

Joti Prasad vs State on 14 November, 1950

Equivalent citations: AIR1951ALL549, AIR 1951 ALLAHABAD 549

ORDER

P.L. Bhargava, J.

1. This is an application in revision by Joti Prasad and Girdhari Lal, who had, according to their own showing, "stood sureties for the appearance of Khushal Singh during the trial of S. T. No. 27 of 1949, Rex v. Har Pal and Ors. under Section 395, Penal Code. P. S. Etah."

The trial in the Sessions Court commenced on 7-7-1949, and it proceeded from day to day. After the case for the prosecution and the defence had been closed, the case was set down for delivery of judgment on 25-7-1949. It appears that the judgment was not ready on that date, and the case was adjourned to 6-8-1949, for delivery of judgment. Khushal Singh accused was absent on 6-8-1949. When the case was taken up on that date, the learned Sessions Judge recorded the following proceedings :

"The accused Khushal Singh and his sureties are absent without any excuse. His counsel is present. I forfeit the bond and the surety bonds of Khushal Singh. Let notice go to the sureties to deposit the security money or show cause against it by 26-8-1949. As the judgment is of acquittal, I pronounce it in Court in the presence of the counsel for Khushal Singh and the remaining accused who are personally before the Court."

2. On 29-12-1949, the two sureties made an application to the Sessions Judge objecting to the forfeiture of the bonds executed by them. They alleged that, on 25-7-1949, Khushal Singh was present in Court; that the clerk of the counsel, appearing for Khushal Singh, had stated that Khushal Singh had been acquitted; and that on account of the information given by the clerk of the counsel, they had lost control over the movements of Khushal Singh. This plea, raised on behalf of the applicants, was not accepted by the learned Sessions Judge. He, however, substantially reduced the amount payable under the surety bonds.

3. In this revision, two points have been urged on behalf of the applicants. In the first place, it has been contended that it was not necessary for the applicants, the sureties, to produce Khushal Singh in Court on 6-8-1949, as it was the date fixed for the delivery of judgment. This argument is based on the terms of the bond executed by the applicants, in which it was stated that they would be liable to produce Khushal Singh in the Court of Session to answer the charge levelled against him. The terms of the bond are wide enough to include an undertaking to produce Khushal Singh on all the hearings on which the trial of Khushal Singh was to take place. The trial will be deemed to have been concluded on the date on which the judgment was pronounced. Consequently there can be no doubt

that under the bond executed by the applicants they were responsible for the production of Khushal Singh even on the date or dates fixed for the delivery of judgment. I, therefore, see no force in this contention.

4. In the next place, it has been contended on behalf of the applicants that the learned Sessions Judge having dispensed with the presence of Khushal Singh, no action could or should have been taken by him under Section 514, Criminal P. C. The learned Judge never dispensed with the presence of Khushal Singh. On the other hand, it appears that when he was found absent, the learned Sessions Judge took action, under Section 514 of the Code, and forfeited the surety bonds. After doing so, the learned Judge proceeded to pronounce the judgment as it was of acquittal and the counsel for Khushal Singh was present. The learned Judge never made any order dispensing with the presence of Khushal Singh.

5. In support of his contention, learned counsel for the applicant has invited my attention to a decision of the Avadh Judicial Commissioner's Court reported in *Emperor v. Godhan*, A. I. R. (12) 1925 Avadh p. 314 : (26 Cr. L. J. 400). In that case after a charge had been framed in a warrant case, the parties were absent on the date fixed for hearing. The Magistrate, therefore, discharged the accused. Then he directed that proceedings be taken against the accused persons, who had been discharged, under Section 514, Criminal P. C. On these facts, it was held that the procedure adopted by the Magistrate was wrong, and that no action could be taken under Section 514, Criminal P. C., when the Court itself by discharging the accused persons held that their presence on the date of hearing was not necessary. The position there was entirely different from the one in the present case. In this case the applicants were bound to produce Khushal Singh on 6-8-1949, and there was no question of their presence having been dispensed with.

6. For the reasons given above, I hold that the order of forfeiture passed by the learned Sessions Judge was fully justified; and the learned Judge had shown consideration which the applicants deserved. I see no force in this revision which is accordingly rejected.