

# ALLAHABAD HIGH COURT

Abdul Aziz

Vs

Emperor

(Allsop,J)

05.09.1945

## JUDGMENT

**Allsop, J.**

1. This is an application against four orders in four connected cases directing the recovery of money forfeited by two persons who stood surety for the attendance of a man released on bail. The main argument is that the money was not forfeited because the surety bonds were invalid on the ground that no surety bond can be valid unless the person released on bail himself signs the bond for his attendance when called upon. Learned Counsel has referred us to the case in *Emperor v. Brahmanand Misra*<sup>1</sup> but in that case there was really no surety bond at all. A Magistrate had merely made a note that some person had promised orally to produce another if that other was charged with some offence. The learned Judge did pronounce a dictum to the effect that a surety bond would not be valid unless the person accused himself signed the bond but it was apparently not brought to his notice that this opinion was contrary to the decision of another learned Judge of this Court in *Reoti v. Emperor*<sup>2</sup> There has been a recent decision by one of us in *Nesar Ahmad v. Emperor*<sup>3</sup> which follows the earlier decision in *Reoti v. Emperor*<sup>4</sup> We are both agreed that this decision is correct. Learned Counsel has referred us to a case of the Lahore High Court, *Indar v. Emperor*<sup>5</sup> In our judgment, a certain amount of confusion is created by the use of the word 'surety' in the Code of Criminal Procedure because there is a tendency to regard this word as meaning a surety for the payment of a sum of money by another person. It is quite clear from the terms of Section 499, Criminal P.C., and the form of the bail and security bond given in the schedule of form that the surety does not guarantee the payment of any sum of money by the person accused who is released on bail but guarantees the attendance of that person. He is a surety for attendance and not a surety for payment of money. His contract and the contract of the person released on bail are independent of each other. The simple fact is that the surety promises to pay a certain sum of money if the person accused does not appear at some time and place as required by law. If that person does not appear the money is forfeited. There is no question of the surety making efforts to secure the attendance of the person accused or his being badly treated by that person or of his having made all the necessary efforts which he could

make. His is a simple contract. All he undertakes is to pay a certain sum of money if a certain event does not occur and if that event does not occur, he must pay. Any relaxation of this rule has the effect of inducing people to execute surety bonds without properly considering their position and without a due sense of responsibility.

2. A point was raised by learned Counsel for the applicants that in one of the four cases no surety bond had in fact been executed, but we find that this point was not taken in the Court below where it could properly have been considered and we see no reason to go into this question of fact at this stage of the proceeding. We, therefore, reject this application.

#### Cases Referred.

1('39) 26 A.I.R. 1939 All. 682

2('34) 21 A.I.R. 1934 All. 1046

3('45) 32 A.I.R. 1945 All. 389

4('34) 21 A.I.R. 1934 All. 1046

5('40) 27 A.I.R. 1940 Lah. 339