

# CALCUTTA HIGH COURT

Sailesh Chandra Chakraborty

Vs.

State (Calcutta)

Criminal Revn. Case No. 1005 of 1960

(S.K. Sen and K.C. Sen, JJ.)

14.03.1961

## JUDGMENT

**S.K. Sen, J.**

1. This revisional application is directed against the forfeiture of the bond executed by the petitioner Sailesh Chandra Chakravarty as the surety for producing certain accused in Court. The accused Salimuddin, Sultan and three others were arrested by the police, and on 16-7-59 under the provisions of Section 496 Cri. P. C. they were released on bail by the officer-in-Charge of Dinhata Police Station, who accepted a bail bond executed by the petitioner Sailesh Chandra Chakravarty as surety. Sailesh Chandra Chakraborty undertook to produce each of the accused in the Court of the S. D. O. at Dinhata and in default undertook to pay Rs. 200/- in respect of each accused. Two of the accused, namely, Sultan and Salimuddin absconded, and the surety Sailesh Chandra Chakravarty was directed to produce them before the S. D. O., Dinhata, but failed to do so. Thereupon the S. D. O. Dinhata, called upon the petitioner to show cause why the bail bond should not be forfeited. After hearing the petitioner, the S. D. O. by an order dated 4-4-60 forfeited the bail bond and directed the petitioner to deposit in Court the full amount of Rs. 400/- in respect of the two accused. There was an appeal to the District Magistrate under the provisions of Section 515 Cri. P. C., but the learned A. D. M., Cooch Behar, who heard the appeal only reduced to Rs. 300/- the amount forfeited, on the ground that the petitioner was a refugee from East Bengal. Accordingly, the petitioner has moved this revisional application. Mr. Alak Gupta has first urged that the bail bond could not be forfeited under Section 514 Cri. P. C., because it was not taken by the Court, but was taken by the police, namely, the Officer-in-Charge of Dinhata Police Station, and in support of his contention he has referred to the decision of the Supreme Court in the case of *Rameshwar Bhartia v. State of Assam*<sup>1</sup>, In that case, however, the only thing that was decided was that when the bond was for the production of property, action under Section 514 Cri. P. C. could be taken only when the bond was taken by the Court. In that case the Supreme Court did not purport to lay down that if bail bond for the appearance of the accused was taken by a police officer under Section 496 Cri. P. C., the bond could not be forfeited under Section 514 Criminal Procedure Code. A reference to the terms of Section 514 Criminal Procedure Code shows that the section is divided in two parts : the first part relates to any bond taken by Court and the second part relates to a bond for the

<sup>1</sup> AIR 1952 SC 405

appearance of an accused before the Court. When the bond is for appearance before the Court, it is not provided by Section 514 Cri. P. C. that the bond must be taken by the Court, but in every other case it is necessary that the bond must be taken by the Court. Accordingly, in respect of a bond for the production of seized property the Supreme Court naturally held that unless it was a bond taken by the Court itself it could not be forfeited under Section 514 Cri. P. C. In respect of the appearance of the accused before the Court, it is sufficient that the bond should be for the appearance of the accused before the Court, even though the bond is taken by the police; and it is not necessary that it should be taken by the Court itself.

2. Next, Mr. Gupta has urged that the bond was not in accordance with law, and therefore, could not be forfeited under Section 514 Cri. P. C. Section 499 Cri. P. C., which relates to the bond by an accused and by sureties, provides that before any person is released on bail, a bond for such sum of money as the police officer or the Court thinks sufficient shall be executed by such person and by one or more sufficient sureties. It appears, therefore, that Section 499 Cri. P. C. requires that a bail bond taken under the Code should be signed by the accused as well as by the surety. There is a provision in Section 514B that when the person required by any Court to execute a bond is minor, the bond may be executed by the surety only; but in respect of a person who is not a minor, Section 499 Cri. P. C. requires that the bail bond must be executed both by the accused and the surety. In the present case, the record shows that the bail bond was executed by the surety Sailesh Chandra Chakravarty only and not by the accused, and there is nothing to show that the two accused Sultan and Saimuddin were minors.

3. In the circumstances we are constrained to hold that the bail bond was not a bond within the terms of the Code of Criminal Procedure and therefore, Section 514 Cri. P. C. would not apply to the bond. In support of our view we may refer to the decision of this Court in the case of *Narerndra Nath Majumdar v. The State*<sup>2</sup>, where it was held that where a bail bond did not comply with the requirements of Section 499 Cri. P. C. the bond could not be said to be a bond under the Code of Criminal Procedure, and therefore, the Court could have no jurisdiction to forfeit the bond under Section 514 Cri. P. C. No doubt the surety may be proceeded against for damages for breach of contract; but forfeiture of the bond under Section 514 Cri. P. C. is not legally possible in the circumstances.

4. Accordingly, this Rule is made absolute and the order of forfeiture of the bond and for deposit of the money as passed by the Courts below is set aside.

**K. C. Sen, J.**

5. I agree.

Rule made absolute.

<sup>2</sup>59 Cal WN 475