

Anwar Ahmad vs State Of U.P on 12 September, 1975

Equivalent citations: 1976 AIR 680, 1976 SCR (1) 779, AIR 1976 SUPREME COURT 680, (1976) 1 SCC 154, 1976 (1) SCR 779, 1975 UJ (SC) 883, 1975 CRI APP R (SC) 341, 1975 MADLW (CRI) 255, 1975 SCC(CRI) 785

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, V.R. Krishnaiyer

PETITIONER:

ANWAR AHMAD

Vs.

RESPONDENT:

STATE OF U.P.

DATE OF JUDGMENT 12/09/1975

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

KRISHNAIYER, V.R.

CITATION:

1976 AIR 680

1976 SCR (1) 779

1976 SCC (1) 154

ACT:

Code of Criminal Procedure, 1898, Sections 514 and 523-
Seizure of car suspected to have been stolen-Police
entrusting the car with the owner and getting personal bond
executed for its production in Court-Bond, if can be
forfeited.

HEADNOTE:

The appellant bought a car from the dealers on the basis of a hire-purchase agreement. He filed a report before the police alleging that Ran Singh and others had practised a fraud on him and had taken away his car and had not returned the same. On 3-12-1969, the police during the course of investigation recovered the car and landed it over to the appellant on supurdnama on his executing a personal bond whereby the appellant undertook to produce the car in the court whenever necessary, and in the case of failure to

do so, he bound himself to pay a penalty of Rs. 5000/-. By the time the matter came to the Court, two years had elapsed and on 14-9-1971, the munsiff magistrate, Meerut, called upon the appellant to produce the car, and as he was unable to do so, a notice was issued under section 514 of the Code of Criminal Procedure for forfeiture of the bond. After hearing the appellant, the magistrate ordered the forfeiture of the bond and directed the appellant to pay a penalty of Rs. 5000/-. He failed in his appeal and his revision petition to the High Court was also dismissed.

Allowing the appeal by special leave,

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HELD : (1) A perusal of section 514 (1) of the Code of Criminal Procedure, 1898 clearly shows that a bond for production of the property seized by the police must be executed before the Court, although a bond for the appearance of any person before the Court can be taken by the police under section 170(2) of the Code of Criminal Procedure. This section also clearly enjoins that a bond can be forfeited only if it is executed before a Court or before a Presidency Magistrate or a Magistrate of the first class. In the present case, therefore. Once the car was seized by the police, it was the duty of the police under section 523 to report the matter to the magistrate and get an order from him regarding the custody of the car. This was not done. Even the bond which was executed by the appellant, was not before the Court or the magistrate but before the police officer, and in these circumstances, therefore, the aforesaid bond was not one as contemplated by section 514 and, therefore, could not be forfeited. *Rameshwar Bhartia v The State of Assam*, A.I.R. 1952 'S.C. 405, relied on. [781-FH. 782-A]

(ii) Though the provisions of Regulation 165(ii) of the Government of Uttar Pradesh Police Regulations read with section 423 of the Code undoubtedly authorize the police to seize the property and to make a summary order. Of the custody of the property, neither section 523 nor rule 165 (ii) authorize the police officer to take a bond from the person to whom the property is entrusted. [781-D-E]

Observation: Even in the new Criminal Procedure Code, there is no express provision which empowers the police to get a bond from the person to whom the property seized is entrusted. This may lead to practical difficulties, for instance in cases where a bulky property is seized and the magistrate is living at a great distance, it would be difficult for a police officer to report to the magistrate with the property. The Government will be well-advised to make suitable amendments in the code to fill up this serious lacuna by giving power to the police for taking the bond in such circumstances. [782-E-F]

JUDGMENT :

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. of 1975.

Appeal by Special Leave from the Judgment and order dated the 22nd November, 1974 of the Allahabad High Court in Criminal Revision No. 2475 of 1971.

K. C. Agarwala and M. M. L. Srivastava, for the appellant.

O. P. Rana, for the respondent.

The Judgment of the Court was delivered by B FAZAL ALI J. This appeal by special leave involves a short point of law relating to the legal enforceability of a personal bond executed by the appellant before the police for the production of the car belonging to him, which was alleged to have been stolen. The facts leading to the appeal fall within a very narrow compass.

The appellant appears to have bought a car No. USD 5317 from the dealers ON] the basis of a hire-purchase agreement. He filed a report before the police alleging that Ran Singh and others had practised a fraud on him and had taken away his car and had not returned the same. On 3-12-1969, the police during the course of investigation recovered the car and handed it over to the appellant on supardnama on his executing a personal bond whereby the appellant undertook to produce the car in the court whenever necessary, and in the case of failure to do so, he bound himself to pay a penalty of Rs. 5,000/-. By the time the matter came to the Court, two years had elapsed and on 14-9-1971, the munsiff magistrate, Meerut, called upon the appellant to produce the car, and as he was unable to do so, a notice was issued under section 514 of the Code of Criminal Procedure for forfeiture of the bond. After hearing the appellant, the magistrate ordered the forfeiture of the bond and directed the appellant to pay penalty of Rs. 5,000/-. The appellant went up in appeal to the learned Session Judge against the magistrate's order. But the appeal was dismissed. The appellant met the same fate in revision which was preferred to the High Court. Hence, this appeal before us.

