

Gambhir Kumari vs Bishambhar Nath Soni on 5 July, 1954

Equivalent citations: AIR1955ALL125, 1955CRILJ326, AIR 1955 ALLAHABAD 125

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. This is an application by Maharani Gambhir Kumari against the order of the Additional Sessions Judge of Dehra Dun confirming the order of the City Bench (A) Dehra Dun exempting the applicant from personal attendance at the hearing of a case under Sections 405 and 406, Penal Code, but modifying the order requiring her to furnish one or two sureties in the sum of Rs. 14 lacs to the effect that she was to furnish a personal bond in Rs. 50,000 and 2 sureties each in like amount.

2. Personal bond and sureties are required when a person is released from custody. If a person is not in custody no question of granting bail can arise and, therefore, no occasion to demand security. It may be that a certain specific provision of a statute may require the demand of a security from any person. There is nothing in the Code of Criminal Procedure which provides that security be demanded from an accused person who is exempted from personal attendance at the hearing of a case. In fact, Section 205 is the only section which specifically deals with the question of exempting an accused from personal attendance and says that whenever a Magistrate issues a summons he may, if he sees reasons to do so, dispense with the personal attendance of the accused and permit him to appear by his pleader. This section deals with a case where the accused is not in custody.

We have held that every court has inherent power to exempt an accused from personal attendance. I do not see why when personal attendance is dispensed with, the accused be required to furnish security for a certain contingency, the contingency being that the court requires his personal attendance and serves him with a notice of the date on which such attendance is required. Here again, when such a contingency should arise the Court will have the option either to issue a summons to the accused to appear on that date or to issue a warrant, bailable or non-bailable, as may be advisable in the circumstances of the case. The Code of Criminal Procedure lays down the circumstances in which warrants are to be issued instead of summons. The stage for security, therefore, can arise when the Court is considering the question of calling the accused personally in court and has reasons to believe that the accused may not obey the summons and, therefore, a

warrant be issued against him. Till such contingency arises there seems to me no justification for demanding security from an accused who is exempted from personal attendance at the hearing of a case.

3. I, therefore, allow this application in revision and set aside the order of the Court below requiring the applicant to furnish a personal bond in the sum of Rs. 50,000/- & two sureties each in like amount. I confirm the Magistrate's order to this extent only that the applicant's personal attendance at the hearing is dispensed with, subject to the Court's calling her when her personal attendance be considered necessary.