

## **The State Of Maharashtra vs Dadamiya Babumiya Sheikh, Etc. on 6 May, 1971**

**Equivalent citations: AIR1971SC1722, 1971CRILJ1274, (1972)3SCC85, 1971(III)UJ694(SC), AIR 1971 SUPREME COURT 1722, 1971 UJ (SC) 694, 1971 CRI APP R (SC) 60, 1971 SCD 816**

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**Bench: S.M. Sikri, P. Jaganmohan Reddy, I.D. Dua**

### **JUDGMENT**

I.D. Dua, J.

1. These two appeals are by special leave from the judgment of the Bombay High Court dated 11 August, 1967 allowing the criminal revision applications of two sureties and setting aside the order of the Presidency Magistrate forfeiting their bonds.

2. On March 2, 1964 one Abdul Wahab Ibrahim, who was accused of having committing certain offences under the Customs Act was produced before the Court of the Chief Presidency Magistrate for the purpose of securing his remand. The Chief Presidency Magistrate released him on bail on his executing a bond for a sum of Rs. 2 lakhs with two sureties. The two respondents in this Court Laxman Bania and Dadamiya Babumiya Sheikh stood sureties the former in the sum of Rs. 50,000/-and the latter in the sum of Rs. 1,50,000/-. The bonds in both the cases were in identical terms. The sureties undertook that the accused would appear before the Court of the Chief Presidency Magistrate on March 12, 1964 or on such other dates as the Court may direct. On March 12, 1964 the accused appeared in the Court of the Chief Presidency Magistrate when the period of bail was extended to 16th April 1964. According to the directions of the Court the accused Abdul Wahab Ibrahim was to appear in the Court of the Chief Presidency Magistrate on April 16, 1964. He did not appear on that date in that Court and it appears that he was not traceable because he did not surrender to his bail bond anywhere. A circular letter seems to have been issued by the Chief Presidency Magistrate on March 12, 1964 according to which all applications for remands and extensions of bail periods under the Customs Act and also miscellaneous applications pertaining to such cases were to be placed in future before the Miscellaneous Court at the Esplanade center of Courts. According to this circular it appears that surety applications and also fresh cases under Customs Act were to be filed in the miscellaneous Court. It is common case before us that on April 16, 1964 the accused neither appeared in the Court of the Chief Presidency Magistrate nor in the Miscellaneous Court. The Miscellaneous Court issued notices to the sureties on April 17, 1964 requiring them to show cause why their bonds be not forfeited. These notices were ultimately

disposed of by the Additional Chief Presidency Magistrate. Third Court on May 27, 1964 and the surety bonds of both the sureties were ordered to be forfeited. Criminal Provision against order of forfeiture was presented to the High Court where it was contended that the bonds having been executed for the purpose of guaranteeing the attendance of the accused in the Court of the Chief Presidency Magistrate on the dates as directed by that Court the bonds could not be forfeited by the Additional Chief Presidency Magistrate. The order of forfeiture was set aside by the High Court and it was observed that it would be open to the Chief Presidency Magistrate on proper proceedings to enforce the bonds if their conditions had not been fulfilled and if the Court considered it proper to enforce them. The Customs Authorities then approached the Chief Presidency Magistrate Under Section 514, Cr.P.C. and that Court issued fresh notices to the sureties calling upon them to show cause why the bonds executed by them be not forfeited. On March 17, 1966 the Chief Presidency Magistrate held that there was good and convincing evidence to show that accused Abdul Wahid Ibrahim was absent from that Court on April 16, 1964 when he was required to be present according to that Court's directions dated March 12, 1964. Both the bonds were accordingly forfeited. The Court also believed the evidence of the Customs Officers that the accused had neither appeared in the Court of the Chief Presidency Magistrate nor in the Miscellaneous Court.

3. On revision by the two sureties, the High Court took the view that the accused was not bound to appear in the Court of the Chief Presidency Magistrate on April, 1964, and therefore the bonds executed by the sureties were not liable to be forfeited. It had been contended before the Chief Presidency Magistrate and upheld by him that according to the practice and procedure of the Court the accused was bound to appear before that Court on April 16, 1964, in spite of the fact that case was considered to have been transferred to the Miscellaneous Court by virtue of the Circular Order because it was on the appearance of the accused in the Court of the Chief Presidency Magistrate that he was to be directed by judicial order of that Court to appear in the Miscellaneous Court for further proceedings. The Customs Officer and the clerk of the Chief Presidency Magistrate's Court had deposed to this practice.

