
(2012) 10 BOM CK 0242
In the Bombay High Court
Case No : Criminal Appeal No. 1102 of 2012

Siddanna Bandappa Sutar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 444, 446, 449
Penal Code, 1860 (IPC) — Section 174

Citation : (2013) ALLMR(Cri) 268

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : Balwant V. Patole with Mr. Satyavrat Joshi instructed by Mr. Subhash Hulyalkar, for the Appellant; Y.S. Shinde, APP, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Thipsay, J.—By consent, admitted and taken up for hearing forthwith. The appellant offered himself as surety for one Geeta Sharma, who is the accused in a case pending before the Sessions Court at Pune. The said Geeta Sharma was ordered to be released on bail in the sum of Rs. 15,000/-, and the appellant who offered himself as surety in the said sum, was duly accepted as such. It appears that as the accused Geeta Sharma did not remain present before the Sessions Court, the bond executed by her for her appearance before the Court, stood forfeited. Thereafter, a notice came to be issued to the appellant in his capacity, as the surety of the said Geeta Sharma. It appears that when the notice was served upon him, the appellant appeared before the Sessions Court, and sought some time for producing the accused before the court. It also appears that the appellant, at that time, was made to execute a personal bond in the sum of Rs. 25,000/- for his presence before the Sessions Court on the next date. The order dated 19 June 2011 passed by the Sessions Court, in that regard, shows that it was stipulated that if the appellant would fail to produce the accused, the bond of Rs. 15,000/- executed by him would be forfeited, and he would be liable to be detained in civil prison for six months. It appears that

the appellant could not, or did not, produce the accused before the Sessions Court.

2. On 20 December 2011, the Sessions Court, on receipt of a police report that a notice to show cause had duly been served upon the surety i.e. the appellant, observed that the appellant had failed to show cause and hence, directed issuance of a distress warrant for recovery of the bond amount of Rs. 15,000/-. On 25 September 2012, the surety appeared before the Sessions Court and made an application that, as he was unable to trace the accused, he was ready to pay the entire bond amount i.e. of Rs. 15,000/-. He submitted that the amount be accepted, and the surety be discharged. On this, the learned Sessions Judge passed an order observing, inter alia, that the surety should file an affidavit mentioning the places which he visited for searching the accused, and it is only thereafter, that the application made by surety, would be considered.

3. On 26 September 2012, the learned Addl. Sessions Judge by detailed order made certain observations about the conduct of the appellant, and also his advocate, and stated that the presence of the appellant needed to be secured for sending him to civil prison for six months. The operative order that was passed by the learned Sessions Judge is as follows: "Issue non bailable warrant to the surety as he has flouted the above said orders and mandate of section 446 of the Code of Criminal Procedure."

4. Aggrieved by the said order passed u/s 446 of the Code of Criminal Procedure (hereinafter referred to as the Code" for the sake of brevity), the appellant has approached this Court by filing the appeal u/s 449 of the Code.

5. The order passed by the learned Addl. Sessions Judge is, ex facie, illegal. The learned Judge has failed to comprehend the nature and extent of the liability of a surety. When the surety was ready to pay, and had, in fact, offered the entire bond amount, there was no question of detaining the surety in civil prison. In fact, even after a surety is sentenced to suffer Simple Imprisonment in civil prison, for nonpayment or non-recovery of the amount of penalty, he would be released from prison as soon as the amount would be paid. There was, therefore, no justification for refusing to accept the amount of bond that was being tendered by surety by way of penalty, and insisting that he should be sent to civil prison to suffer Simple Imprisonment.

6. The learned Addl. Sessions Judge has totally misconstrued the provisions of section 444 of the Code. The said section would be applicable where the surety would be seeking discharge of the bond. Such discharge would absolve him of his obligation under the bond i.e. of paying the amount of the penalty upto the amount of the bond in case of its forfeiture. In this case, the bond was already forfeited and there was no question of seeking "discharge" thereof. The provisions that applied in the instant case, were of section 446 of the Code, whereby the Court could only recover the amount of penalty, not exceeding the bond amount from the surety. The question of his detention in civil prison would

come only on the failure of the surety to pay the amount, and where it would not be recovered from him by attachment, and sale of his property.

7. The impugned order being clearly contrary to law, needs to be set aside.

8. Before parting, some observations made by the Addl. Sessions Judge about the conduct of the advocate for the appellant, may be reproduced:-

However, the surety most ingeniously appears to have flouted the above provision, at the ill advice of Adv. Hulyalkar. Thus, such act of the Court Officer amounts to causing interference in administration of justice, which is actionable according to the provisions of Advocates Act. Hence, Adv. to take note thereof.

9. These observations are unwarranted, and ought not to have been made.

10. If the learned Addl. Sessions Judge felt that the surety had committed any offence punishable u/s 174 of the IPC or any other offence for that matter he could have proceeded against the surety in accordance with law with respect to any such offence, but the procedure i.e. of refusing to accept the amount of penalty that was being tendered by surety, and insisted on sending him to prison, was totally uncalled for and unjustified.

11. The appeal is allowed.

12. The impugned order is set aside.

13. The appellant undertakes to deposit the amount of Rs. 15,000/- in the Trial Court by Tuesday 16th October 2012. On his failure to deposit, the learned Addl. Sessions Judge shall be free to take steps for the recovery of the said amount. Appeal is disposed of accordingly. All concerned to act on an authenticated copy of this order.