered from him or his property. In these bonds it has not been mentioned that the amounts mentioned in the said bonds, would be forfeited to the Government. Simply, it has been mentioned that the amount mentioned in the bonds would be recovered from the surety, Santokhsingh. Therefore, the bonds in question are not in accordance with the form mentioned in Schedule-V to the old Code of Criminal Procedure. As mentioned above, in every form, it has been mentioned that the surety binds himself to forfeit the amount mentioned in the bond, to the government. But, in the present case, in both the bonds, it was mentioned that Supardar binds himself to forfeit the amount of those bonds, to the government. The surety simply undertook that the amount mentioned in the bonds would be recoverable from him. He simply empowered the court to recover the amount mentioned in those bonds. But, it was not specifically mentioned that the amount if recovered, would be forfeited to the government. So these were no bonds under the Code of Criminal Procedure, to which Section 514 may be attracted.

5. In *Rarmshwar Bhartia v. The State of Assam* : 1953 CriLJ163 , the bond was taken from the appellant not by the court, but by the Procurement Inspector. In that bond, the surety promised to produce the seized paddy before the court. It was not a promise to produce the paddy, made to the court, but it was made to an officer,

i.e., the Procurement Inspector. The High Court of Assam in that case, held that Section 514, Cr. P.C. applied to that case. Hon'ble the Supreme Court in that case, in appeal, observed as under:

Under Section 514, Criminal P.C., action can be taken only when the bond is taken by the Court under the provisions of the Code such as Section 91 for appearance, the several security sections or those relating to bail.

Where the security bond is taken from the accused not by the Court but by a particular official such as a Procurement Inspector for production of the property before the Court, no action can be taken under Section 514 for forfeiture of the bond.

6. In *State of U.P. v. Mohammed Sayed* : 1957 CriLJ888 , it has been observed as under:

Since January 26, 1950, no bond executed in favour of the Empress of India could be said to be a bond executed under the Code of Criminal Procedure.

Where the surety had executed a bond in 1953, under Section 499, Cr. P.C. whereby he was to forfeit to 'the King Emperor Qaisar-e-Hind' a certain sum of money if he made default in procuring the attendance of the accused before the Court, and the bond was not one by which he bound himself to forfeit the said sum either to the Government of the Union of India or that of the State (of Uttar Pradesh) the bond executed was unknown to the law of the Republic of India under the Code of Cr. P when it was executed. Section 514 of the Criminal Procedure Code empowers a Court to forfeit a bond which has been executed under the provisions of that Code and since the bond executed by the surety was not under the Code of Criminal Procedure, resort cannot be had to the provisions of Section 514 of the Code to forfeit the same'. (Para 3)

Clause 4 of the Adoption of Laws Order, 1950, directs that the word, 'Government' shall be substituted for the words 'Crown', 'Her Majesty' and 'His Majesty'. There is no mention therein of the words King Emperor or Emperor of India. Queen, Empress or Empress of India or Qaisar-e-Hind as being so

substituted. The words, 'King Emperor Qaisar-e-Hind' in the bond executed by the surety cannot therefore be read, by virtue of Clause 4 of the Order, to mean Government.

By this bond, the surety has not bound himself either to the Government of the Union of India or that of the State (of Uttar Pradesh) to have his bond forfeited on his failure to produce the accused before the Court and he is entitled to say that no order of forfeiture can be passed against him with respect to a bond which was not one under the Code and which was one unknown to the law, as contained in the Code at the time of its execution.

7. A similar matter under Section 514, Cr. P.C. (old) was decided by a division bench of this Court in State v. Ram Pratap 1964 RLW 233. In that case, Ram Pratap was an accused who was tried for the offences Under Sections 302 307 IPC. He was acquitted by the Sessions Judge, Ganganagar. The State then preferred an appeal in this Court, against that order of acquittal. The said State-appeal was admitted by the division bench of this Court. While admitting the appeal, it was ordered that warrant of arrest be issued against Ram Pratap, who would be before the District Magistrate, Ganganagar, and it would be for him to admit the accused on bail or send him to jail. The District Magistrate reported to this Court that the accused was arrested and was released on bail on executing personal bond of Rs. 25,000/- and a surety bond of Nathuram, in the like amount. The said State Appeal was decided in their favour, and Ram Pratap was convicted of the offences Under Sections 302 & 307, IPC. The Sessions Judge, Ganganagar was directed to send the accused to jail. As Ram Pratap did not surrender, this Court ordered forfeiture of the personal bond as well as the surety-bond. A notice was given to the accused as well as the surety to pay the penalty of the said bonds or to show cause as to why the amount due, should not be recovered from them. On this notice, Nathuram appeared and filed a reply and contested the said notice. It was contended on behalf of the surety, Nathuram, that the surety did not bind himself to the Government, the sum of Rs. 20,000/-, and as such, that was not a bond executed under the provisions of the Code of Criminal Procedure, the penalty whereof could be realised from him under Section 514(2), Cr. P.C. While dealing with this aspect, the division bench of this Court observed as under:

