

Bahar Husain And Ors. vs State on 29 September, 1955

Equivalent citations: AIR1956ALL78, 1956CRILJ23, AIR 1956 ALLAHABAD 78

ORDER

Mukherji, J.

1. This is an application, in revision by Bahar Husain and another, who stood sureties for one Mohammad Husain. Mohammad Husain was arrested and produced before a Magistrate at Mora-dabad where he applied for being enlarged on bail. The two applicants stood sureties on his behalf and they executed a surety bond on 9-9-1952. This surety bond was in the sum of Rs. 500/- and by this bond the sureties had undertaken to produce the accused in that Court and also to produce him before another Court if so ordered.

It appears that the accused made his appearance in Court only once, that is to say, on 8-8-1952. Thereafter, the accused did not appear and several opportunities were given to the sureties to bring him to the Court but the sureties were unable to do so. The Court below, therefore, ordered the bond executed by the sureties to be forfeited to the State in the sum of Rs. 500/-.

2. A revision was preferred by the sureties and the Court below has dismissed that revision. Two points were urged before the Court below: one was that, the Railway Magistrate at Moradabad. in whose Court the bond had been executed, had no jurisdiction to take the bond, 'inasmuch as, the offence, in respect of which bail had been allowed and the bond executed, had been committed beyond the territorial jurisdiction of that Magistrate; and the second point urged was that in the circumstances of the case the entire amount of the bond should not have been forfeited.

3. The two arguments which were advanced before the lower Court were reiterated by Mr. Gyanendra Kumar before me; also he raised two other points as well. The first of these points was that there being no bond in this case by the accused himself, the bond which had been executed by the sureties was unenforceable because under Section 499, Criminal P. C. a surety could only come into existence as also a validly enforceable bond only after there had been a bond by the accused himself; and the second point that was raised by Mr. Gyanendra Kumar was that there being no specific mention in the bond 'of the Court in which the accused had to be produced the bond could not be enforced against the sureties for their non-production of the accused.

4. In regard to the argument that the surety bond could not be enforced because there was no bond by 'the accused himself in this case, I see no substance in it, although a learned single Judge of this Court in -- 'Brahmanand Misra v-Emperor', AIR 1939 AH G82 (A) had accepted this contention. I am relieved of the necessity of indicating my reasons for taking a different view from that which was taken by the learned single Judge in 'Brahmanand Misra's case (A)', because I am fortified in the view that I take by a Bench decision of this Court in -- 'Abdul Aziz v. Emperor', AIR 1946 All 116 (B).

5. As regards the second argument that the Court of the Railway Magistrate, Moradabad, could not enforce the bond, it is clear from the affidavit and the application filed by the applicants, while they put in the surety bond, that they were giving the bond in the Court of the Railway Magistrate of Moradabad and that they were holding themselves responsible for producing the accused first in the Court of the Railway Magistrate on each date and they were also holding themselves responsible for producing the accused before the Court of Session or any other Court if and when so ordered.

So that the non-specification of the Railway Magistrate's Court in the bond itself, in my opinion, did not affect the right of that Court to enforce the bond, particularly when, the wording of the bond clearly indicated that it did refer to the Court in which the bond had been put in. The bond actually used the words "Adalat Hazamen barabar hazir karega" and these words to my mind clearly indicate that the sureties had taken the obligation to produce the accused in the Court in which they were putting in the bond.

I am aware of the principle that a bond of this character has to be strictly construed, but I am aware of no principle which states that if there is some kind of lacuna in the bond itself in regard to any particular matter, then the surrounding circumstances and those documents, which, so to speak, accompanied the bond itself when it was put in the Court, could not be looked into in order to determine what the clear intention of the party executing the bond was.

Taking these circumstances into account, I am clearly of the opinion that the applicants gave in the first instance an undertaking to produce the accused in the Court of the Railway Magistrate of Moradabad and that the Railway Magistrate of Moradabad was therefore competent to enforce the bond if there was a breach.

6. In regard to the question of jurisdiction, I have seen no substance in that argument for even if the Magistrate had no jurisdiction to try the accused even then that fact did not divest him of the jurisdiction to take a bond from the sureties and to release the accused on bail when he was put up before him and that he thereafter had jurisdiction to enforce the bond against the sureties in case there was a breach.

7. The last argument of Mr. Gyanendra Kumar was that in the circumstances of this case the entire amount of the bond should not be forfeited. It is clear from the facts, of the case that the sureties made a good deal of endeavour to produce the accused before the Court but they unfortunately failed. There is nothing on the record to indicate that the sureties were in any manner careless or that they in any manner colluded with the accused and thereby gave him an opportunity to disappear.

Therefore, I am of the opinion that in this case the ends of justice would be met by forfeiting half the amount of the bond and not the full amount.

8. I, therefore, partly allow this application in revision by modifying the order of the Magistrate to this extent, and no more, that a sum of Rs. 250/- only would be forfeited in respect of the bond and not Rs. 500/-.