

Rajasthan High Court

Tejasingh vs Janwata And Anr. on 18 January, 1956

Equivalent citations: 1957 CriLJ 162

Author: Modi

Bench: Modi

ORDER Modi, J.

1. This is a revision by Tejasingh against an order of the District Magistrate, Jalore, dated the 26-11-1954, forfeiting his surety bond under Section 514 Cr. P. C., and arises in the following circumstances.

2. A report was made by Teekma against one Janwata in connection with the theft of the former's camel at the police station Sanchores. During the course of investigation, the investigating officer made over the camel which had been recovered from the possession of Janwata to the petitioner Tejasingh on the latter's executing a bond in favour of the police officer that he would produce the camel before the police or the court whenever called upon to do so and that in default he would pay a sum of Rs. 500/-.

This bond was executed on the 18-11-1952. Janwata was challaned in the court of the Sub-Divisional Magistrate Jalore, in due course and the case was thereafter transferred to the court of the Extra First Class Magistrate Sanchores. By his judgment dated the 31-1-1954, Janwata was acquitted. Thereupon he applied to the Magistrate for restoration of the camel to him.

The petitioner Tejasingh was called upon to produce the camel. The latter failed to comply with the order. Consequently the Magistrate forfeited his surety bond and directed him to pay the sum of Rs. 500/- stipulated in the bond. The petitioner raised the principal contention that the forfeiture of the bond was illegal as he had not executed any bond in favour of the Court and, therefore, he could not, in law, be called upon to pay the penalty under Section 514 Cr. P. C.

He also stated that the camel had been made over to the complainant Teekma and that it had been recently lost from his custody and efforts were being made to find it : out. The First Class Extra Magistrate, Sanchores, held that Tejasingh was bound to produce the camel and that in default he must deposit the sum of Rs. 500/-. Then the petitioner went in appeal to the District Magistrate who maintained the order of the Magistrate. Aggrieved by the above order, the petitioner has come up in revision to this Court.

3. The main point for determination in this revision is whether the order of forfeiture, passed by the courts below, of the surety bond executed by the petitioner in this case is correct. The contention is-that the petitioner had never executed any bond in favour of the court and, therefore, there was no bond which the court could forfeit within the meaning of Section 514 Cr. P. C. The determination of this question depends upon Section 514, the relevant portion of which reads as follows:

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 of the First Class, or, when the bond is for the

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.

The language of the section clearly implies that before a bond can be forfeited, an essential condition is that the bond must have been one taken under the Code. The question, therefore, arises whether the bond which was taken by the investigation officer in the present case was a bond for which provision exists under the Code.

It must be pointed out that learned Deputy Government Advocate has not been able to place his finger on any such provision in the Code of Criminal Procedure. Section 550 authorises that police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

Then Section 516-A provides that when any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and the section further provides that if the property is subject to speedy or natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Finally, Section 517 makes provision for final orders in connection with the disposal of such property at the conclusion of the inquiry or trial.

Reference may also be made, to Section 523 which lays down that upon seizure by any police officer of property taken under Section 51 of the Code or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, such seizure shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person is unknown then the Magistrate is required under Sub-section (2) to issue a proclamation requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation. A review of these sections leads to the conclusion that the bond, like the one which was taken by the police officer in the present case, is not a bond for which any provision is to be found in the Code of Criminal Procedure. As soon as the challan was presented in the court of the Magistrate, the prosecuting inspector should have moved the Magistrate to proceed under Section 516A and a bond should have been then taken from the surety Tejas Singh or any other person for the proper custody of the camel pending the conclusion of the trial. But this was not done and the bond which had been executed by Tejas Singh in favour of the police officer was supposed to have been enough. Be that as it may, the crucial question is whether to such a bond the provisions of Section 514 can be attracted. To my mind, the answer to this question can only be in the negative because the bond cannot be said to be one taken under the Code; it being an essential condition for the application of Section 514 that before a bond can be forfeited thereunder, it must be a bond taken under the Code, of Criminal Procedure. I am strengthened in the conclusion at which I have arrived by an examination of the cases to which I proceed to make reference. In *re Hubert Crawford* AIR 1918 Bom 226 (A) bonds were taken under

Sections 106 and 107 of the City of Bombay Police Act from the accused and also from a surety. The accused absconded. The bonds of the accused as well as the surety were forfeited. The question was raised whether Section 514 Cr. P. C. applied to such bonds. The Magistrate held that the section applied. On revision the High Court repelled this view and held that the bonds taken under the City of Bombay Police Act for appearance before the police were not bonds taken under the Code of Criminal Procedure, and, therefore, the Magistrate had no jurisdiction to direct the forfeiture of these bonds and his order was set aside as having been made without jurisdiction.

