

Nanhey Shah and Another Vs State

Court: Allahabad High Court

Date of Decision: Oct. 31, 1967

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” Section 514

Citation: AIR 1969 All 403 : (1969) 39 AWR 240 : (1969) CriLJ 961

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

Bench: Single Bench

Advocate: O.P. Tewari, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.D. Singh, J.

This revision has been filed by two persons Nanhey Shah and Abdul Hamid against whom an order has been passed u/s

514 of the Code of Criminal Procedure and proceedings for the recovery of the forfeited amount of the surety bonds are pending in the Court of

Sri N.C. Jain, Magistrate. First Class of Moradabad. The Magistrate, under Sub-section (2) of Section 514 of the Code of Criminal Procedure,

by an order dated 25th of November, 1955, directed the issue of warrant of attachment of moveable property of the sureties. The filed an appeal

against that order which was heard by Sri M. Murtaza Husain, Addl. Sessions Judge of Moradabad. He dismissed the appeal but reduced the

amount of the penalty from Rs. 1000/- to Rs. 500/- in case of each of the two appellants, who have now come in revision to this Court

2. The first error which appears to have crept in the record is that according to the surety bonds Nanhey Shah and Abdul Hamid were the two

sureties, but the appeal was filed by Nanhey Shah and Abdul Hamid and even this revision has been preferred by them. It does not appear

whether the name of the second surety is Abdul Hakim or Abdul Hamid, though parentage is correctly shown as Chidda.

3. What was contended on behalf of the applicant was that before an order is passed under Sub-section (1) of Section 514. Cr. P. C. the

Magistrate must be satisfied that the surety bond has been forfeited. Under the earlier part of Sub-section (1) aforesaid, it is to be proved to the

satisfaction of the court by which a bond has been taken that such bond has been forfeited and the court is required to record the grounds of such

proof. It is only after this stage is gone through that the second part of Sub-section (1) aforesaid will apply and the surety will be called upon either

to pay the penalty prescribed under the bond or to show cause why it should not be paid. In this particular case, there is specific order passed by

the Magistrate that the surety bond has been forfeited. In order that it may be proved to the satisfaction of the Court that the bond has been

forfeited, it may not be necessary for the Magistrate to take down any fresh evidence. The facts which appear on the face of the record may

themselves be sufficient to prove "to the satisfaction of the court" that the bond has been forfeited. But Sub-section (1) of Section 514 does not

stop there. It proceeds further and says that "the Court shall record the grounds of such proof". When the Court is required to record a certain

thing, the recording of that thing is not to be merely in the mind of the Presiding Officer of the Court, but in black and white. It means, therefore,

that the court must pass a specific order that having regard to such and such facts which have been brought out in evidence or from the record, it

has been proved to its satisfaction that the bond has been forfeited. This has not been done in this case.

4. The learned Sessions Judge relied upon Annada Charan Chakravarti and Others Vs. Emperor, in which it has been held that the failure to

record a formal order that the bond executed by the accused has been forfeited, is a mere irregularity and the High Court will not interfere in

revision merely on that ground. Reliance on the other hand has been placed upon two decisions of the Patna High Court, Bubai Manjhi and Others

Vs. The State, and Panchi Ram and another Vs. Sheikh Muhammad Abdulla in which it has been held that the Court must record the grounds of

proof of the forfeiture of the bonds before the sureties may be called upon to show cause why the amount may not be recovered from them,

5. In the Calcutta case the main reason why that view was taken, appears to be that it was the usual practice of the Magistrates in Bengal, in order

to save time, to call upon the person convicted to show cause without formally recording an order that the bond had been forfeited. I find it difficult

to take that view merely because a certain practice has grown up with the Magistrates under which specific provisions of the law are ignored or in

any case not complied with. When the Legislature made a specific provision that "the Court shall record the grounds of such proof" the intention

could not but be that before a surety is called upon to show cause why the amount of the bond or penalty thereunder, may not be recovered from

him, the Court must first be satisfied that the bond stood forfeited and the reason for that satisfaction must be recorded in writing.

6. Apart from this, however, there is another irregularity and of a more serious type which has been committed by the Magistrate and it is a matter

of some regret that when the appeal was heard by the Sessions Judge he did not care to examine the record carefully before coming to the

conclusion whether the order passed by the Magistrate was justified.

7. According to the order sheet, as it appears in the record, the case was first put up before the Magistrate on 30th of September, 1965 on which

date an order was passed that the accused were to be summoned for 16th October 1965 and summons were to go to them. On 16th October,

1965 the accused did not appear but the order sheet shows that the summons had not been received back after service by them. I looked into the

record, The summonses do not appear to be part of the record even upto this stage. On 16th October. 1965, the Magistrate passed an order that

summonses were to go against the accused afresh for 29th October, 1965 and there was another direction in the same order that information was

to be sent to the sureties. On the basis of this order all what the office could do was to send a notice to the sureties that the accused were wanted

on 29th of October, 1965. But what actually happened was that notice was issued against them not for 29th, but 20th October, 1965 requiring

them to produce the accused in Court on that date, failing which the amount of their bonds was to be forfeited. This notice was, therefore, against

the directions of the Court in more than one respect and consequently invalid. All the same the applicants in this revision appeared before the

Magistrate on 20th October, 1965 and asked for 15 days time to produce the accused, but only ten days time was given to them for the purpose.

In pursuance of this order the record was put up in Court not on. 29th, but on 30th of October, 1965 on which date the Magistrate passed an

order ""Both the sureties are present They have not produced the accused. They have not shown sufficient cause nor have paid the penalty"". But

there is no order of any date earlier than 30th October, 1965 that the sureties were required to show cause or to pay the penalty.

8. Warrants for the attachment of the moveable properties of the sureties could be issued only under Sub-section (2) of Section 514, Cr. P. C.,

and this could be done only after two specific orders had been passed namely:

(1) That it was proved to the satisfaction of the Magistrate that the bond had been forfeited;

(2) That the surety had failed to pay the penalty under the bond or to show cause why it should not be paid.

9. As has been pointed out earlier, there was no order that it was proved to the satisfaction of the Magistrate that the bond had been forfeited, and

there being no order even (passed) in the case at any time before the 30th of October, 1965 that the bonds having been forfeited, the sureties were

to pay the penalty under the bonds by a certain date or to show cause, the order which was passed on 30th October, 1965 was altogether without

jurisdiction.

10. In dealing with the appeal which was filed by the appellant the Sessions Judge failed to take into consideration all these facts and circumstances

and the law prescribed u/s 514 subsection (2) of the Code of Criminal Procedure.

11. The order against which the appeal was filed and the legality of which is challenged in this revision, is itself based on the order which was

passed on 30th of October, 1965 and as the order dated 30th of October, 1965 is illegal and without jurisdiction, so is the order which was

passed subsequently on 25th November, 1965 in pursuance of the earlier order.

12. The revision is, therefore, allowed. The order passed by the Magistrate on 15th of November, 1965 is set aside and so is the order dated

30th October, 1965. The Magistrate, will now consider afresh under a separate order whether it is proved to his satisfaction within the meaning of

Sub-section (1) of section 514, Cr. P. C., that the surety bonds executed by the two sureties have been forfeited and he will record the ground for

coming to that conclusion on record. Having done so, he will then call upon the sureties to pay the penalty contemplated under the surety bonds

or to show cause why it should not be paid. A date will be fixed for this purpose and it is only if the sureties fail to pay penalty or to show cause

that further steps will be taken under Sub-section (2) of Section 514, Cr. P. C., for the realisation of the afore said amount.