
(1998) 12 BOM CK 0089

In the Bombay High Court

Case No : Criminal Revision Application No. 258 of 1996

Mr. Parkar Hasan Abdul Gafoor

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 22-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 413, 444, 446

Citation : (1999) 5 BomCR 481 : (1999) BomCR(Cri) 481 : (2000) 120 ELT 620

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : S.K. Pathare, for the Appellant; J.C. Satpute, P.H. Kantharia, Assistant Public Prosecutor, for the Respondent

Judgement

D.G. Deshpande, J.—Heard Mr. Pathare for the petitioner and Mr. Satpute, for the respondent No. 2 and A.P.P. for the State.

2. The question involved in this case is whether the surety of an accused stands discharged as soon as the accused is arrested on a non bailable warrant and produced before the Court.

3. The petitioner stood surety for one Rajesh J. Trivedi for an amount of Rs. 3,00,000/-. This surety bond was executed on 27-8-1991 pursuant to the order of the Court by which the accused was to be released on bail in the amount of Rs. 4,00,000/- out of which the accused Rajesh Trivedi deposited Rs. 1,00,000/- and for the remaining amount of Rs. 3,00,000/- the petitioner stood surety.

4. The accused thereafter required to appear before the learned C.M.M. on 4-9-1991. He however, committed default in appearance and the learned C.M.M. issued show cause notice in February 1996 to the petitioner requiring him to show cause why for the non-appearance of the accused on 4-9-1991 the bond amount should not be enforced against him. Thereafter, distress warrant was issued against the petitioner on 26-3-1996.

5. The petitioner-surety appealed before the Magistrate and prayed for time to

produce the accused and for stay of the distress warrant. The trial Court rejected his application and issued recovery warrant by order dated 26-3-1996. The petitioner appealed to the Sessions Court against this order, but his appeal was rejected and hence this petition.

6. Mr. Pathare appearing for the petitioner-surety contended that he is raising a settled question of law in this case which was not raised by the petitioner-surety before the Court below. According to him and as per the roznama of this case after the bond of the surety was accepted for Rs. 3,00,000/- the accused remained absent. Magistrate issued warrant against him and on 25-1-1994 the accused was produced from jail. Copy of the complaint was given to the accused and Magistrate released the accused on the same day on earlier surety bond. Thereafter, the accused remained absent and again non bailable warrant was issued against him. Warrant could not be executed for two years and ultimately notice was issued to the surety and the proceedings for recovery of the amount of the bond were started against the petitioner-surety.

7. Mr. Pathare contended in the background of the circumstances that if the petitioner has undertaken all the responsibility of the accused person by execution of bond, the liability of the petitioner-surety ceases to exist as soon as the accused was arrested under a non-bailable warrant and produced before the Court. He further contended that release of the accused on 25-1-1994 by the Magistrate was improper and illegal without giving notice to the petitioner and without verifying whether the petitioner was ready and willing to stand surety for the accused subsequent to the arrest of the accused. Mr. Pathare also contended that taking of action against the petitioner-surety after a gap of three years was also not only improper but illegal in the circumstances of the case.

8. Mr. Pathare placed reliance on section 444 of the Cr.P.C. in support of his contention.

9. Mr. Satpute on the other hand contended that once the petitioner furnished his bond to the Court, the bond continued to remain in force till it was forfeited by the Court or till the surety of his own accord appear before the Court and apply for discharge. According to him arrest and production of the accused under the non bailable warrant did not result in automatic termination of the bond in favour of the surety. Further, according to him as observed by the Sessions Judge, the petitioner was a professional surety wherein he was penalised to the extent of Rs. 40,000/- and therefore the Sessions Judge and the learned Magistrate rightly rejected his application.

10. The question raised by Mr. Pathare require serious consideration because it is a question frequently arising before the trial Court regarding the rights and liabilities of surety. From the roznama of the Case No. 556/CW-1993 filed at record page 17 it appears that the warrant was issued against the accused and the matter was adjourned to 11-4-1994. However, on 25-1-1994 accused was produced before the Magistrate pursuant to the said warrant, he was identified

by Advocate Sayed and the accused was released on earlier surety bond.