In *Shangra Singh v. Emperor* AIR 1929 Lah 658 (B), the police having seized certain goods handed them over to a "Supardar" on the latter executing a bond to produce them on demand before the court; but when he was called upon to produce them, he failed, and, thereafter, he executed another bond in favour of the court undertaking to produce them on demand.

It was held that the latter bond was covered by the provisions of Section 516A and it was not open to the petitioner to raise the objection that the bond was not executed under the section merely because the goods were not actually produced in court.

It will be observed that the facts of this case were peculiar and although the original bond had been executed in favour of the police officer, a further bond had been executed by the surety in favour of the court itself even though the goods were actually not produced in court at the time; but the actual production of the goods was immaterial as the surety had admitted that he had received the custody of the bullocks on the date of the execution of the second bond.

In these circumstances, the conclusion that the bond was covered by the provisions of Section 516A and that it was not open to the petitioner to raise the objection that the bond was not executed under the section merely because the bullocks were not actually produced in court was perfectly correct.

This ruling can have no application to the facts of the present case, as no further bond had been executed by the surety in favour of the court at all. The last case to which reference may be made is *Rameshwar Bhartia v. State of Assam*. The facts there were that a bond had been executed by the accused in respect of paddy found in his possession without a licence in contravention of the provisions of the Food Grains Control Order, in favour of the procurement inspector whereupon the stock of paddy was allowed to remain in his possession.

Subsequently he was unable to produce it when called upon by the court and, therefore, the accused was ordered to procure a similar quantity of paddy and make it over to the procurement department.

The District Magistrate referred the case to the High Court, inter alia, with a recommendation that the zimmanama should have been forfeited. The High Court sent the case back to the trial court for action being taken under Section 514 for its forfeiture.

When the matter went up to the Supreme Court, the contention was raised on behalf of the accused that the security bond had been taken from him not by the court but by the procurement inspector, and, therefore, Section 514 was inapplicable.

It was held by their Lordships that this contention was well-founded and that it was true that the bond contained the undertaking that the seized paddy would be produced before the court, still it was a promise made to a particular official and not to the court and that action could be taken under Section 514 Cr. P. C. only when the bond was taken by the court under the provisions of the Code and, therefore, the High Court was in error in thinking that the Section 514 was applicable. Their Lordships also disposed of the argument which was not addressed to them, whether the High Court could pass an order for forfeiture in the exercise of its inherent powers under Section 561 A, by saying that, in the first place, it did not exercise any such power in fact, and, secondly, that a further question must then arise whether when the Code contains an express provision on a particular subject, there could be any resort to inherent jurisdiction under a general provision.

No such question can at all arise in the present case because the courts below have, no such inherent jurisdiction. The above decision lends considerable support, to my mind, to the conclusion at which I have arrived.

4. It only remains for me to say that this conclusion is not, in any way, affected by the mere circumstances that the petitioner produced the camel in court on a number of hearings when called upon by the court to do so. The question that has to be determined is : what action could be taken against the petitioner if he failed to produce the camel on a subsequent occasion and whether any order of forfeiture could be made against him.

I have no doubt that before any forfeiture could take place, there should have been a bond which could be forfeited and in any case there was no undertaking whatsoever which the petitioner gave to the court that in case he failed to produce the camel he would pay such and such penalty and even such bond as he gave to the police officer was not a bond which could be said to have been given under the Code and therefore Section 514 is not called into play at all.

This result is indeed to be regretted but this Court can only administer the law as it stands and not as it should be or might well have been.

5. Having regard to the conclusion at which I have arrived, I allow this revision, set aside the order of the courts below and hereby direct that the order of forfeiture passed against the petitioner shall be quashed. The penalty, if recovered, from the petitioner, shall be refunded.

6. Learned Deputy Government Advocate concedes that the provisions of Section 514 could not be called in aid to enforce the bond executed by the petitioner in this case in favour of the Sub Inspector of Police, Sanchore, but prays in the last resort that the State would still have a right to enforce this bond against the petitioner under the general law of the land relating to Contracts such as may be applicable to the case and that the order of this Court may be made without prejudice to any such rights or remedies as the State may have against Tejasingh. I wish to say nothing on this

aspect of the matter beyond remarking that my order will not in any way, prejudice the rights and remedies of the State in respect of the bond in question under the general law relating to contracts or any other law such as may be applicable to the circumstances of the case and my order will not stand in the way of the State pursuing any such remedy by a suit or any other appropriate method according to law.