
(1909) 02 CAL CK 0002

Calcutta High Court

Case No: Criminal Reference No. 234 of 1908

Saligram Singh,
Principal and Kuldip
Singh Surety

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Feb. 12, 1909

Citation: (1909) 02 CAL CK 0002

Judgement

1. This is a reference made by the Sessions Judge of Patna which raises the question of the extent of the liability of a person who has stood surety for another bound down to keep the peace. It appears that one Saligram Singh was required by the Sub-divisional Magistrate of Dinapur to execute a bond for Rs. 100 under sec. 107 of the Code of Criminal Procedure, and that the Petitioner, Kuldip Singh, stood as his surety in the sum of Rs. 50. The bond was declared forfeit by the Sub-divisional Magistrate, who ordered the principal and the surety to pay the sums of Rs. 100 and Rs. 50 respectively. Against this order an appeal was preferred before the District Magistrate under sec. 515 of the Code, and was summarily rejected. One of the grounds taken on the appeal was that the Sub-divisional Magistrate was wrong in inflicting a "double penalty," the contention being that, as the principal had paid, there ought to have been no realisation from the surety. The learned Sessions Judge has recommended that the District Magistrate's order be set aside on the ground that he has not considered the point above stated. He has himself refrained from expressing any opinion upon it, but has referred to a decision in a case, e.g., Emperor v. Uga Kasing Up. B. Rep. for 1905, p. 31 which appears to have been decided in Upper Burma in 1905 (see Criminal Law Journal of India, Vol. II, p. 463). Prima facie, no doubt, a surety merely agrees to pay the creditor failing the debtor, and his liability is, as a rule, coextensive with that of the principal. But this is not a case of ordinary suretyship for the payment of money. As pointed by Edge, C. J., in Queen-Empress v. Rahim Bakhsh I. L. R. 20 All. 206 (1898), the object of these provisions of the Code is to prevent crime, not to obtain money for the Crown. It is not, as in the case of, for example, an administration bond with sureties, the object to secure the

payment of money or the avoidance of pecuniary loss. It is provided (see sec. 111 of the Code) that the amount of the bond demanded from the principal shall be fixed with due regard to the circumstances of the case and shall not be excessive, while in sec. 106 it is expressly directed that the amount of the bond shall be proportionate to the means of the person bound clown. That being so, it is obvious that the power to require sureties must have been given with some object other than that of ensuring the recovery of the amount of the bond; in other words, an additional security for the principal's keeping the peace, not a surety for his paying forfeit, is demandable.

2. This view is supported by the form of the bond executed in this instance. Saligram Singh "bound himself not to commit a breach of the peace or do any act that might probably occasion a breach of the peace during the term of one year," and "in case of his making default therein, to forfeit to His Majesty the sum of Rs. 100." The Petitioner, Kuldip, next " bound himself surety for Saligram Singh that he should not commit a breach of the peace or do any act that might probably occasion a breach of the peace during the said term, and, in case of his (Saligram's) making default therein, to forfeit to His Majesty the sum of Rs. 50." This is the form set forth as Form XI in the Fifth Schedule to the Code, and from its terms it seems to us to be clear that Kuldip bound himself to forfeit Rs. 50, in the event of Saligram's failing to keep the peace during the period fixed. The conclusion at which we have arrived, therefore, is that the Sub-divisional Magistrate was right; and, in these circumstances, we think it unnecessary to send the case back for disposal by the District Magistrate as the first appellate authority. In the result then we decline to interfere.