

Bombay High Court

Ramakant Simopuruskar vs The State on 18 August, 1988

Bench: G Couto

JUDGMENT

1. This Appeal arises out of the Order dt. 25th March 1988, whereby the learned Sessions Judge, Panjim, allowed the application filed by the State praying that the amount of the bond entered by the appellant should be forfeited to the Government.

2. The relevant facts are as under :-

A criminal case for offences punishable under sections 20(b) and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, was filed against one Hamid Roza Sharmrow. Hamid was enlarged on bail on the sum of Rs. 10,000/- the appellant having stood as a surety to secure the presence of the accused in Court at the time of the inquiry or trial. However, when the matter came up for hearing, Hamid failed to appear in Court, and therefore, the appellant was directed to produce him in Court on a particular date. Appellant applied for time, and thrice, the Court extended the time for producing the accused, and as he ultimately failed in that, a notice was given to him to show cause as to why the amount of the bond should not be forfeited to the Government. The learned Sessions Judge did not find the reasons given by the appellant satisfactory and hence, by his impugned Order dt. 25th March 1988 forfeited the amount of the bond to the Government and directed the appellant to forthwith pay the said amount in Court.

3. Mr. R. V. Kamat, the learned counsel appearing for the appellant, contends before me that the impugned Order is not sustainable and is bound to be set aside. He submits that a bond is a contract between the Court and the surety, and therefore, the bond should be precise in its terms for being enforceable. In particular, the bond should incorporate in unmistakable terms the date on which the accused person is to be produced in Court. In the present case, the surety bond signed by the appellant is vague and ambiguous in nature as no specific date was mentioned in the said bond to produce the accused. Therefore, the learned counsel further contends placing reliance on Dr. Chimanlal Dharamdas Shah v. State. 1987 Cri LJ 2002 (Bom), the said bond is not enforceable with the result that the impugned order is invalid. He further contends that in any event, the Court should reduce the amount of the bond, considering that the appellant is a motorcycle driver and has no sufficient means to pay the amount of the bond.

4. It was however countered by Mr. Bhobe, the learned Public Prosecutor, that the decision relied upon by Mr. Kamat does not favour the case of the appellant, for what was laid down in the said case is that a bail bond is not enforceable when it is vague and ambiguous or silent in material particulars. This does not happen in the present case, for although a specific date for appearance was not given, the learned Magistrate was careful enough to incorporate in the bond a clause under which the appellant undertook to produce the accused on whatever date as directed by the Court, and further, in case of his making a default, to forfeit to the Government a sum of Rs. 10,000/-. The terms of this contract cannot be said, by any stretch of imagination, to be ambiguous or vague and therefore, on the strength of the very same ruling, such contract is enforceable, specially when

admittedly a direction was given to the appellant to produce the accused in Court on a particular date. The appellant has thrice sought extension of time to produce the accused in Court and finally, submitting himself to the terms of the bond, by his application dt. March 7, 1980 sought a reduction of the amount to be forfeited.

5. The surety bond signed by the appellant reads as under :-

"I Ramakant Arjun Shimepuruskar of Umta Wado Calangute, Bardez, Goa, hereby declare myself surety for the said Hamid Roza Sharmrow that he shall attend at the Court of Judicial Magistrate F.C. at Mapuca on every day of the preliminary inquiry into the offence charged against him and trial thereafter, and, should the case be sent for trial by the Court of Session that he shall be, and appear, before the said Court to answer the charge against him and I undertake to produce the accused whenever directed by the court and in case of his making default therein bind myself to forfeit to Government the sum of rupees ten thousand (10,000/- only)."

It is clear from the above bond that the appellant not only gave an assurance that the accused person would attend the Court on any day fixed for the preliminary inquiry and for the trial, but has further undertaken to produce him whenever directed by the Court and in case of his failure to do so, to forfeit to the Government a sum of Rs. 10,000/-. The records also show that the Court, on the failure of the accused to appear for the trial, gave a notice to the appellant to produce him on a particular date. The appellant failed to comply with this direction and sought time to produce the accused. This was granted by the Court, and again on two more occasions, the appellant sought extension of time which was granted by the Court, specifying the date on which the accused should be produced. This being so, it is difficult to accept the contention that the terms of the bond entered into by the appellant are ambiguous or vague. But Mr. Kamat contends that such ambiguity and vagueness exists inasmuch as in the original bond, no reference was made to a particular date, and in this connection, placed strong reliance on the decision of Puranik J., in *Dr. Chimanlal Dharamdas Shah v. State* (1987 Cri LJ 2002) (Bom) (supra).