The second point raised on behalf of the surety deserves serious consideration. Under Section 514, Cr. P.C., it is only the bond taken under the Criminal Procedure Code that can be forfeited and it is in respect of only such bond that the person bound by it may be called upon to pay the penalty thereof. The bond in the instant case purports to be one Under Section 91, Cr. P.C. In Schedule V of the Code the specimen form Under Section 86 is given. Under Section 555, Cr. P.C., the bond set forth in the Fifth Schedule that as the circumstances of each case require may be used for respective purpose therein mentioned, and if used shall be mentioned. A surety bond, should be in substance, in the form prescribed Under Section 86 only with such variations as were necessary Barring such variation, the form used must conform to the pattern given in the Fifth Schedule. This Schedule is a part of the Code and cannot be ignored except to the extent permitted by Section 555, Cr. P.C. In the form prescribed for various bonds in Fifth Schedule, there is one important ingredient. In all these forms, the executant binds himself to Government. In the bond of good behaviour, the executant binds himself to be of good behaviour to Government and to all citizens of India. The form of every bond in the Fifth Schedule is that the executant binds himself to forfeit to the Government the amount. A bail bond may not be necessarily a contract. It is, however, an undertaking given by the executant and that undertaking must be in favour of the Government and no other person. If the undertaking is not in favour of the Government the bond is not one under the Criminal Procedure Code to which Section 514, may be attracted. A bail-bond is to be strictly construed and it is not permissible for a court of law to depart from the language of the bail bond and to interpret it in the light in which it was intended to be executed. It was also not permissible to; court of law to construe a bond in favour of the Government by its general tenor or by looking to the circumstances under which it was executed. Such in our view are the principles deducible from the pronouncements of their Lordships of the Supreme Court in *State of Bihar v. M. Homi* (1) and *State of Uttar Pradesh v. Mohammed Sayeed*(2) In the second, case, the surety-bond was executed in 1953 Under Section 499 Cr. P.C. whereby the surety was to forfeit to 'the King Emperor Kaiser-e-Hind a certain sum of money (Rs. 500/-) if he made a default in procuring the attendance of the accused before the Court. The bond was not one by which he bound himself to forfeit the said sum either to the Government

of the Union of India or that of the State. It was held that no order of forfeiture could be passed against him with respect to the bond which was not one under the Code and which was unknown to law as contained in the Code at the time of its execution.

Applying the principle enunciated in this case to the instant case we are of the opinion that the bond in this case did not provide forfeiture either to the Union of India or to the State of Rajasthan. The bond provided forfeiture of the amount of Rs. 20,000/- to the court of District Magistrate, Ganganagar. This is not the form recognised by the Code of Criminal Procedure and so, no action can be taken Under Section 514 Cr. P.C. against the surety for the forfeiture of the bond. In practically similar circumstances, *Jia Lal Lillam, J. in Balwant Singh v. State* (3) refused to forfeit the bond in which the surety had undertaken to deposit the sum of Rs. 1,500/- in the Treasury and had not bound himself to forfeit Rs. 1,500/- to the Government of Kashmir. We respectfully agree with the view taken in that case.

8. The law referred to above, is fully applicable to the present case. The surety-bonds in question, produced by Santokhsingh, in this case, have no mention that he bound himself to forfeit the amount to the Government. He simply undertook that in case, the Suparda fails to produce the property in court, then, the court would be empowered to realise from him, the amount mentioned in the surety-bonds. So, those bonds were not bonds under the Code of Criminal Procedure, to which Section 514 might be attracted. Those bonds simply provided that the amount could be recovered from him. So, that was not a form recognised by the Code of Cr. Procedure, and in my opinion no action can be taken Under Section 514, Cr. P.C. (old) or Under Section 446, Cr. P.C. (new) against the surety for the forfeiture of the bonds. The learned Magistrate as well as the learned Addl. Sessions Judge have erred in forfeiting the amount mentioned in the bonds.

9. I, therefore, hold that the order of the learned Magistrate dated 27th August, 1976, and that of the learned Additional Sessions Judge No. 2, Alwar dated 12th April, 1979, are incorrect orders, and the amount cannot be realised from the petitioner-surety, Santokhsingh.

10. The revision petition is, therefore, accepted. The order passed by the learned Judicial Magistrate Kishangarh Beas,'dated' 27th August, 1976; and that of the learned Additional Sessions Judge No. 2, Alwar, dated 12th April, 1979, are set aside.

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