

## Ballabh Dass vs Rex on 26 April, 1950

**Equivalent citations: AIR1950ALL667, AIR 1950 ALLAHABAD 667**

ORDER

P.L. Bhargava, J.

1. Khemchand was being prosecuted under Section 457, Penal Code. While the case against him was pending in the Court of the City Magistrate of Mathura the applicant Ballabh Das and one Ram Prasad executed a joint surety bond, under which they undertook to produce Khemchand whenever they were called upon to do so by Court during the pendency of the case, and, in the event of their failure to do so, to pay a penalty of Rs. 500 each. The case was subsequently transferred to the Judicial Magistrate of Mathura, who fixed it for hearing on 26th March 1949. The Judicial Magistrate called upon the applicant by means of a notice to produce Khemchand on the date fixed; and he failed to comply with the order. The Judicial Magistrate thereupon treated the surety bond as having been forfeited and, under Section 614, Criminal P. C., ordered the applicant to pay the penalty of Rs. 500, in terms of the surety bond. The applicant preferred an appeal against the order of the Judicial Magistrate to the Sessions Judge of Mathura, who upheld the order but reduced the amount of penalty to Rs. 250. Now, the applicant has come up to this Court in revision.

2. Learned counsel for the applicant has contended that the applicant had only undertaken to produce Khemchand in the Court of the City Magistrate, and, as such he was not liable to pay any penalty for his failure to produce Khemchand before the Judicial Magistrate, to whom the case was subsequently transferred; and that, in any case, the Judicial Magistrate was not competent to take any action against him under Section 514, Criminal P. C. Under the surety bond, however, he had undertaken to produce him whenever called upon to do so by Court during-the pendency of the case. There is nothing in the bond to show that he had undertaken to produce him only in that Court. The notice issued by the Judicial Magistrate was served upon him personally; so he knew full well that the case had been transferred to, and was pending in the Court of the Judicial Magistrate. Consequently, in terms of the surety bond the applicant was bound to produce Khemchand in the latter' Court as well. That being so, there was forfeiture of the bond and the applicant became liable to pay the penalty.

3. In this connection learned counsel for the applicant further contended that there was a contract between the applicant and the Court of the City Magistrate and not with the Judicial Magistrate of Mathura; consequently, there was no contractual liability upon the applicant to pay any penalty for his failure to produce Khemchand in compliance with the order of the Judicial Magistrate in his Court. I see no force in this contention. The applicant had executed a surety bond undertaking to produce the accused, who was on trial, in Court whenever called upon to do so during the pendency of the case, which had been started by the State against him, and in the event of his failure to do so to pay the specified amount to the State. as such the contract really was between the State (not the

Court) and the applicant.

4. Learned counsel for the applicant has-relied upon Ballabhdas v. Emperor, A. I. R. (30) 1943 Bom. 178 : (44 Cr. L. J. 549), Basudeb v. Emperor, A. I. R. (21) 1934 Cal. 763 (36 Cr. L. J. 76); Karali Charan v. The King, A I. R (36) 1949 pat. 196 : (50 Cr. L. J. 462); Kanshi Ram v. Emperor A I. R. (20) 1933 Lah. 678 : (34 Cr. L. j. 952) and Brahmanand Misra v. Emperor, 1939 A. L. J. 779 : (A. I. R. (26) 1939 ALL. 682 : 41 Cr. L. J. 85). These cases are, however, clearly distinguishable, and most of them were-decided with particular reference to the terms of the bond produced therein. In Ballabhdas Motiram's case : (A. I R. (30) 1943 Bom. 178: 44 Cr. L. J. 549), it was held that the accused, who had bound himself to appear in a particular Court, could not be held responsible for his failure to appear in another Court to which the case had been subsequently transferred. It appears from the body of the judgment that in that case the accused had bound himself to attend the Court of the Chief Presidency Magistrate on a particular date and he had failed to appear in the Court of the Eighth Presidency Magistrate to whom the case was subsequently transferred. In Basudeb's case (A. I. R. (21) 1934 Cal. 763 : 36 Cr. L. J. 76) the surety had undertaken to produce the accused in a certain place on a certain date and the liability sought to be fixed upon him was on his failure to produce him before the same Court sitting at different place and on a different date. In Kanshi Ram's case, (A. I. R. (20) 1933 Lah. 678 : 34 Cr. L. J. 952) the bond was taken by the criminal Court and the question of forfeiture arose in a District Court seized of the proceedings under the Guardians and Wards Act. In Brahmanand Misra's case (1939 A. L. J. 779 : A. I. R. (26) 1939 ALL. 682 : 41 Cr. L. J. 85) there was no regular surety bond.

5. In Karali Charan's case (A. I. R. (36) 1949 Pat. 196 : 50 Cr. L. J. 462) it was, no doubt, observed that the language of Section 514, Criminal P. C was unambiguous "that it is the Court by which the bond was taken that has power to take necessary steps to enforce forfeiture of it."

Clause (1) of Section 514, Criminal P. C. is in these terms :

"Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the First Class, or when the bond is for appearance before a Court, to the satisfaction of such Court, that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid."

6. A Court, which has taken the bond, has primarily the jurisdiction to enforce forfeiture : but, in circumstances like those of the present case, the jurisdiction of a Magistrate of the First Class to take action under Section 514 of the Code is not barred. The forfeiture having occurred, the Judicial Magistrate was, in any case, competent to enforce the forfeiture.

7. Learned counsel appearing on behalf of the State has referred to Amulya Charan v. Emperor, A. I. R. (21) 1934 Cal. 785: (38 Cr. L. J. 133) in which a person had stood surety for producing an accused person till the disposal of the case. the case was sent to another Magistrate and when the surety was called upon to produce the accused he contended that the bail bond had ceased to be in force. There

it was bald that the bail bond was a contract between the Crown and the surety and the surety was liable to produce the accused till the case was disposed of. There is a decision of this Court reported in Mustadimuddin v. Emperor, A. I. R. (13) 1926 ALL. 297 : (27 Cr. L. J. 377) which is against the applicant and which supports the view I have taken.

8. The forfeiture of the bond having occurred, under Section 514 of the Code, action against the applicant could be taken by the Court which had taken the bond or by any other Magistrate of the first Class; and, in the present case by the Judicial Magistrate, who is a Magistrate of the first Class.

9. I, therefore, see no force in this revision and dismiss it.