

Ram Prasad Agarwalla Vs. the State

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Court : Kolkata

Decided On : May-19-1955

Reported in : AIR1955Cal586,1955CriLJ1481,60CWN542

Judge : Debabrata Mookerjee, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 514, 516A and 517

Appeal No. : Criminal Revn. No. 246 of 1955

Appellant : Ram Prasad Agarwalla

Respondent : The State

Advocate for Def. : Hirendra Chandra Ghose and ;P.K. Hazra, Advs.

Advocate for Pet/Ap. : S.K. Basu and ;Nishi Kanta Basu, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

Debabrata Mookerjee, J.

1. This is a petition for revision of an order made by a Presidency Magistrate, Calcutta, dated 15-2-1955 by which the petitioner Ram Prasad Agarwalla was directed to deposit in the Court of the Magistrate, on or before a date named in the

order, the sale proceeds of 78 bags of 'Mung Dal' in respect of which a bond had been executed by the petitioner.

2. The facts shortly stated are that the petitioner instituted certain proceedings under Section 420/ 114, Penal Code against two persons Kashi Prosad Keshri and Ganga Prosad Keshri which resulted in trial of the latter before a Presidency Magistrate. Upon the petitioner's application orders were passed by the learned Magistrate directing seizure of the bags of 'Dal' at Delhi. The petitioner having executed a bond by which he engaged to produce the goods, namely the bags of 'Dal' in question covered by the bond the goods were allowed to be kept in his custody.

Thereafter, during the pendency of the proceedings the bags of 'Dal' were sold by the petitioner to a third party on the pretext that they being 'perishable goods were deteriorating. The trial of the accused Ganga Prosad Keshri who alone had been proceeded against ended in acquittal.

3. Meanwhile a suit on the Original Side of this Court had been commenced by a third party purchaser in respect of the goods and upon his application the Official Receiver was appointed receiver of the goods. It then transpired that the petitioner Ram Prasad Agarwalla had in violation of the terms of the bond sold the goods and retained the sale proceeds. When the matter was brought to the notice of the learned Magistrate, the petitioner Ram Prasad Agarwalla and his surety were called upon to show cause why the bond executed by them should not be forfeited.

After having heard the petitioner and his surety in the matter the learned Magistrate forfeited the bond and imposed penalties on them. Thereafter the learned Magistrate made an order by which he called upon the petitioner Ham Prasad Agarwalla to deposit the sale proceeds in Court on or before 22-2-1955 in order that they may be made over to the Official Receiver to be kept in his custody pending disposal of the suit. It is against this last order made on 15-2-1955 that the present Rule has been obtained.

4. Mr. Basu appearing on behalf of the petitioner has contended that the petitioner could not in law be called upon to produce the goods in Court or their value in view of the fact that the learned Magistrate had by forfeiting the bond exhausted his powers to compel production of the goods or their value. It has been argued that when a bond is furnished engaging to produce goods in court it is only the bond, which is but a contract between the court and the party concerned, which can be enforced.

Once a bond is entered into, the Court has only the power to enforce the penalty against the party bound by the bond who merely incurs forfeiture on breach of the bond. In the instant case, Mr. Basu argues, the bond having been executed and accepted the learned Magistrate was within his rights to enforce it and the petitioner and his surety had justly incurred penalties since they had failed to keep the terms of the bond.

The result, therefore, according to Mr. Basu is that after having enforced the bond in the manner indicated above, the Court concerned lost all further powers in respect of the property including the power to compel production of the goods covered by the bond or their sale proceeds.

5. This contention would have force if the provisions of Section 516A, Criminal P. C., could be said to have been nullified directly a bond in respect of property referred to in the section was taken from a party in whose custody it was left under the terms of the bond. It seems further to have been contended that Section 516A which authorises a Court to make such order as it thinks fit for proper custody of property pending conclusion of an enquiry must be viewed along with the provisions as to bonds contained in Chap. 42, Criminal P. C., with all necessary modifications which these latter provisions import and imply, regulating the performance, discharge or enforcement of obligations arising out of the contract of the bond.

6. In order to be able to examine the contentions raised, it is necessary to refer to the different provisions contained in Chap. 43, Criminal P. C., which deal with the question of disposal of property and then to refer to the provisions of Chap. 42 of the Code relating to bonds.

7. Section 516A provides that when property regarding which an offence appears to have been committed, or which appears to have been used for the commission of an offence, is produced before any Criminal Court during an enquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the enquiry or trial. Power is also given to the Court to direct disposal by sale or otherwise of property which is liable to speedy or natural decay.

8. Section 517 proceeds to regulate the disposal of property upon conclusion of a trial. The Legislature has given the widest power to the Court as respects disposal of property referred to in Section 516A, and the power extends even to ordering destruction, confiscation or delivery to any person claiming to be entitled to possession of it. By Sub-section (3) of Section 517 the Legislature has provided that in casewhere property is livestock or subject to speedy or natural decay, the Court of first instance will have (he power to dispose of it even before the time for presentation of an appeal has elapsed.

9. Sub-section (4) of Section 517 contains the provision that nothing in Section 517 will be deemed to prohibit any Court from delivering any property under provisions of Sub-section (1) to any person claiming to be entitled to the possession thereof upon executing a bond with or without sureties to the satisfaction of the Court engaging to restore such property to the Court if the order is modified or set aside on appeal.

