

Bhairon Lal Ramadhin vs State on 9 September, 1955

Equivalent citations: AIR1956ALL123, 1956CRILJ182, AIR 1956 ALLAHABAD 123

ORDER

Roy, J.

1. This criminal revision arises under the following circumstances. The applicant Bhairon Lal stood surety for the appearance in Court of one Bhola who was being prosecuted under Section 454, I. P. C. Bhola had applied for bail and he was released on his own bond and on the surety bond executed by Bhairon Lal the applicant on 13-3-1951. The surety bond was in the sum of Rs. 600/-. At the trial Bhola was not produced. He had absconded. The result was that the trial could not go on and, in spite of several opportunities having been given to Bhairon Lal, the attendance of Bhola could not be secured.

Notice was issued to Bhairon Lal by the learned Magistrate to show cause why the bond be not forfeited. The cause that was shown by Bhairon Lal did not commend itself to the Magistrate who by his order dated 15-3-1952, directed that under the provisions of Section 514, Criminal P. C. the bond be forfeited to the extent of Rs. 600/-. Bhairon Lal preferred an appeal from that order, but the learned Sessions Judge of Allahabad refused to interfere with the order of the Magistrate and dismissed the appeal.

2. In this revisional application the only point urged before me is that the bond executed by the applicant could not be forfeited because it was in favour of the "King-Emperor" and not in favour of the "Government" as provided in Form 42 of Schedule V, Criminal P. C. as amended by the Adaptation of Laws Order, 1950. This point, although not taken in these specific terms in the lower Courts, cannot be refused to be taken in this Court.

I have looked into the bond and it specifies that it was made out in favour of the "King-Emperor". Before India became a Republic the bonds were to be in favour of the "Crown". The words in Form No. 42 were "Her Majesty the Queen". When India became a Republic the Form was amended by the Amending Order of 1950 which was issued on 26-1-1950, and instead of the words "Her Majesty the Queen" the word "Government" was substituted, With the result that the bond under Form No. 42 was henceforward to be executed in favour of the "Government".

The bond in the present case was executed on 13-3-1951, that is after the commencement of the Constitution and the coming into force of the Adaptation of Laws Order, 1950. After India became a Republic and Form No. 42 had been amended by the Adaptation of Laws Order there was obviously no point in executing a bond in favour of the "King-Emperor" because there was no "King-Emperor"

so far as India was concerned. The present bond, however, was , by mistake executed in favour of the "King-Emperor" on an old printed Form. The question, therefore, is whether under such circumstances the bond can be forfeited to "Government".

3. The contention put forward on behalf of the other side is that this was an accidental error and that in substance the bond should be taken to be a bond in favour of the "Government" although it was stated that it was in favour of the "King-Emperor".

A similar question arose in -- 'Lala Asharfi Lal v. State', Criminal Revn. No. 256 of 1951 (All) (A) in which a Division Bench of this Court to which I was a party, held that an error or omission in a proceeding of the Court which does not affect the merits , of the case or prejudice the accused can always be ignored under Section 537, Criminal P. C. but the mistake, as appears in the present case, though technical was a material mistake, and where, as in the present case, the name of the obligee over the bond was wrongly mentioned and the bond was not in favour of the Government at all, the bond could not be enforced against the applicant at the instance of the State. The revision is therefore to be allowed, although purely on a technical point.

4. The result therefore is that the order of the Courts below is set aside and it is held that the applicant is not liable to pay anything under the bond in question.