4. The High Court, however, on revision took a different view. It observed that the evidence given by the Clerk of the Chief Presidency Magistrate's Court had not deposed to such practice, though the Customs Officer had. According to the High Court the said clerk had stated that apart from the cases transferred under the Circular Order the procedure in other cases transferred by the Chief Presidency Magistrate was that on the case being called out in that Court, the accused would be directed to go to the transferee Court for obtaining further orders. The High Court further felt that there was no satisfactory evidence, apart from the bare assertion of the Customs Officer, Ahuja, that this case was actually called out in the Court of the Chief Presidency Magistrate on April 16, 1964, there being nothing to that effect on the official records. This view was considered to be supported by the fact that the Miscellaneous Court actually issued notices to the sureties why their bonds should not be forfeited.

5. Before us the short question canvassed at the bar relates to the effect of the Circular Order dated March 12, 1964. According to Mr. Daphtary the learned Counsel for the respondents, this Order had the effect of modifying the terms of the bond and of absolving the accused and the surety from any obligation to appear in the Court of the Chief Presidency Magistrate on April 16, 1964. There being

no obligation to appear in any other Court on April 16, 1964, according to Mr. Daphtar's argument, the accused and the sureties were completely absolved of all obligations under the bond and the bond virtually become a dead letter.

6. Mr. H.K. Khanna on behalf of the appellant State on the other hand contended that the bonds executed by the sureties could not get legally exhausted merely because of the Circular Order, and that the High Court was wrong in taking that view.

7. A surety bond is a contract and it is a question as to how far its terms can be considered to have been varied by any unilateral act. Each bond, it may be pointed out, has to be construed on its own terms. But in construing the terms of a surety bond for the production of an accused person, the purpose and object of executing it must be kept in view. Such a bond is executed for the purpose of ensuring the presence of the accused concerned in Court in which he is standing his trial for a criminal offence at the hearing of the case. But for the execution of such a bond, the accused would have to remain in custody so that the trial may proceed smoothly.

8. Looked at from this point of view surety bonds in criminal cases must be held to be designed to an extent to serve a public purpose. In some cases it is of course said that surety bonds call for a strict construction But the construction must not be so unduly strained as to result in defeating its essential purpose. Each bond has of course to be construed on its own terms, subject to what has just been stated.

9. In the present case the surety bonds relate to the production of the accused in the Court in which he was being tried, The High Court entertained some doubt if after the Circular Order the accused was under any obligation to appear in the Court of the Chief Presidency Magistrate. But after giving expression to this doubt, the High Court felt that there was no satisfactory evidence, apart from bare assertion of the Customs Officer, Ahuja, that the present case was actually called out in the Court of the Chief Presidency Magistrate on April 16, 1964. The High Court also pointed out that there was no official noting on the record that the case was called and the clerk of the Court was unable to state that case had actually been called out on that date. Now under the bonds in question the sureties understood to assure that the accused would attend the Court of the Chief Presidency Magistrate on March 12, 1964 to answer the charge for which he had been arrested and would continue so to attend until otherwise directed by that Court. As in the opinion of the High Court, the material on the record does not show that the accused was required on April 16, 1964, to attend the Court of the Chief Presidency Magistrate for answering the charge in respect of which he had been arrested, and as, in our opinion, this view is a possible view to take on the existing record, we do not find any cogent ground for interfering with the impugned order under Article 136 of the Constitution. This Court, as has repeatedly been pointed out, does not interfere under Article 136 of the Constitution with every order of the High Court which may be considered to be erroneous in law The High Court decided this case on its own peculiar facts and on the terms of the surety bond in question. No exceptional circumstances have been brought to our notice impelling us to exercise extra-ordinary power of this Court. Without expressing any considered opinion on the general question of the obligation of a surety in the event of the transfer of the case to some other Court to produce the accused in the transferor or the transferee Court, we dismiss the present appeals on the short

ground that no case for interference under Article 136 of the Constitution has been made out.