
(1964) 03 RAJ CK 0013
In the Rajasthan High Court

State	Vs	APPELLANT
Ram Pratap		RESPONDENT

Date of Decision : 03-03-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 507

Citation : (1966) CriLJ 496 : (1964) RLW 233

Hon'ble Judges : D.M. Bhandari, J;B.P. Beri, J

Bench : Division Bench

Judgement

D.M. Bhandari, J.—This case has come before under the following circumstances.

One Ram Pratap accused was tried for offences under -section 302 and 507, Penal Code and acquitted by the Sessions Judge of Ganganagar by his judgment dated 23rd of August 1961. The State preferred an appeal to this Court against the order of acquittal. The State appeal was admitted by this Court on the 23rd of January 1962. While admitting the appeal it was ordered that a warrant of arrest be issued against Ram Pratap who will be produced before the District Magistrate, Ganganagar and it will be for him to admit the accused on bail or send him to jail. The District Magistrate reported to this Court that the accused was arrested and was released on bail on executing a personal bond for Rs. 25,000/- and a surety bond by Nathuram in the like amount. The State appeal was heard and decided by this Court on 29th of March 1963.

Ram Pratap was convicted u/s 302 and 307, Penal Code and was sentenced to imprisonment for life u/s 302, Penal Code and to 5 years rigorous imprisonment u/s 307, Penal Code-Both the sentences were ordered to run concurrently. The Sessions judge, Ganganagar was directed to send the accused to jail. Ram Pratap, however, did not surrender and on 27th of August 1963 we ordered the forfeiture of the personal bond as well as of the bail bond. We further ordered that the notices be issued to the accused and his surety to pay the penalty of these bonds or to show cause why the amounts due under the bond should not be recovered from them. Thereupon Nathuram filed a reply to the notice on the

23rd of October 1963 raising objections to the recovery of the penalty under the surety bond. For appreciating the objections filed by Natnurarm it is necessary to give some details about the nature of the bond executed by the surety Nathuretm.

On the top of this bond it is printed "Judicial Criminal Form No. 3". Then it is said that it is a surety bond for the appearance of the accused u/s 91 of the Criminal Procedure Code. The name of the Court as mentioned is D. M. Ganganagar- Title of the case is given as "State v. Ram Pratap. In the body of the bond it is mentioned : "I" Nathu Ram, stand as surety for Ram Pratap that he shall continue to attend the High Court, Jodhpur till the decision relating to the "daryaft and tabqiqat" of the offence for which he has been charged. If any default is made then I do here by bond myself to forfeit to the above mentioned court the sum of Rs. 20,000/. (Rs. Twenty thousand).

2. Two contentions are raised by the Learned Counsel for the surety on the contents to this bond. The first is that this bond was for enquiry and trial of an offence with which Ram Pratap was charged and since neither any enquiry nor was any trial pending in the High Court, this bond is ineffective. The second contention is that the surety did not bind himself to forfeit to the Government the sum of Rs. 20,000/-, and as such, it was not a bond executed under the provisions of the Code of Criminal Procedure the penalty whereof could be realised from him u/s 514 (2) Criminal P.C. These two are the contentions urged on the contents of the bond. Yet a third contention is urged that the notice issued to the surety was issued after the decision of the appeal and the surety was not bound to produce him or to pay Rs. 20,000/- after the appeal had been decided.

3. Now we proceed to decide these contentions. There is little doubt that the bond was for the appearance of Ram Pratap in the High Court on the 26th of February 1962, or on such other date as the High Court may fix. The contention of the surety is that the bond was in connection with an enquiry or trial but there were no proceedings relating to enquiry and trial pending in the High Court, and as such, the bond was invalid. It is urged that the enquiry against Ram Pratap ended with his commitment for trial before the Sessions Judge, Ganganagar and the trial ended at the latest on the pronouncement of the judgment by the Sessions Judge and that the appeal is not a continuation of the trial. It is conceded that the word "tahqiqat" used in bond is for trial.

4. There is no doubt that the expression "trial" is not defined in the Criminal P.C. In the restricted sense the trial ended on the delivery of the judgment u/s 366, Criminal P. C.

"Trial" in an extended sense means-- "The examination and decision of a matter of law or fact by a court of law.

(Concise Law Dictionary by Osborn 4th (1954) Edn.--Sweet & Maxwell).

An appeal is a proceeding taken to rectify an erroneous decision of a court before

a higher court and in the extended sense it is also a part of the trial as the appellate court also examines questions of law or fact and decides the guilt or innocence of the accused.

