

(2009) 05 AHC CK 0192

Allahabad High Court

Case No: None

Banshi Lal

APPELLANT

Vs

Additional Session Judge (F.T.C.7)
Sitapur

RESPONDENT

Date of Decision: May 27, 2009

Hon'ble Judges: Alok Kumar Singh, J

Final Decision: Allowed

Judgement

Alok K. Singh, J.

With the consent of the appellants and learned Additional Government Advocate this appeal is being finally disposed of.

It is submitted on behalf of the appellants that unfortunately they had stood surety for Kutlu alias Thothey in S.T. No.728A of 2000, under Sections 395, 397, 412 I.P.C. who absented himself from 12.09.2008. Notices were issued to them. They produced him at the police station in November, 2008 but somehow the accused slipped from there. Then they filed an objection on 19.12.2008 (Annexure4) informing the Court that the accused has been arrested in Case Crime No.1011 of 2008, under Section 8/21 N.D.P.S. Act, Police Station Fatehpur, District Barabanki. It is said that instead of summing the accused from jail who was detained there in the aforesaid case of N.D.P.S. Act the learned court below passed the order imposing a fine of Rs.5000/ each on both the appellants.

Learned A.G.A. has nothing to say substantial against it.

There is an uncontroverted averment that soon after receiving notices both the appellants (sureties) tried their level best and produced the accused at the police station concerned in the month of November, 2008 itself but unfortunately he fled away from there. Then by filing their objection before the court below (Annexure4) they informed the learned court below about the arrest and detention of the accused in the aforesaid case of N.D.P.S. Act. In such circumstances they could not

have produced him before the court below. It was incumbent upon the lower court to have summoned the accused from there. But from the perusal of the order in question it appears that without considering these facts and circumstances the learned court below reached to the conclusion that the appellants (sureties) have failed to adhere to their undertaking and therefore under Section 446 of the Cr.P.C. imposed a fine of Rs.5000/ each upon both of them to be paid within seven days.

The provisions contained in Section 446 Cr.P.C. are as under:

"446 Procedure when bond has been forfeited:(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited,

or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first case, that the bond has been forfeited,

the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation: A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2)If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3)The Court may, as its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4)Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5)Where any person who has furnished security under Section 106 or Section 117 or Section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under Section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that

such offence was committed by him unless the contrary is proved."

From the perusal of the aforesaid provisions it appears that the learned court below ought to have firstly forfeited the bonds which was done summarily in this case. Secondly the grounds of such proof and satisfaction have also not been mentioned. Thirdly the accused was detained in another case and as such was out of the reach of the appellants. This fact was brought to the notice of the Court vide objection (Annexure4). But it was not taken into consideration while passing the order imposing penalty. The learned court below may be technically justified but it should have taken a pragmatic view of the matter.

In view of the above, this appeal deserves to be and is accordingly allowed and the impugned order is accordingly set aside.