

Basudeb Maity Vs. Emperor

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Court : Kolkata

Decided On : Feb-15-1934

Reported in : AIR1934Cal763,152Ind.Cas.341

Appellant : Basudeb Maity

Respondent : Emperor

Judgement :

ORDER

Mallik, J.

1. This Rule is directed against an order by which the petitioner who had executed a surety bond has been held to have forfeited it. What happened in the case was this. One Bhagbat Bhanja was a man against whom proceedings under Section 110, Criminal P. C, had been started. The hearing of the case was fixed for 8th, 9th and 10th August 1933 at Khakurda camp and the petitioner Basudeb Maity, a muktear stood surety for the appearance of Bhagbat Bhanja on those three days at Khakurda camp and executed a bond to that effect. On 7th August 1933, there was an application made before the Magistrate alleging that Bhagbat Bhanja had fallen ill whereupon the learned Magistrate adjourned the hearing of the case to 5th and 6th September. Two days later, namely on 9th August the Court officer informed the Magistrate that Bhagbat had absconded whereupon the Magistrate directed the petitioner Basudeb to produce Bhagbat on 15th August 1933. The

petitioner appeared before the Magistrate on 15th August and submitted that the whereabouts of the accused Bhagbat could not be traced. Thereupon the petitioner was called on to show cause why his surety bond should not be forfeited, and the surety bond was subsequently held by the Magistrate to have been forfeited.

2. The order of the learned Magistrate forfeiting the bond cannot in my opinion be sustained. As observed before what the petitioner had undertaken to do was to produce Bhagbat Bhanja on 8th, 9th and 10th August 1933 at Khakurda camp. But he gave no undertaking to produce the man at the Sadar Head quarters where the Subdivisional Magistrate was on 9th August and then the petitioner was directed to produce the accused on 15th August. The learned Magistrate in his explanation has tried to show that it was the duty of the petitioner to draw the attention of the Magistrate to the defective nature of the surety bond in question. I need hardly say that it was no part of the duty of the petitioner to draw the attention of the Magistrate to the defects that were in the surety bond in question on account of which defects the petitioner could not be, strictly speaking, taken to task. In the circumstances I am clearly of opinion that there was no forfeiture of the surety bond that was executed by the petitioner and that being so, the order of the Magistrate directing the petitioner to pay Rs. 200 the amount of the surety bond, must be set aside. In the result the Rule is made absolute and the order of the learned Magistrate holding that the petitioner had forfeited his bond is set aside.