The short point taken by learned counsel for the appellant is that even accepting the prosecution case as it stands, the bond is not legally enforceable under the Criminal Procedure code, because it was not executed before a court, but it was executed before a police officer. It is not disputed by counsel for the parties that as the occurrence took place long before the Criminal Procedure Code, 1973, the present case will be covered by the old Criminal Procedure Code, 1898. The Criminal Procedure Code contains separate provisions for the custody of property (1) during the course of investigation, (2) during the course of enquiry and trial, and (3) after the accused is convicted or acquitted. In the instant case, we are concerned, however, with the case while it was under investigation. Section 523 of the Code runs thus:-

"The seizure by. any police officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit res-

pecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property." , It would thus appear from a perusal of this provision that the moment a police officer seizes a property suspected to have been stolen or which is the subject matter of an offence" he has to report the matter to the magistrate concerned and it is for the magistrate to pass such orders as he thinks fit regarding the disposal of the property. The learned counsel or the respondent, Mr. O. P. Rana, has, however, drawn our attention to Regulation 165 of the Government of Uttar Pradesh Police Regulations in order to contend that this provision concerned clear authority on the police officer to take possession of the property seized and to give it on superdnama to any respectable person. 165(ii) runs thus:

"(ii) Bulky property, other than livestock taken possession of under section 25 of the Police Act V of 1861, attached, distrained or seized under section 88, 387 or 523 of the Code of Criminal Procedure shall ordinarily, pending the orders of the Magistrate, be left at the place where it was found in the charge of some land holder or other respectable person willing to undertake responsibility for its custody and to produce it when required by the court."

It is true that this provision read with section 423 undoubtedly authorizes the police to seize the property and to make a summary order of the custody of the property, but neither section 523 nor rule 165(ii) authorize the police officer to take a bond from the person to whom the property is entrusted. The policy of the law appears to be that the execution of the bond involves a civil liability and, therefore, it is ill the fitness of things that it should be executed before a court. Section 514 of the Code runs thus:-

"514(1) 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,".

A perusal of this section clearly shows that a bond for the production of the property seized by the police must be executed before the Court, although a bond for the appearance of any person before the Court can be taken by the police under section 170(2) of the Code of Criminal Procedure. This section also clearly enjoins that a bond can be forfeited only if it is executed before a Court or before a Presidency Magistrate or a Magistrate of the first class. Section 6 of the Code of Criminal Procedure classifies the classes of courts which includes magistrate of the first class also. In the present case, therefore, once the car was seized by the police, it was the duty of the police under section 523 to report the matter to the magistrate and get an order from him regarding the custody of the car. This does not appear to have been done. Even the bond which was executed by the appellant, was not before the court or the magistrate but before the police officer, and in these circumstances, therefore, the aforesaid bond was not one as contemplated by section 514 and, therefore, could not be forfeited. This Court in . Rameshwar Bhartia v. The State of Assam(1) went into this very question and observed:

"The other point taken on behalf of the appellant is` a more substantial one. The security bond was taken from him not by the court but by the Procurement Inspector. It is true that it contained the undertaking that the seized paddy would be produced before the court, but still it was a promise made to the particular official and not to the court. The High Court was in error in thinking that section 514 Criminal Procedure Code applied. Action could be taken only when the bond is taken by the court under the provisions of the Code ..."

The facts of the present case squarely fall within the ratio laid down in that case. It follows, therefore, that unless a personal bond is executed by a person for the production of the property, before a court it shall not be valid in law. In view of these circumstances, therefore, we are satisfied that the bond executed by the appellant was not legally enforceable and the order of the courts below forfeiting the bond must, therefore, be quashed.

Before closing this judgment, we would like to observe that even in the new Criminal Procedure Code, there is no express provision which empowers the police to get a bond from the person to whom the property seized is entrusted. This may lead to practical difficulties for instance in cases where a bulky property, like an elephant or a car is seized and the magistrate is living at a great distance, it would be difficult for a police officer to report to the magistrate with the property. In these circumstances, we feel that the Government will be well-advised to make suitable amendments in the Code of Criminal Procedure to fill up this serious lacuna by giving power to the police for taking the bond in such circumstances. We would also like to make it clear that since the bond is legally invalid, it is not enforceable under section 514, Criminal Procedure Code, but we refrain from making any observation regarding any other liability of the appellant under the law. For the reasons given above, we allow this appeal, set aside the orders of the courts below and discharge the appellant from the bond V.M.K. Appeal allowed.

(1)A.I.R. 1952 S.C. 405.

L 925 Sup 1175-2500-4-3-76. GIPF