

# SUPREME COURT OF INDIA

Ghulam Mehdi

Vs.

State of Rajasthan

Crl.A.No.17 of 1957

(S. J. Imam and J. L. Kapur, JJ.)

21.04.1959

## JUDGEMENT

### **KAPUR, J.:**

1. In this appeal on a certificate of the High Court of Rajasthan the question for decision is the legality of the order forfeiting the bail bond given by the appellant in the case of one Salamat Ali who was being prosecuted under S. 409, Indian Penal Code and who was ordered to be released on bail of Rs. 10,000/-. This bail bond was executed by three sureties, the appellant Ghulam Mehdi, Dost Mohammad and Raghubir Singh who all undertook to produce Salamat Ali whenever and wherever he was required and in default they were jointly and severally liable to pay Rs. 10,000 which could be realized from their person and properties.

2. This case against Salamat Ali was originally being tried in the Court of the Sub-Divisional Magistrate but was transferred to the Court of Extra Magistrate on September 3, 1951. Salamat Ali continued to appear in that Court up to December 31, 1951 when he absented himself. Proceedings were then taken under S. 514 of the Criminal Procedure Code by the Extra Magistrate. In the first instance Dost Mahammad was given notice under S. 514 (1), Criminal Procedure Code, to show cause why the bond of Rs. 10,000 be not ordered to be paid and the amount realized from him. Dost Mahammad appeared but showed no cause and therefore the amount was forfeited but nothing was recovered from him. He was sentenced to six months' imprisonment in civil jail.

3. On February 13, 1952 notice was issued to the appellant to show cause why his bond be not forfeited and amount not recovered from him. Head Constable Ramchander was given the process to be served upon him but it could not be served. Then Head Constable Bhairon Lal was directed to effect service but evidently he also did not or could not serve him nor was notice affixed on the door of his residence nor given to any one of his relatives as required under Ss. 70 and 71, Criminal Procedure Code. On February 26, the Public Prosecutor made an application to the Sub-Divisional Magistrate who without notice to the appellant ordered his properties to be attached. The appellant thereupon filed an appeal under S. 515 of the Criminal Procedure Code in the Court of the District Magistrate, Bharatpur and raised various objections as to the legality of the order of forfeiture but the appeal was dismissed and he took a revision in the High Court and the High Court upheld the order of forfeiture and in regard to the notice under S. 514 (1) Criminal Procedure Code, it held that although no notice had been given, yet no useful purpose would have been served even if the notice had been given when "they have expressed their inability to abide by the terms of the surety bond for the reason that the accused had absconded and had taken shelter in a foreign country i.e.,

Pakistan. Under these circumstances this point cannot be availed of in favour of the petitioners". Thereupon the appellant made an application under Art. 134 (1) (c) and raised the following two points on which the certificate was granted :-

1. The bond was vague inasmuch as it was not specified as to in which Court and at what place the accused Salamat Ali was to be produced, and
2. no notice was served on the applicant under section 514 of the Code of Criminal Procedure.

It is not necessary to go into the first point as in our opinion unless notice is given to the surety under S. 514 (1) to show cause why the surety bond be not paid no proceedings for recovery under S. 514 can be taken. Section 514 (1) and (2) is as follows :

S. 514. (1) "Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class.

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

S. 514. (2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person or his estate if he be dead."

This provision shows that before a surety becomes liable to pay the amount of the bond forfeited it is necessary to give notice, why the amount should not be paid and if he fails to show sufficient cause only then can the Court proceed to recover the money. In the present case the appellant was not called upon to show cause why the penalty should not be paid. Before a man can be penalised forms of law have to be observed and an opportunity has to be given to a surety to show cause why he should not be made to pay and as in this case that was not done, proceedings cannot be said to be in accordance with law and should therefore be quashed.

4. We are therefore of the opinion that the Magistrate could not proceed to attach the property of the appellant unless a proper notice was given to him and he was given an opportunity to show cause why he should not pay the amount of the bond.
5. We would therefore allow this appeal and set aside the order of attachment.

Appeal allowed.

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