10. Then follows an Explanation attached to the section which says that 'property' would mean and include not only the property in its original state in the possession or control of any party but also property into which or for which the same has been converted or exchanged, and includes anything acquired by such conversion or exchange, whether immediately or otherwise.

11. The explanation attached to Section 517 to which I have just referred has far-reaching consequences. Apart from what it embodies in terms, the provisions contained in this Explanation seem to make it clear by necessary implication that the Court is intended to be clothed with the widest powers in following up property in respect of which an offence has been committed not only in its original state but

also in any other shape or form into which it may have been converted. Thus the Explanation empowers the Court to follow the property from hand to hand and makes no distinction between the property in its original state and its altered state.

12. Keeping these provisions in mind, it is quite clear that the learned Magistrate who directed the petitioner to produce the property, namely, the sale proceeds of the hags of 'Dar in question, had ample powers to make that order. It may be mentioned incidentally that despite the terms of the bond by which the petitioner had engaged expressly not to deal with the property in any event and by which he had undertaken to produce it in Court as when called upon to do so, he infringed the bond and disposed it of in a most unauthorised manner.

The sale proceeds are with him and the learned Magistrate has to my mind quite rightly, in view of the aforesaid provisions of the law, directed the petitioner to produce them in Court for disposal. The Explanation furnishes a firm foundation for the order made and authorises production of the property not merely in its old corpus but also in its new corpus represented by the sale proceeds and the arms of the Court are long enough to reach them in the possession of the petitioner.

13. Returning to Mr. Basu's argument that once a bond has been executed, only the penalty of the bond can be enforced robs the bond of its real content and makes the breach more substantial than the bond itself. Failure to comply with the terms of the bond will according to this view entitle the Court to punish, and the person who engaged to produce the property will, on such failure, merely incur the penalty mentioned in the bond.

But when that episode is over, in other words, when a forfeiture has been incurred and the penalty paid, the Court is rendered completely ineffective in regard to the subject-matter of the bond, I am afraid, this argument is repelled by the scheme of the different sections to which I have already referred. Section 510A to my mind establishes the Court's custody and gives the Court a firm hold on the property regarding which an offence has been committed or which appears to have been used for the commission of an offence.

Despite the bond which merely represents a temporary arrangement the property continues to be in the custody of the Court. It makes no difference whether somebody offers to take by means of the bond interim charge of the property; and if the Court agrees, the person has the custody not on his own but for and on behalf of the Court. There can be no question of competitive custody as between the Court and the person who takes it on bond. The custody of the Court continues despite the recognizance.

In this view the provisions of Chap. 42 relating to bonds cannot possibly be pleaded in bar upon the Court demanding production of the property either in its original or altered state. As a matter of fact, the goods may be a hundred miles away from the Court, but the legal fiction is the goods are in the well of the Court (sic) Section 516A provides for the Court's custody, and the goods must be deemed to be in such custody although factually they may be at a particular point of time miles and miles away.

The bond to which reference has been made by Mr. Basu may have been executed under Section 514 of the Code, but then that bond, as I have just said, cannot be so construed as to deprive the Court of its custody of the property. A reference to the terms of the bond itself in the instant case makes the position perfectly clear. The petitioner engaged to produce the goods in Court whenever called upon to do so.

It is his failure to keep this engagement which constituted a breach of the bond for which the petitioner incurred penalty. But the bond or its breach cannot in any sense be so read as to extinguish the custody of the Court. Section 514 cannot possibly be construed as having the effect of neutralising the consequence of an order validly made under Section 516A of the Code by which the Court acquires jurisdiction to deal with the property.

14. If the position is that the custody of the Court continues despite the bond, the Court must be held to have the necessary power to call upon the person to produce the goods either in the original state or in the altered state represented by the sale proceeds. In the present case, the Magistrate has precisely done that and nothing more. The forfeiture cannot be pleaded in extinguishment of the Court's

power to deal further with the property or its sale proceeds.

My attention has been called to a decision of the Allahabad High Court reported in -- 'Bishambhar Rai v. State', : AIR1953 All199 (A). In that case the learned Judge held that Section 517 presupposes the existence of the property either in the custody of the Court or in the possession of any party to the litigation. It was further held that if the property had been disposed off and was no longer available to the Court and if its money value was also not in the custody of the Court, no order about the payment of money could be made under the explanation to the section.

With great respect I must say that I cannot agree with the statement of the law in the latter part of the learned Judge's observations if they mean that the Court is powerless even if an order under Section 516A was made. The facts of that case however show no such order had been made. That being so the decision is no authority for the proposition for which Mr. Basu has contended.

The effect of Mr. Basu's contention would be to completely neutralise the combined effect of Section 516A and the different sub-sections of Section 517 and to ignore the Explanation attached to the section. which expressly empowers the Court to follow it in the hands of third parties in any shape or form.

15. It remains to notice an incidental submission made by Mr. Basu. The argument seemed to be that the Magistrate could have recovered bond on the property by taking a fresh bond. I do not see how. The main argument has been that the supervision of the bond had the effect of depriving the Court of its custody of the property. How a second bond, or fresh security will do the miracle of establishing the Court's custody I fail to see.

Even so, the taking of a fresh security will have to be in terms of Section 514A of the Code and 'in accordance with the directions of the original order'. So the fresh security continues to be impressed with the character of the original bond. A second or subsequent bond cannot possibly achieve what its predecessor failed to achieve.

16. There is no substance in this Rule which must therefore be discharged.

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