
Inder Singh and Another Vs State

None

Court: Allahabad High Court

Date of Decision: June 26, 1959

Acts Referred:

Contract Act, 1872 & Section 134, 56, 63#Penal Code, 1860 (IPC) & Section 304

Citation: (1960) CriLJ 873

Hon'ble Judges: D.S. Mathur, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

D.S. Mathur, J.

This is an application in revision by Inder Singh and Makhan Singh against the order, of the Sessions Judge of Meerut

upholding the order of the Magistrate directing each of the applicants to deposit in court Rs. 1200/- as penalty for being unable to produce the

accused in court to undergo the trial.

2. The only point urged before me is that when the case was transferred from the court of one Magistrate to another ill cases where the sureties

had undertaken to produce the accused before the former court, the surety bonds stood discharged as soon as the case was transferred to another

court, and that the bonds did not revive when the case was retransferred to the original court.

3. The facts of the case are not in controversy. One Gurbachan Singh was standing his trial u/s 304 IPC in the court of Shri N. C. Sharma,

Magistrate of Meerut, and the present applicants stood surety for Gurbachan Singh and executed a surety bond whereby they undertook to pay

the penalty if the accused failed to present himself in the court of Shri N. C. Sharma on every day of hearing for so long as the case re-, mained

pending for preliminary inquiry or was committed to the court of Session. The case was later on transferred to the court of Shri Jai Chand andi (n

the end to that of Shri G. A. Farooqi. When the accused did not put in appearance in the court of Shri G. A. Farooqi, the case was retransferred

to the court of Shri N. C. Sharma who forfeited¹ the surety bond and called upon them to deposit the amount of the bond or to show cause why

such an order be not passed. After concluding the inquiry Shri N. C. Sharma directed the applicants to pay full penalty of Rs. 1200/- each.

4. Two cases of Calcutta High Court had been brought to the notice of the lower appellate court. In one, namely, Hem Lal Ganguly Vs. Emperor,

a view favourable to the applicants was taken. This view was, however, not followed in the subsequent case of Amulya Charan Pal Vs. Emperor, .

The decision in the earlier case cannot be regarded as a good law chiefly because the learned Judge did not give any reasons for taking that view

and merely applied the proposition laid down in Shamisuddin Sirkar v. Emperor ILR 30 Cal 107 the facts of which were different. In ILR 30 Cal

107 the bonds were forfeited by another court to which the case was transferred and not by the court before whom the sureties had bound

themselves to present the accused.

In Amulya Charan Pal Vs. Emperor, the question was considered in general terms without reference to the provision of the Indian Contract Act.

It was observed therein that the contract was between the Crown and the surety, that the surety had contracted with the Crown that he would

produce the accused before the Magistrate till the case against the Accused was disposed of, and that the case had not been disposed of and the

surety had failed to produce the accused. It was thus held that the surety bond was still in force and the sureties could be penalised if they failed to

produce the accused in court. I am in full agreement with the principle laid down in this latter Calcutta case.

5. The learned Counsel for the applicants relied upon three Sections of the Indian Contract Act, namely, Sections 56, 63 and 134. It was also

said that on the application of the principle of equity, the contract should not be enforced once the case had been transferred to another court.

6. Section 56 of the Indian Contract Act runs as below :

Agreement to do Impossible Act: An agreement to do an act impossible in itself is void.

Contract to do Act Afterwards Becoming Im-possible or Unlawful : A contract to do an act which, after the contract is made, becomes

impossible, or by reason of some event which the promisor could not prevent, unlawful becomes void when the act becomes impossible or

unlawful.

Compensation For Loss Through Non-Performance of Act Known to be Impossible or Unlawful - Where one person has promised to do

something which he knew, or, with, reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful,

such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

The contract was to produce the accused in a particular Court. Production of the accused before any Court is independent of the court where the

accused has to be produced, for example, the production would depend upon the influence of sureties in compelling the accused to attend the

Court on every date fixed. It will not, in any way, be connected with or dependent upon the Court in which the case is pending. Any court before

whom the case is pending can issue summons or warrant for the appearance of the accused and they can all render assistance to the sureties to

secure the attendance of the accused in court. Consequently, it cannot be said that by the transfer of the case to another Court it became

impossible to carry out the contract. Section 56 of the Indian Contract Act is applicable to only those agreements which relate to the doing of an

impossible act or an act which had become impossible to do on account of certain events happening subsequent to the making of the contract.

7. Section 63 of the Indian Contract Act provides that every promisee may dispense with or remit, wholly or in part, the performance of the

promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit. In the case of

surety bonds in criminal cases the promisee is the State and not the Court. Courts cannot be treated as agent of the State, otherwise Courts would

be incompetent to decide cases instituted by the State. Consequently, the promisee cannot be said to have been responsible for the transfer of the

case from one court to another. Further, by that transfer of the case it cannot be said by any stretch of imagination that the Court had dispensed

with the performance of the promise. The surety continued to be responsible for the production of the accused in Court referred to in, or

contemplated by, the surety bonds.

8. Section 134 of the Indian Contract Act governs the discharge of surety by release or discharge of principal debtor. It provides that the surety is

discharged by any contract between the creditor and the principal debtor, by which principal debtor is released, or by any act or omission of the

creditor, the legal consequence of which is the discharge of the principal debtor. By the transfer of the case to the court of another Magistrate the

principal debtor namely, accused, is not discharged. He has to undergo his trial in one Court or the other. Further, by the transfer of the case there

is no act or omission on the part of the Court or the State by which the accused is discharged.

9. In other words, there is no provision in the Indian Contract Act where under surety bonds excluded by sureties they would stand discharged

as "soon as the case is transferred to another court.

10. The principle of equity cannot also be of any help to the sureties. They had bound themselves to present the accused before a court of law; till

the conclusion of the trial. Consequently, their responsibility would continue for so long as that case is pending. Admittedly by the transfer of the

case from one Court to another, the criminal case does not come to an end.

11. I am thus of opinion that the surety bond executed by the applicants was in force when the criminal case was retransferred to the file of Shri N.

C. Sharcia and he had the power to forfeit the bond and to impose penalty when the sureties failed to produce the accused in Court to undergo

the trial.

12. Instances of accused persons absconding are on the increase and in the circumstances of the case the amount of penalty imposed cannot be

said to be excessive.

13. The revision application is hereby dismissed summarily.