

Anwar Ahmad

Vs

State of U. P.

Criminal Appeal No. 128 of 1975

(V.R. Krishna Iyer, Syed M. Fazal Ali JJ)

12.09.1975

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave involves a short point of law relating to the legal enforceability of a personal bond executed by the appellant before the police for the production of the car belonging to him, which was alleged to have been stolen. The facts leading to the appeal fall within a very narrow compass.

2. The appellant appears to have brought a car No. USD 5317 from the dealers on the basis of a hire-purchase agreement. He filed a report before the police alleging that Ran Singh and others had practised a fraud on him and had taken away his car and had not returned the same. On December 3, 1969, the police during the course of investigation recovered the car and handed it over to the appellant on supardnama on his executing a personal bond whereby the appellant undertook to produce the car in the court whenever necessary, and in the case of failure to do so, he bound himself to pay a penalty of Rs. 5,000. By the time the matter came to the court, two years had elapsed and on September 14, 1971, the Munsiff Magistrate, Meerut, called upon the appellant to produce the car, and as he was unable to do so, a notice was issued under Section 514 of the Code of Criminal Procedure for forfeiture of the bond. After hearing the appellant, the Magistrate ordered the forfeiture of the bond and directed the appellant to pay a penalty of Rs. 5,000. The appellant went up in appeal to the learned Sessions Judge against magistrate's order. But the appeal was dismissed. The appellant met the same fate in revision which was preferred to the High Court. Hence, this appeal before us.

3. The short point taken by learned Counsel for the appellant is that even accepting the prosecution case as it stands, the bond is not legally enforceable under the Criminal Procedure Code, because it was not executed before a court, but it was executed before a police officer. It is not disputed by Counsel for the parties that as the occurrence took place long before the Criminal Procedure Code, 1973, the present case will be covered by the old criminal Procedure Code, 1898. The Criminal Procedure Code contains separate provisions for the custody of property (1) during the course of investigation, (2) during the course of enquiry and trial, and (3) after the accused is convicted or acquitted. In the instant case, we are concerned, however, with the case while it was under investigation. Section 523 of the Code runs thus :

The seizure by any police officer of property taken under Section 51, or alleged or suspected to have been stolen, or found circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall

make such order as he thinks fit respecting the disposal of such property or the delivery to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

It would thus appear from a perusal of this provision that the moment a police officer seizes a property suspected to have been stolen or which is the subject-matter of an offence, he has to report the matter to the magistrate concerned and it is for the magistrate to pass such orders as he thinks fit regarding this disposal of the property. The learned Counsel for the respondent, Mr. O. P. Rana, has, however, drawn out attention to Regulation 165 of the Government of Uttar Pradesh Police Regulations in order to contend that this provision conferred clear authority on the police officer to take possession of the property seized and to give it on supardnama to any respectable person. Rule 165 (ii) runs thus :

(ii) Bulky property, other than livestock taken possession of under Section 25 of the Police Act V of 1861, attached, distrained or seized under Section 88, 387 or 523 of the Code of Criminal Procedure shall ordinarily, pending the orders of the Magistrate, be left at the place where it was found in the charge of some landholder or other respectable person willing to undertake responsibility for its custody and to produce it when required by the court.

It is true that this provision read with Section 423 (sic 523) undoubtedly authorizes the police to seize the property and to make a summary order of the custody of the property, but neither Section 523 nor Rule 165 (ii) authorize the police officer to take a bond from the person to whom the property is entrusted. The policy of the law appears to be that the execution of the bond involves a civil liability and, therefore, it is in the fitness of things that it should be executed before a court. Section 514 of the Code runs thus :

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.

A perusal of this section clearly shows that a bond for the production of the property seized by the police must be executed before the court, although a bond for the appearance of any person before the court can be taken by the police under Section 170 (2) of the Code of Criminal Procedure. This section also clearly enjoins that a bond can be forfeited only if it is executed before a court or before a Presidency Magistrate or a magistrate of the first class. Section 6 of the Code of Criminal Procedure classifies the classes of courts which includes magistrate of the first class also. In the present case, therefore, once the car was seized by the police, it was the duty of the police under Section 523 to report the matter to the magistrate and get an order from him regarding the custody of the car. This does not appear to have been done. Even the bond which was executed by the appellant, was not before the court or the magistrate but before the police officer, and in these circumstances, therefore, the aforesaid bond was not one as contemplated by Section 514 and, therefore, could not be forfeited. This Court in *Rameshwar Bhartia v. State of Assam* (AIR 1952 SC 405 : 1953 SCR 126 : 1953 Crj LJ 163) went into this very question and observed :

The other point taken on behalf of the appellant is a more substantial one. The security bond was taken from him not by the court but by the Procurement Inspector. It is true that it contained the undertaking that the seized paddy would be produced before the court, but still it was a promise made to the particular official and not to

the court. The High Court was in error in thinking that Section 514, Criminal Procedure Code applied. Action could be taken only when the bond is taken by the court under the provision of the Code

The facts of the present case squarely fall within the ratio laid down in that decision. It follows, therefore, that unless a personal bond is executed by a person for the production of the property, before a court, it shall not be valid in law.

4. In view of these circumstances, therefore, we are satisfied that the bond executed by the appellant was not legally enforceable and the order of the courts below forfeiting the bond must, therefore, be quashed.

5. Before closing the judgment, we would like to observe that even in the new Criminal Procedure Code, there is no express provision which empowers the police to get a bond from the person to whom the property seized is entrusted. This may lead to practical difficulties, for instance in cases where a bulky property, like an elephant or a car is seized and the magistrate is living at a great distance, it would be difficult for a police officer to report to the magistrate with the property. In these circumstances, we feel that the Government will be well-advised to make suitable amendments in the Code of Criminal Procedure to fill up this serious lacuna by giving power to the police for taking the bond in such circumstances. We should also like to make it clear that since the bond is legally invalid, it is not enforceable under Section 514, Criminal Procedure Code, but we refrain from making any observation regarding any other liability of the appellant under the law. For the reasons given above, we allow this appeal, set aside, set aside the orders of the courts below and discharge the appellant from the bond.

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