

ALLAHABAD HIGH COURT

Mewa Ram

Vs.

State (Allahabad)

Criminal Revn. No. 1496 of 1950

(Agarwala and Chaturvedi, JJ.)

22.01.1953

JUDGMENT

Agarwala, J.

1. This is a revision application on behalf of two sureties against an order forfeiting their bonds. One Debi Dayal was prosecuted under Section 411, Indian Penal Code. When he was brought in Court he appears to have applied for being released on bail. A bond was taken from the applicants as sureties for securing the presence of Debi Dayal on the next date of hearing and on subsequent dates. Debi Dayal appeared to subsequent dates but no bond was taken from Debi Dayal himself. Later on he absconded and did not appear on 23.2.1950, the date fixed in the case and thereafter could not be found. The bonds filed by the applicants were forfeited in the amount of Rs. 750/- each which was the amount of the bond. They filed an appeal against the order of forfeiture. Their appeal was dismissed.

2. The revision application of the applicants first came up for hearing before our learned brother Desai, J., who was of the opinion that unless there was a bond executed by the accused himself a bond taken from the sureties was not a bond taken under the Code and therefore could not be forfeited under Section 514, Criminal Procedure Code. But as there were three decisions of our Court against the view which our learned brother was inclined to take, he referred the case to a Bench for decision.

3. The sole point for determination in this application is whether the bond can be validly forfeited by the Court below. The bond was in the form mentioned in Form No. 42, Schedule V. The applicants executed one joint bond agreeing to produce the accused Debi Dayal on all the dates of the preliminary enquiry against him as also in the Court of Session, and covenanted that in case of failure to do so they would forfeit the amount of Rs. 750/- and in default of non-appearance of the accused on any of the dates fixed for his appearance each of them would be

liable to pay a sum of Rs. 750/- as penalty. On the back of the surety bond there was a form to be filled in by the accused which was, however, not filled in and remained blank. The bond was in the same terms as are mentioned in form No. 42 of Schedule 5 to the Criminal Procedure Code. In this form the bond executed by the sureties under reference is below the bond meant to be executed by the accused. The bond intended to be executed by the accused and that intended to be executed by the sureties are wholly independent of each other and one of them is not affected by anything said in the other. It is not in dispute that forfeiture of the bond has been incurred. The question is whether the non-execution of a bond by the accused vitiates the bond executed by the applicants. The answer depends on a correct interpretation of Sections 499 and 514, Criminal Procedure Code. Section 499 provides :

"(1) 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. (2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge."

4. The section does not make it necessary that only one bond shall be taken which will be executed both by the accused as well as by the sureties. There is nothing to prevent two bonds being taken, one by the accused and one by the sureties. The form of the bond in the form No. 42 of Schedule 5, indicates that the bonds are to be separate. Again, the section does not lay down that the bond or bonds which are to be executed by the sureties shall have any reference to the bond executed by the accused. The phrase "time and place" mentioned in the section must, in our opinion, refer to the time and place mentioned in the particular bond executed by the accused or the sureties, as the case may be. The bond executed by the sureties is not intended to have reference to the date and place mentioned in the bond executed by the accused. It is clear that a bond which is taken from the sureties and which has no reference to any of the terms mentioned in a bond executed by the accused himself is one taken in pursuance of the provisions of Section 499. Such a bond does not cease to be taken under that section merely because no bond has been taken from the accused. It is true that Section 499 requires a bond to be taken from the accused but there is nothing in Section 499 which makes the execution of the bond by the surety or sureties to be dependent upon the execution of a bond by the accused. When the terms of the bond executed by the sureties are contravened Section 514 comes into play. The phrase "under this Code" in Section 514, is fully applicable to the bond executed by the sureties even when no bond has been executed by the accused.