11. From these facts, two questions arise. Firstly, whether the Court was justified in releasing the accused on the earlier surety bond when the accused had in fact remained absent after furnishing his personal bond as well as bond of the surety, without calling upon the surety and verifying from the surety whether the surety intends to continue as surety of the accused and the second question is whether on arrest of the accused (released on PR Bond and surety bond earlier) and is produced before the Court, the surety bond comes to end automatically.

12. So far as second question is concerned, I asked Mr. Pathare whether he has got any authority in support of his contention that on re-arrest of the accused (in the aforesaid circumstances) the surety bond automatically comes to an end. Mr. Pathare relied upon sub-section (3) of section 444 of the Cr.P.C. and also relied upon the judgment reported in AIR 1951 Trav 38, 24 Kesavan Pillai Madhavan Pillai and another v. State, and contended that when the accused surrenders to the Court or is brought before it as per action taken u/s 413 Travancore Cr.P.C, the sureties are ipso facto discharged and there will be no question of forfeiture of their bonds.

13. I am unable to agree with this submission of Mr. Pathare because subsection (3) of section 444 is preceded by sub-section (1) and (2) and subsection (3) depends on a contingency which is provided in the earlier sub-sections therefore sub-section (3) cannot be isolated from the earlier sub-sections and cannot be read as an independent provision. Section 444(1) gives power to the surety to apply to the Magistrate to discharge him from his bond. If such an application is made the Magistrate has to issue warrant of arrest against the accused for whom the bond was given by the surety and thereafter sub-section (3) provides that if such a person is produced pursuant to the warrant, the Magistrate shall direct the bond to be discharged and shall call upon the accused to find other surety. The ruling of the Travancore-Cochin High Court referred to above by Mr. Pathare is in respect of similar provisions of Travancore Cr.P.C.

14. It is therefore clear that section 413 does not come to the help of the surety-petitioner because it is not the case of the surety that he had applied to the Magistrate for his discharge and that thereafter the Magistrate issued non-bailable warrant against the accused and then surety stood discharged. The contention of Mr. Pathare is that as soon as the accused was arrested and produced before the Magistrate as per the Roznama dated 25-1-1994, the surety bond discharged. This submission cannot be accepted because there is no legal support and section 444 of Cr.P.C. nor the ruling of Travancore-Cochin High Court supports Mr. Pathare's contentions. Provisions of section 444 are altogether different and they were not invoked by the present petitioner-surety before the Cri. Court. Since this submission of Mr. Pathare cannot be accepted, the Revision Application is required to be dismissed. However, there is undoubtedly a procedural mistake committed by the Magistrate and that is when the accused was produced pursuant to a non-bailable warrant before the Magistrate on

25-1-1994, the Magistrate should have instead of releasing the accused on same bond or on earlier surety bond should have asked the accused either to furnish fresh surety bond and fresh surety or to produce the surety who had executed bond earlier in favour of the accused. This was necessary for the Magistrate because once the person stands a surety of an accused in a criminal trial he undertakes the responsibility of keeping the accused present in the Court. The subsequent absence of the accused may not be a fact known to the surety. Therefore, if the non-bailable warrant is issued against the accused and he is produced, it is necessary to ascertain the intention and desire of the surety as to whether he still desires to stand surety for the accused who remained absent and on account of whose absence, the bond of the surety is likely to be forfeited. Therefore, for this purpose the Magistrate should have issued notice to the surety on 25-1-1994 to ascertain the intention of the surety as to whether he desires to continue as surety inspite of the absence of the accused and/or the Magistrate should have asked the accused to produce fresh surety or another surety. It might be that on learning about the absence of the accused and his re-arrest pursuant to non-bailable warrant, a surety may not desire to continue for such an accused as surety. Though it is true as observed by me earlier that on arrest of the accused, the bond of the surety does not come to an end automatically, this procedural safeguard should have been adopted by the Magistrate and hence with these observations. I pass the following order :

Revision Application is dismissed. Rule discharged.

After the order was pronounced, Counsel for the petitioner prayed for staying operation of this order. Considering the issue involved, operation of the order is stayed for six weeks on the condition that if the petitioner prefers appeal, he will give 48 hours previous notice about the same.

Certified copy expedited.

Copy of this order may be circulated to all the Magistrates & Sessions Judges.

15. Application dismissed.