In the bond it is clearly mentioned that Ram Pratap was to appear in the High Court in connection with the "tahqiqat" of the offence charged against him. "Tahqiqat" in the context meant the proceedings in appeal pending in the High Court for the determination of the guilt or innocence of the accused. We cannot concede to the argument of the Learned Counsel for the surety that in this case the word "tahqiqat" should be so narrowly construed as to include only the proceedings taken against an accused at the trial at the Sessions Court and not the proceedings in appeal. There were in fact no original proceedings pending in the High Court and the presence of the accused was required in connection with the appeal pending against him. In this view of the matter, the first contention urged on behalf of the surety has got no force.

5. The second point raised on behalf of the surety deserves serious consideration. u/s 514 Cr. P.C. it is only the bond taken under the Criminal Procedure Code that can be forfeited and it is in respect of only such bond that the person bound by it may be called upon to pay the penalty there of. The bond in the instant case purports to be one u/s 91 Cri. P.C. In Schedule V of the Code the specimen form u/s 88 is given. u/s 555 Cri. P.C. the form sets forth in the Fifth Schedule that as the circumstances of each case require may be used for respective purposes therein mentioned and if used shall be mentioned. A surety bond should be in substance in the form prescribed u/s 86 only with Such variations as were necessary. Barring such variations, the form used must conform to the pattern given in the Fifth Schedule. This Schedule is a part of the Code and cannot be ignored except to the extent permitted by Section 555 Cri. P. C.

In the forms prescribed for various bonds in the Fifth Schedule there is one important ingredient. In all these forms, the executants binds himself to Government. In the bond for good behavior, the executants binds himself to be of good behavior to Government and to all citizens of India. The form of every bond in the Fifth Schedule is that the executant binds himself to forfeit to the Government the amount. A bail bond may not be necessarily a contract. It is however, an undertaking given by the executant and that undertaking must be in favor of the Government and no other person. If the undertaking is not in favor of the Government the bond is not one under the Criminal Procedure Code to which Section 514 may be attracted. A bail bond is to be strictly construed and it is not permissible for a court of law to depart from the language of the bail bond and to interpret it in the light in which it was intended to be executed. It is also not permissible to a court of law to construe a bond not in favor of the Government by its general tenor or by looking to the circumstances under which it was executed.

Such in our view are the principles deducible from the pronouncements of their

Lordships of the Supreme Court in *The State of Bihar Vs. M. Homi and Another*, and *The State of Uttar Pradesh Vs. Mohammed Sayeed*, In the second case, the surety bond was executed in 1953 u/s 499 Cri. P. C whereby the surety was to forfeit to "the King Emperor Qaiser-e-Hind" a certain sum of money (Rs. 500/.) if he made a default in procuring the attendance of the accused before the court. The bond was not one by which he bound himself to forfeit the said sum either to the Government of the Union of India or that of the State. It was held that no order of forfeiture could be passed against him with respect to the bond which was not one under the Code and which was unknown to law as contained in the Code at the time of its execution.

6. Applying the principle enunciated in this case to the instant case we are of the opinion that the bond in this case did not provide forfeiture either to the Union of India or to the State of Rajasthan. The bond provided forfeiture of the amount of Rs. 20,000/- to the court of the District Magistrate, Ganganagar. This is not the form recognized by the Code of Criminal Procedure and so no action can be taken u/s 514 Cri. P.C. against the surety for the forfeiture of the bond. In practically similar circumstances, *Jia Lal Kilam J. in Balwant Singh v. State* AIR 1958 J & K 38 refused to forfeit the bond in which the surety had undertaken to deposit the sum of Rs. 1,500/- in the Treasury and had not bound himself to forfeit Rs. 1, 500/./- to the Government of Kashmir. We respectfully agree with the view taken in that case.

7. Action u/s 514 Cri P. C, could no doubt be taken against the surety for the non-appearance of Ram Pratap even after the judgment of this Court.

8. Nathuram surety, however, succeeds in the second contention and we are constrained to hold that we cannot order the realization of the penalty of the bond from him.

9. Before parting with the case we may also observe that in this case the District Magistrate, Ganganagar had authorised the use of privately printed forms which did not conform to the form given in Schedule V. The result has been that this Court has been unable to uphold the validity of a bond on such a form. Courts of law should be vigilant to see that only forms which conform to the provisions of law should be allowed to be used in courts of law. The Registrar is directed to send one copy of this judgment to every Sessions Judge in the State so that the Sessions Judges may take note of the observations of this Court and may further take such appropriate action as they may deem proper for stopping the use of unauthorized forms if they are in use in me courts under their jurisdiction.