5. A surety under the Code of Criminal Procedure is not an ordinary surety under the civil law. A surety under the civil law guarantees the payment of a certain sum of money by a debtor, and

guarantees that a certain sum of money shall be paid in the first instance by the debtor and if he does not pay it, the same amount shall be paid by the sureties themselves. In such a case, in order that a surety may be bound to pay the amount, it is necessary that the debtor must be bound to pay the amount. If the debtor was not liable to pay the amount, the sureties are not liable to pay, either. Under the Criminal Procedure Code, however, a surety is for the appearance in Court of an accused person on a particular date or dates. When a Court orders an accused person to appear on any date, the accused is bound to appear on that date whether the accused has executed a bond to that effect or not. The effect of a bond executed by an accused is merely to make him liable in a certain sum of money if he does not appear on the date on which he is ordered to appear. The agreement of the surety to produce an accused on a particular date or dates is wholly independent of any agreement by the accused to pay a certain sum of money in case he does not appear on a certain date. In our judgment, a bond executed by a surety under Section 499, even when no bond has been executed by an accused under that section is a valid bond which can be forfeited under Section 514. This view finds support from several decisions of our Court : vide - '*Reoti Prasad v. Emperor*¹', - '*Nisar Ahmad v. Emperor*²', and - '*Abdul Aziz v. Emperor*³'. We respectfully agree with the view expressed in these cases.

6. A contrary view was expressed by a single Judge of this Court in - '*Brahma Nand Misra v. Emperor*⁴', We respectfully disagree with that view.

7. Our attention was drawn to - '*Wadhawa Singh v. Emperor*⁵', '*Baidyanath Misra v. Emperor*⁶', and - '*Govinda Chandra v. State*⁷',

8. In ' AIR 1928 Lahore 318 ' the bond did not mention the Court or officer before whom the executant was to appear. The bond was not taken under Section 499 but appears to have been taken under Section 496. The bond was not in the form mentioned in form No. 42 of Schedule 5. It was held that the surety had incurred no legal liability by executing it. It was, however, observed that there could be no surety without a principal and that no undertaking having been given by the accused to appear when called upon to do so, it was not possible for any person to declare himself surety for his appearance. As already observed, even if no bond is taken from an accused, the order of the Court that he should appear on a particular date is enough to bind him to appear on that date and it is not necessary in order to create a liability on an accused to appear on a particular date that this liability must appear from a bond.

9. A contrary view was taken in a later decision of the same Court : vide - '*Indar v. Emperor*⁸',

10. In AIR 1947 Patna 58 it was observed that for the enforcement of the liability of a surety, it was incumbent upon the Court to take a bond from the accused himself and that unless such a bond was taken, there was no obligation on the part of the person released so to attend. With respect we do not agree with this observation. The obligation to attend a Court on a fixed date in the case arises by virtue of the order of the Court itself. If the order of the Court is communicated to the accused and he does not appear on the date fixed in the order, the accused is liable for disobedience of the Court's order, and if the accused intentionally omits to attend in accordance

with the order he is guilty of offence under Section 174, Penal Code. It cannot, therefore, be said that the surety is not bound by his undertaking because the accused himself is not bound to appear in Court.

11. In AIR 1951 Orissa 18 it was held :

"The very conception behind the word 'surety' and the liability implied in that status as recognized by law is to reimburse the loss sustained by the principal on account of failure of performance on the part of the obliger."

As already observed by us, a surety under the Code of Criminal Procedure is not a surety for the payment of money at all. He is a surety for securing the attendance of an accused. The amounts mentioned in the bond of the accused and the surety may be different.

¹ AIR 1934 All 1046

³ AIR 1946 All 116

⁵ AIR 1928 Lah 318

² AIR 1945 All 389

⁴ AIR 1939 All 682

⁶ AIR 1947 Pat 58

⁷ AIR 1951 Orissa 18

⁸ AIR 1940 Lah 339

Further, when the accused is a minor the bond of a surety alone is taken vide Section 514B. It is obvious, therefore, that the word 'surety' is not used in the Criminal Procedure Code in the sense of a person guaranteeing the payment of money by another. Again, it was observed :

"Not taking a bond from the accused person to appear on the dates fixed amounts to leaving him to act at his own option. If the accused is not bound to appear, there is no meaning requiring the surety to make him appear.

12. This also, as we have already pointed out is not correct.

13. We, therefore, hold that the bail bond was liable to be forfeited under Section 514 of the Code. No other point was urged.

14. The application is, therefore, dismissed.

Application dismissed.