6. That was a case where one Vinod Shah has been arrested by the Customs Department for having been found in possession of a gold bar at the time he landed from Singapore. The said Vinod Shah was detained not only under the provisions of the Customs Act, but also under the COFEPOSA Act, and while in detention, applied for parole as his wife had fallen sick. The Government of Maharashtra granted him one week's parole but he could not avail himself of the same as he was also detained under the Customs Act. He therefore, applied for bail and the learned Metropolitan Magistrate granted it to him in the sum of Rs. 2 lakhs. The father of the said Vinod Shah stood as surety, but as on the day the complaint filed by the Customs Authorities came up for hearing before the Metropolitan Magistrate, Vinod was not present, a warrant for his arrest was issued. Thereafter, in view of the repeated absence of the said Vinod, a notice was given to the surety to produce him in Court. The surety appeared in Court in pursuance of the show cause notice, submitted his explanation and asked for a substantial remission. The Magistrate reduced the amount by Rs. 50,000/- and hence, the surety approached the High Court in a revision application.

7. It was contended in the High Court that the surety bond could not be enforced against the surety inasmuch as it was totally vague and did not specify the date or the day when the accused was to be produced by the surety before the trial Court. This contention was opposed by the learned counsel appearing for the State. Dealing with it, the learned single Judge adverted to several authorities, namely, 'State of Bihar v. M. Homi', 'State of Haryana v. Satya Narain' 1974 Cri LJ 113 (Punj & Hry), 'Emperor v. Chintaram' AIR 1936 Nag 243 : (1937-38 Cri LJ 100), 'Shri Kishan Lal v. State of U.P.' 1978 Cri LJ 1429 (All) and 'Chhaganlal Kikabhai v. State of Gujarat' 1969 Cri LJ 1164 and after quoting S. 441, Cr.P.C. observed as under :-

"Thus, the Code itself prescribes that the bond must state therein the date and time on which the accused has to remain present before the Court. The bond is also to be construed as a contract between the individual and the Court. The bail bond of the accused and the Court and the surety bond is a contract between the surety and the Court and the accused and the surety are bound by the terms of the said contract. If the surety violates the terms of the bond, the Court has power to enforce the bond against the surety and forfeit the amount. It is in this perspective that the terms of the surety bond must be strictly construed; and if the said terms are vague or ambiguous or silent in material particulars, such as in the case, where no date and time to produce the accused is stated, then such a bond cannot be enforced by the Court."

It is clear from the above quoted passage that what Puranik, J., held is that the bond being a contract between the accused or the surety and the Court, can be enforceable only when the terms of it are clear in material particulars and not vague or ambiguous. This otherwise was the view earlier taken by Justice Vivian Bose in 'Emperor v. Chintaram' (1937-38 Cri LJ 100) (Bom) (supra). He has indeed held in that case that the terms of the surety bond have to be determined by the language used in the bond itself. It follows that if the terms of the bond are clear, the parties to the contract, i.e. the Court on one side and the surety on the other, are bound by it and the contract is enforceable. Puranik J., held the same view in Chimanlal's case (1987 Cri LJ 2002) (Bom) when he said that if the surety violates the terms of the bond the Court has power to enforce the bond against the surety and forfeit the amount. In the present case, it is apparent from the said terms of the bond that there is no scope for any doubt and the appellant bound himself to forfeit the amount of the bond in case he failed to produce the accused on the date fixed by the Court as directed by it. The bond is conditional in nature and its enforceability is contingent upon the giving of a particular date by the Court. This was done and it may be noted that despite the specific dates given by the Court, the appellant failed to produce the accused. In the circumstances therefore, in my view, there is no reason whatsoever for interference with the impugned judgment.

8. I may also mention that Mr. Kamat's prayer that the amount of the bond to be forfeited be reduced, bearing in mind that the appellant is a pilot driver of a motorcycle and therefore, incapable to pay a sum of Rs. 10,000/-, cannot be accepted. The charge against the accused indeed is serious, being punishable with the minimum of ten years of R.I. and a fine of Rs. 1 lakh. The surety bond was to secure the presence of the accused during his trial. The appellant did not fulfill his obligations towards the Court and cannot now come with a case that he is poor and cannot pay Rs. 10,000/-. He knew, or at least was bound to know, the seriousness of the offence with which the accused was charged and of the responsibility assumed by him.

9. Before I part with this case, I think it necessary to invite the attention of all the Magistrates, as well as of the Sessions and Additional Sessions Judges to the provisions of S. 441, Cr.P.C. and to the need to be careful in incorporating in the bond a clause binding the surety to produce the accused on a particular date, or on a date as directed by the Court.

10. The result, therefore, is that this appeal fails and is, accordingly, dismissed.

11. Appeal Dismissed.