

Sripal Singh And Anr. vs The State on 23 April, 1952

Equivalent citations: AIR1953ALL187, AIR 1953 ALLAHABAD 187

ORDER

Misra, J.

1. The applicants Sripal Singh and Shankar Singh stood surety for one Aughar Nath against whom along with others an inquiry under Section 419, 342 and 170, I. P. C. was proceeding in the Court of the Judicial Magistrate III, Hardoi. Each of the aforementioned sureties executed a bail bond for Rs. 1500/- on 30th October 1950, but no personal bond was taken from Aughar Nath in pursuance of Section 499, Criminal P. C. It appears that a form purporting to be a bond under that section was filled in but it was not signed. Aughar Nath attended Court thereafter on seven different days on which the hearing of his case took place. He, however, absented himself on 13th February 1951, and the Magistrate thereupon issued a warrant of arrest against him and called upon the sureties to show cause why their bonds should not be forfeited. In answer to the notice issued to them, these persons filed a written statement on 11th July 1951, averring that Aughar Nath was dead. On the date of evidence, however, they failed to prove that fact and the learned Magistrate called upon the sureties by his order dated 20th August 1951, to pay a penalty of Rs. 1000/- each. Sripal Singh and Shankar Singh went up in appeal against the aforesaid order to the Court of the Sessions Judge, Hardoi, but they failed to obtain any redress there.

2. In support of the revision the learned counsel for Sripal Singh, and Shankar Singh has urged that the omission to get a bond executed by Aughar Nath in pursuance of Section 499, Criminal P. C. rendered the surety bond executed by applicants invalid and infructuous and the order imposing penalty on them under Section 514, Criminal P. C. was unwarranted. -- 'Wadhawa Singh v. Emperor', AIR 1928 Lah 318, -- 'Emperor v. Chintaram', AIR 1936 Nag 243, -- 'Brahma Nand v. Emperor', ILR (1939) All 924 and -- 'Baidyanath Misra v. Emperor', AIR 1947 Pat 58 are cited in support of the contention.

There are a number of decisions of this Court, however, to the contrary. In -- 'Emperor v. Prabhu Dayal', 40 All 825, it was held that under the terms of bail bond a joint surety was responsible for the production of the accused notwithstanding the failure of the accused to sign the requisite bond under Section 499 (1), Criminal P. C. The case reported in -- 'Brahma Nand Misra v. Emperor', ILR (1939) All 924 was examined and distinguished by a Division Bench of this Court in -- 'Emperor v. Abdul Aziz', ILR (1946) All 238 and it was held that under Section 499 Criminal P. C. the surety does not guarantee payment of any sum of money by the person accused who is released on bail taut guarantees the attendance of that person. He is a surety for attendance and not a surety for payment of money. The learned Judges observed that his contract and the contract of the person released on bail are independent of each other and the fact that the person released on bail did not himself sign the bond for his attendance when called upon to do so does not make the bond executed by the

surety invalid. Reliance for this view was placed on some earlier cases to the same effect: -- 'Reoti Prasad v. Emperor', AIR 1934 All 1046 and -- 'Nisar Ahmad v. Emperor', ILR (1945) All 639. I not only respectfully agree with the decision of the Division Bench but sitting singly I am also bound by it. The contention raised on behalf of the applicant must, therefore, be overruled.

3. The applicant's learned counsel also urged that the penalty imposed upon his client was a heavy one and it should be reduced. I am unable to agree. The surety bonds were for Rs. 1500/-each and the learned Magistrate was considerate in demanding a penalty of Rs. 1000/- only from each of the applicants.

4. No other point was urged in support of the application. I affirm the order of the Courts below and reject the revision application.