
(1991) 02 RAJ CK 0030
In the Rajasthan High Court
Case No : Criminal Appeal No. 330 of 1990

Jakir Hussain and Another	Vs	APPELLANT
The State of Rajasthan		RESPONDENT

Date of Decision : 07-02-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 446
Penal Code, 1860 (IPC) — Section 354, 376, 511

Citation : (1991) 1 RLW 301 : (1991) WLN 71

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—This appeal is directed against the order dated August 30, 1990, passed by the Additional Sessions Judge, Nagaur, by which the learned Additional Sessions Judge ordered for the forfeiture of the amount of Rs. 1000/- from his personal bond and remitted the remaining amount. He however, did not order for the refund of the amount which was recovered from the surety.

2. Accused Jakir Hussain was tried by the learned Additional Sessions Judge, Nagaur, for offences under Sections 354 and 376/511 IPC. During the trial, Jakir Hussain was granted bail on his furnishing a personal bond for a sum of Rs. 5000/- and a surety in the like amount. Jakir Hussain furnished the personal bond in the sum of Rs. 5000/- and Kalu, who stood surety for the personal attendance of Jakir Hussain, submitted the surety bond for a sum of Rs. 5000/-. During the trial, accused Jakir Hussain remained absent and for his non-appearance, his bail bond and personal bond were ordered to be forfeited and the proceedings for the recovery of the amount were initiated. The surety could not produce the accused Jakir Hussain and, therefore, a notice was issued to him to show cause as to why the whole amount of the bail bonds may not be recovered from him. The reply furnished by Kalu could not satisfy the Court below and, therefore, the Court ordered for the forfeiture of the whole amount of

Rs. 5000/- of the bail bond and in pursuance to that order, the total amount of Rs. 5000/- was recovered from the surety Kalu. Thereafter, accused Jakir Hussain appeared in the Court and faced the trial. He, also, filed a reply for his non-appearance u/s 446(3) Cr.P.C. and the learned Additional Sessions Judge, after considering the reply, submitted by accused Jakir Hussain by his order dated August 30, 1990, ordered for the forfeiture of the amount of Rs. 1000/- only of the personal bond. The surety Kalu, also, moved an application u/s 446(3) Cr.P.C. for remitting the amount of the forfeited surety bond which was recovered from him. The learned Additional Sessions Judge rejected the application of Kalu on the ground that as the amount has already been recovered and there is no provision for returning the same and, therefore, the order for refund of the amount of the surety bond cannot be passed. It is against this order that the present appeal has been filed by Jakir Hussain and Kalu.

3. Heard learned Counsel for the appellants and the learned Public Prosecutor.

4. It is contended on behalf of the appellants that the learned lower Court committed an error in forfeiting the amount of Rs. 1000/- against the personal bond of Jakir Hussain, though the Court was of the opinion that the accused himself appeared and as he was unemployed, he had gone to foreign for earning his livelihood and hence he could not put appearance on the aforesaid date. He, therefore, prayed that the amount forfeited by the learned lower Court is highly excessive. His further submission is that when an amount of Rs. 1000/- has been ordered to be forfeited from the personal bond of accused Jakir Hussain then the surety should not have been made liable for the forfeiture of the whole amount of the surety bond to the tune of Rs. 5000/-. He, therefore, prayed that the order dated August 30, 1990, passed by the learned Additional Sessions Judge may be set-aside and the whole amount may be refunded when, in the facts and circumstances of the case, the accused was acquitted by the learned lower Court by the judgment dated September 1, 1990. Reliance in support of the contention was placed on : Balraj S. Kapoor v. The State of Bombay 1954 Bom 365 and Bataniya and Anr. v. The State of Rajasthan 1985 R.C.C. 259 . The learned Public Prosecutor, on the other hand, has supported the order passed by the learned lower Court. He has placed reliance over the judgment of this Court rendered in the case of Moola Ram Vs. State of Rajasthan, I have considered the rival submissions made by the learned Counsel for the parties.

5. It is, no doubt, true that the learned lower Court has come to the conclusion that the accused, being an unemployed person, after obtaining the Visa, had gone out of the country for earning his livelihood, but the Court specifically opined that the non-appearance of the accused in the Court was not on account of sufficient reason and, therefore, the learned lower Court has justified in remitting Rs. 4000/- and ordering for the recovery of Rs. 1000/- from the personal bond of the accused Jakir Hussain. The order qua Jakir Hussain, thus, does not require any interference.

6. Now, I take the case of the surety Kalu. It is, no doubt, true that the surety

bond furnished by Kalu was forfeited and the order of recovering the amount was passed after giving an opportunity of hearing to Kalu and against that order, no action was taken by the surety Kalu and the recovery proceedings continued and the full amount of the surety bond was recovered. Kalu filed this application u/s 446(3) Cr.P.C. after the forfeiture of the amount was already recovered from him. The question, which, therefore, requires consideration is whether after the recovery of the amount, an application u/s 446(3) Cr.P.C. is maintainable. Section 446(3) Cr.P.C. reads as under:

446(3) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

A bare reading of Sub-section (3) of Section 446 Cr.P.C. makes it clear that the application for remitting any portion of the penalty can be made prior to the recovery of the amount because the language of the Section shows that the Court has discretion to remit any portion of the penalty mentioned and enforce payment in part only. If the amount has not been recovered then the Court, in exercise of its discretion, recovered the amount of Penalty even after the order of forfeiture has already been passed, but if once the amount of penalty has already been recovered, then the application u/s 446(3) Cr.P.C. is not maintainable. This view finds support from the decision of this Court reported in Moola Ram Vs. State of Rajasthan, wherein it has been observed:

Even after passing final order forfeiting the bond for appearance in the Court and before recovery of the whole amount of penalty under the bond, the court, u/s 446(3) can remit any portion of the penalty so long as the amount is not totally recovered.

As the amount has already been recovered from Kalu and no appeal against that order, forfeiting the amount, has been filed, as such no order for remitting the penalty in this case be passed. If Kalu would have filed an appeal against the order of forfeiture then the matter would have been different. But as the application u/s 446(3) Cr.P.C. is not maintainable, therefore, this appeal filed by Kalu is, also, not maintainable.

7. Consequently, the appeal filed by the appellant has got no force and is hereby dismissed.