

**Kuppuraju and anr. Vs. Asst. Public Prosecutor Grade 1**

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**Court :** Chennai

**Decided On :** Sep-04-1964

**Reported in :** 1966CriLJ481

**Judge :** Anantanarayanan, J.

**Appellant :** Kuppuraju and anr.

**Respondent :** Asst. Public Prosecutor Grade 1

**Judgement :**

ORDER

**Anantanarayanan, J.**

1. The point involved in the revision proceeding is a very short one and the relevant facts are not in dispute. There was originally a proceeding Initiated by the Superintendent of Central Excise Customs Circle, Nagapattinam, in October 1961, for a remand of the concerned accused for a period of 15 days, pending further investigation and the fitting of a charge-sheet. We are not now occupied with the particulars of the offences alleged under 1966 Cri.L J. 31. several provisions of the Sea Customs Act, for it seems to be clear that so far no charge sheet has been filed and there has been no trial or preliminary enquiry following such a charge sheet.

2. The accused was originally remanded to judicial custody for 15 days and on 28-10-1981, Learned Counsel for the accused moved for bail under Section 496 CrI. P.C. Bail was granted and the present two revision petitioners stood as sureties for the accused and executed a surety bond; shortly the point is whether the security can be forfeited as the terms of the bond are claimed to have been infringed. It is also not in dispute that subsequent to the grant of bail the concerned accused one Selvaraj, appeared before the Sub Divisional Magistrate, Nagapatttnam, on various dates, the last of which was on 7-5- 1962 Later, he failed to appear. Action under Section 514 CrI. P.C. was initiated stomata by the learned Sub-Divisional Magistrate, against the present revision petitioners. Curiously enough there was no order, as a consequence of these proceedings, forfeiting the security under the bond. On the contrary the learned Magistrate held that there was really no obligation on the respondents (revision petitioners) to produce Selvarai after 6-1-1962 and the proceedings were dropped.

3. It appears that the Assistant Public Prosecutor, Grade I, Nagapattinam, moved the District Magistrate (Judicial) for revision of the proceedings, because, in his view, the order of the learned Sub Divisional Magistrate was not sustainable. The learned District Magistrate went into the tact's and thought that the order was not sustainable and directed the forfeiture of the bond so that the respondents (revision petitioners) became each liable to pay a sum of:- Rs. 5000, which sum was offered by them as security and accepted by the court. It is against this order that the present revision proceeding has been filed.

4. The learned District Magistrate ([]), in my view, has missed one important point. He has referred to certain decisions and discussed the principles of law but the point that he really failed to note was an exclusive question of fact, namely, what precisely were the terms of the undertaking, in this connection of the three decisions cited before me the most pertinent to the present context is the decision of the Supreme Court in State of Bihar v. M. Homi : 1955 CriLJ1017 . Their Lordships have laid it down in explicit terms that, since the conditions of any such bond were penal in nature which is not denied, they should be very strictly construed and that it is only if the contingencies contemplated by the parties had occurred and there had been default notwithstanding such occurrence that the

bond could be forfeited. The other two decisions cited are not particularly relevant to the present context but I shall make a reference to them in passing. One is Rangaratnam v. State 1955 M. W. N. CrL 246b : wherein Bamaswami J. held that where a surety bond is given to attendance in a particular case the liability of the surety comes to an end when the case is transferred to another court. This again emphasises the basic principle that the bond being penal in nature ought to be very strictly construed. The other decision is Roshanlal v. State : AIR1957 All765 , which merely emphasis's that, in cases of forfeiture, the terms of Section 514 CrL. P.C. should be very strictly complied with.

5. Now the question is what are the precise terms of the bond and did the petitioners commit any forfeiture in respect of those terms Fortunately, the text of the bond is available and the relevant portion runs as follows:

We jointly and severally declare ourselves and each of us sureties for the said T. Selvaraj that he shall attend at the Court of the Sub-Divisional Magistrate at Nagapattinam at 11 o' clock on the 7th day of November 1961 and of every subsequent day of the preliminary enquiry or trial into the offence charged against him and should the case be sent for trial by the court of session that he shall be and appear before the said court to answer the charge against him and in case of his making default there in we bind ourselves to forfeit to the State the sum of Rs. 5000 each.

Now, as conceded with commendable frankness by the learned Public Prosecutor for the State, there has been no contravention of these precise terms for the simple reason that there was no charge sheet, no preliminary enquiry and no trial. The learned Sub-Divisional Magistrate seems to have merely obliged the Customs authorities by binding over the accused for appearance before court from time to time. Had any charge-sheet been filed and any preliminary enquiry been commenced the petitioners were in duty bound under the terms of the bond to immediately produce the accused Several before the court. But, since that did not happen at all the contingencies contemplated under the bond never came into being and there was no legal obligation in that respect which could be enforced. For this reason, I hold that the bond is not liable to forfeiture and set aside the

order of the learned District Magistrate, thus virtually restoring the order of the learned Sub-Divisional Magistrate originally made which seems to be correct dropping the proceedings.

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