Ram Lal

Vs

State of Uttar Pradesh

Criminal Appeal No. 154 of 1972

(Syed M. Fazal Ali, O. Chinnappa Reddy JJ)

05.03.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. Jorma who was convicted by the learned Sessions Judge, Dehradun under Section 302, Indian Penal Code and Sentenced to suffer imprisonment for life, was directed by the High Court of Allahabad to be released on bail on furnishing bail to the satisfaction of the District Magistrate, Dehradun. The District Magistrate (Judicial) Dehradun ordered Jorma to execute a personal bond in a sum of Rs. 5000 and to furnish two sureties in a sum of Rs. 10,000 each. Ram Lal the present appellant was one of the person who executed a surety bond. Another Abdul Jabbar, also executed a surety bond. By some oversight no personal bond was taken from Jorma nor was his signature taken on the reverse of the bonds executed by the two sureties as appeared to have been usually done. Jorma jumped bail and the sureties were unable to produce him when required to do so. The District Magistrate, Dehradun, therefore, forfeited the surety bonds and issued a warrant of attachment against the sureties under Section 514 of the Code of Criminal Procedure, 1898. The appellant preferred an appeal to the High Court of Allahabad against the order of forfeiture. Before the High Court it was submitted that the surety bond executed by the appellant could not be forfeited when no personal bond had been taken from the accused who had been released on bail. The High Court overruled the submission of the appellant and confirmed the order of forfeiture. The appellant has filed this appeal on a certificate granted by the High Court under Article 134(1)(c) of the Constitution.

2. Shri Shiv Pujan Singh, learned Counsel for the appellant sub-mitted that the question of forfeiting the surety bond for the failure of the accused to appear would arise only if the accused himself had executed a personal bond for his appearance. He submitted that someone must be primarily bound before the surety could be bound and his bond forfeited. He invited our attention to Section 499 of the Code of Criminal Procedure, 1898, and form No. 42 of the forms in Schedule V. He relied on the decisions in Brahma Nand Misra v. Emperor (AIR 1939 All 682), and Sailesh Chandra Chakraborty v. The State (AIR 1963 Cal 309). A reference was also made to Bakaru Singh v. State of U. P. ((1963) 1 SCR 55 : AIR 1963 SC 430 : 1963 (1) Cri LJ 335). On the other hand the learned Counsel for the state urged that the bond to be executed by the surely was independent of the bond to be executed by the accused and there was no impediment in the way of the forfeiture of the surety bond even in the absence of a personal bond execute by the accused. He relied upon the decisions in Abdul Aziz v. Emperor (AIR 1946 All 116), and Mewa Ram v. State (AIR 1953 All 481).

3. Section 499(1) of the Code of Criminal Procedure Code, 1898 was in the following terms :

> Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

Now, this provision contemplated the execution of a bond by the accused had by the sureties. The provision did not imply that a single bond was to be executed by the accused and the sureties, as it were, to be signed by the accused and countersigned by the sureties. Form No. 42 of Schedule V, Code of Criminal Procedure, 1898, was as follows :

> XLII - Bond and Bail-bond on a preliminary Enquiry before a Magistrate.
>
> (See Sections 496 and 499)
>
> I, (name), of (place), being brought before the Magistrate of (as the case may be) charged with the offence of, and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default, herein, I bind myself to forfeit to Government the sum of rupees
>
> #Dated this day of , 19. (Signature)##
>
> I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the said (name) that he shall attend at the Court of on every day of the preliminary inquiry 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 therein, I bind myself (or we bind ourselves) to forfeit to Government
>
> the sum of rupees
>
> #Dated this day of , 19. (Signature)##

The undertaking to be given by the accused as may be seen from Form No. 42 of Schedule V was to attend the Court on every day of hearing and to appear before the Court Whenever called upon. The undertaking to be given by the surety was to secure the attendance of the accused on every day of hearing and his appearance before the Court whenever called upon. The undertaking to be given by the surety was not that he would secure the attendance and appearance of the accused in accordance with the terms of the bond executed by the accused. The undertaking of the surety to secure the attendance and presence of the accused was quite independent of the undertaking given by the accused to appear before the Court whenever called upon, even if both the undertakings happened to be executed in the same document for the sake of convenience. Each undertaking being distinct could be separately enforced. It is true that before a person is released on bail he must execute a personal bond and, where necessary, sureties must also execute bonds. There can be no question of an accused being released on bail without his executing a personal bond. But it does not follow therefrom that if a person is released by mistake without his executing a personal bond the sureties

are absolved from securing his attendance and appearance before the Court. The responsibility of the surety arises from the execution of the surety bond by him and is not contingent upon execution of a personal bond by the accused. Nor is the liability to forfeiture of the bond executed by the surety contingent upon the execution and the liability to forfeiture of the personal bond executed by the accused. The forfeiture of the personal bond of the accused is not a condition precedent to the forfeiture of the bonds executed by the sureties. The Calcutta High Court in Sailesh Chandra Chakraborty v. The State (supra) and a single Judge of the Allahabad High Court in Brahma Nand Misra v. Emperor (supra), proceeded on the assumption that the bond executed by the accused and the sureties was single and indivisible and if the accused did not join in the execution of the bond, the bonds executed by the sureties alone were invalid. We do not find any warrant for this assumption in Section 499 of the Criminal Procedure Code of 1898. We are afraid that there has been some confusion of thought by the importation of the ideas of 'debt' and 'surety' from the civil law. As pointed out in Abdul Aziz v. Emperor (supra), under Section 499, Criminal Procedure Code, the surety did not guarantee the payment of any sum of money by the person accused who was released on bail but guaranteed the attendance of that person and so the fact that the person released on bail himself did not sign the bond for his attendance did not make the bond executed by the surety an invalid one. In Mewa Ram v. State (supra), the difference between a surety under the Code of Criminal Procedure and a surety under the Civil Law was pointed out and the view taken in Abdul Aziz v. Emperor, was reiterated. We agree with the view expressed in Abdul Aziz v. Emperor and Mewa Ram v. State.

4. In Bekaru Singh v. State of U. P. (supra), the question presently under consideration did not arise. The question which was considered in that case was whether it was necessary that the personal bond of the accused should be executed on the other side of the bond executed by the surety on the same paper. It was held that it was not necessary. And it was pointed out that the mere fact that form No. 42, Schedule V, Criminal Procedure Code, printed the contents of the two bonds, one to be executed by the accused and the other by the surety together, did not mean that both the bonds should be on the same sheet of paper. To the extent that it goes the decision helps the State and not the appellant. For the reasons stated above, the appeal is dismissed.

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