

(1974) 03 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri Case No. 117 of 1974

Shriram Ghasiram Soni

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 15-03-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 514

Citation : (1975) ILR (MP) 182 : (1975) JLJ 694

Hon'ble Judges : M.L. Malik, J

Bench : Single Bench

Advocate : R.N. Rai, for the Appellant; S.K. Dixit, Deputy Govt. Advocate for State, for the Respondent

Judgement

M.L. Malik, J.—The applicant was granted bail of Rs. 1,00,000 (one lac) by this Court. One Ramkishore son of Shiv Kumar offered to stand surety for him and appeared before the Additional District Magistrate (Judicial) with a solvency certificate issued on the basis of the immoveable property he owned. The Magistrate declined to accept him as a surety being of view that the solvency of Rs. 1.00,000 on the basis of moveables was required since on forfeiture of the bond the law contemplated attachment of moveables. Where immoveable property was offered as a security, the Magistrate said, it could only be done by mortgaging the property in the name of the Court.

Aggrieved by this order, the applicant has come up in revision.

2. I am cited two authorities, one of the Lahore High Court reported in AIR 1937 411 (Lahore) and the other of the Allahabad High Court reported in Nisar Ahmad Vs. Emperor, , which lend support to the Magistrate's view. Though in the Lahore case, Din Mohammad, J. did not finally decide whether the sufficiency of a surety could be ascertained only from the moveable property he possessed or whether his immoveable property also could be taken into account. His Lordship observed that "the Magistrate would be committing no illegality in insisting that in the light of the provisions laid down in Section 514, Criminal Procedure Code, that

security alone could be termed sufficient which was backed by moveable property of the value of the amount secured."

In the Allahabad case, Malik, J. gave the dictum that where security of immoveable property was given, the bond required registration.

3. I find two rulings cited in Gauba's case, one of Reid, C.J. in *King Emperor v. Kaim Khan* 18 PR 1906, wherein the learned Chief Justice remarked:

As to sending the security on to the Tahsildar who is to report within ten days whether the person put on security and the surety have moveable property equal in value to the amount of the bond, the exclusion of immoveable property is obviously illegal and the learned Government Advocate has not attempted to defend it.

And the other of Knox, J. in, *Hanhe v. Emperor* 46 IC 295, with the following observations:

While it is true that so long as surety is alive only moveable property can for default u/s 514, Criminal Procedure Code, be attached and sold for recovery of penalty, yet I agree with the learned Sessions Judge that if the house offered as security is worth Rs. 500 and the surety is reported by the Tahsildar to be a respectable person, the security should be accepted.

Din Mohammad, J. did not comment on the correctness of these rulings. The trend of the authorities in general appears to be that the surety must be considered with reference to his properties both moveable and immoveable. The mere fact that the surety has got no sufficient moveable property, though he has ample immoveable property and that in case of breach of bond, the amount can u/s 514 be recovered from moveable property alone, cannot justify the rejection of the bond. (Reference may be made to *Nanhe Vs. Emperor*, and *Puma Chandra Chakrabarty v. Emperor* AIR 1916 Cal. 348.

4. I may as well refer to Panchapakesa Ayyar J. observations in *The Public Prosecutor Vs. George Williams alias Victor*, which very aptly put the idea and purpose of grant of bail to an accused:

Bail, or main prize, originally meant, as Blackstone and other eminent jurists explain bailment or delivery of a person to his sureties, to be in their custody (instead of being sent to a common jail), they being jailors of his own choosing who have dominion and control over him. That is why sureties are called upon to produce him, as his jailors, in Court, and punished when they fail to do so. If the sureties cannot control him and keep him in good conduct during the period of bail, naturally the Court will intervene when he misconducts himself and re-arrest him and recommit him to jail.

It is not the pecuniary sufficiency of a surety that is considered as the sole criteria for determination of the sufficiency of the surety and the important consideration is the extent of the power which a surety can exercise over the

person for whom he has stood a surety.

5. In my view, the demand by the Magistrate of a cash security of Rs. 1,00,000 or surety backed by moveables of that value, would clearly be un-warranted by law. Now could the Magistrate insist upon a deed of mortgage being executed by the surety in favour of the Court. Sufficiency of the surety is a matter to be determined by the Court and the law says that the Magistrate may accept affidavits in proof of the facts contained in the Bond, in the present case, the surety had offered a solvency certificate "issued by a Revenue Officer. The Magistrate could not have rejected that surety only on the ground that the solvency was backed by immoveable property alone, provided the Magistrate otherwise felt that he was a respectable man and not a suspect or a bad character.

I would direct the Magistrate to deal with the matter accordingly.