Narendra Nath Majumdar Vs The State

Court: Calcutta High Court

Date of Decision: Feb. 14, 1955

Acts Referred: Contract Act, 1872 â€" Section 126
Penal Code, 1860 (IPC) â€" Section 409

Citation: 59 CWN 475

Hon'ble Judges: Lahiri, J

Bench: Single Bench

Advocate: Nagendra Chandra Das Gupta, for the Appellant;Amarendra Narayan Bagchi for the State, for the Respondent

Judgement

Lahiri, J.
The question which arises for my consideration in this Rule and on which there has been a difference of opinion between my

learned brothers Guha Ray, J., and Sen. J., is whether a bail bond in a criminal case executed by the surety alone is valid in the absence of

execution by the accused as well and whether such a bail bond can be validly forfeited u/s 514 of the Code of Criminal Procedure. The facts are

these:--The accused Siddiquar Rahaman was arrested on a charge u/s 409 of the Indian Penal Code and was ultimately placed on his trial before

the Special Judge, Jalpaiguri. He was at first released on bail on the 1st July, 1953, but his surety surrendered him on the 5th August, 1953, on

which date he was ordered to remain in hajat. The prosecution examined its witnesses and proved a number of documents on the 5th and 10th

August, and the prosecution was closed on the last mentioned date. Charge was framed against the accused and the case was thereafter adjourned

to the 19th November, 1953 for cross-examination. On the 11th August, 1953, the accused applied for bail which was granted. The petitioner

Narendra Nath Majumdar stood, surety for the accused on this date. On the 21st September, 1953, the Court shifted the date of the trial from

19th November, 1953, to the 13th November, 1953, and informed the Pleader for the accused as well as the Public Prosecutor of this change of

date. On the 13th November, 1953, the accused did not appear and his lawyer applied for adjournment on the ground of the illness of the

accused. This application was rejected and warrant of arrest was issued against the accused for his production and the surety was called upon to

show cause why his bail bond should not be forfeited. The surety after taking several adjournments ultimately failed to produce the accused. The

petitioner stood surety for the appearance of the accused and in case of his default bound himself to forfeit to the State a sum of Rs. 750 After

hearing the cause shown by the petition the Special Judge, Jalpaiguri, passed order dated the 30th March, 1954, forfeiting the petitioner''s bond to

the extent of Rs. 250. Against this order the petitioner has obtained the present Rule. It appears that the bail bond upon which the accused was

released on bail on the 11th August, 1953, was executed by the petitioner alone and not by the accused. Mr. Das Gupta appearing for the

petitioner contends that such a bail bond is not contemplated by the Code of Criminal Procedure and as such it cannot be validly forfeited u/s 514

of the Code of Criminal Procedure. There is a divergence of judicial decision on this point. Guha Ray, J., has taken the view that such a bail bond

is invalid and as such it cannot be forfeited, whereas Sen, J., is of the opinion that the omission of the accused to execute the bail bond is at best an

irregularity and is not such an illegality as to vitiate the bond and it can therefore be enforced against the surety who actually executed it.

2. Before proceeding to consider the conflicting rulings on this point, I propose to record my views on a plain construction of the relevant sections

of the statute. Section 499 of the Code of Criminal Procedure contemplates two kinds of release, (1) a release of the accused on his own bond

and (2) a release of the accused on bail. In both the cases it is essential that the accused shall execute the bond for such sum of money as the Court

thinks sufficient. In the latter case, that is, when he is released on bail, an additional requirement is to be fulfilled and that is that the bond shall also

have to be executed by one or more sufficient sureties. The net result therefore is that when the accused is released on his own bond, the execution

of the bond by the accused himself is sufficient, but if he is released on bail, the bond must be executed by the accused as well as by the surety.

Section 499 of the Code in my opinion, does not authorise the release of the accused on a bond executed by the surety alone. When, however, the

accused is a minor, section 514B empowers the Court to accept a bond executed by a surety in lieu of a bond executed by the accused. The

reason for this provision is obvious, because under the law a minor cannot be required to execute a bond nor can a bond executed by a minor is

treated as valid. On a plain reading of these two sections therefore my conclusion is that unless the accused is a minor, he cannot be released on

bail except on a bond executed by himself as well as by surety or sureties. The form of the bail bond executed in the present case is Form No. 3 of

Schedule V of the Code of Criminal Procedure. This form consists of two parts, one of which is to be executed by the accused and the other is to

be executed by the surety or sureties. The two parts are apparently independent of each other which has probably given rise to the view that each

part can be enforced independently of the other. It has however to be borne in mind that the form is subject to the provisions of section 499 of the

Criminal Procedure Code and cannot override those provisions. If I read the form in the light of the provisions of section 499 of the Code, the

conclusion at which I arrived is that when the accused is released on his own bond, the execution of the first part alone is sufficient and the second

part need not be executed at all unless of course the accused is a minor in which case the execution of the bond by the accused may be dispensed

with and he may be released on the execution of the second part by the surety alone. When, however, the accused is released on bail, the

execution of both the parts by the accused and the surety or sureties is essential except where the accused is a minor. To my mind, the combined

effect of sections 499, 514B and Form No. 3 in Schedule V of the Code of Criminal Procedure is that the only case in which the accused can be

released on a bond executed by the surety alone is when the accused is a minor. In all other cases, the execution of the bond by the accused is

imperative. Mr. Bagchi appearing for the State has strongly urged that the two parts of the bond are independent of each other and each part can

be enforced independently of the other. But I am afraid I cannot accept this argument. From analysis of section 499 which I have already given it is

quite clear that the two parts of the bond must co-exist in order that an accused may be released on bail. In the present case it is admitted that the

accused is not a minor. I have, therefore, no hesitation in holding that the so-called bail bond upon which the accused was released by the order of

the court dated the 11th August, 1953, and which was executed by the surety alone is not a bail bond within the meaning of section 499 of the

Code of Criminal Procedure.

3. The next question to which I have now to address myself is whether such a bond could be validly forfeited u/s 514 of the Code of Criminal

Procedure. The portion of section 514 which is material for the purposes of this case runs as follows:-

Whenever it is proved to the satisfaction of the Court by which a bond under this Code, has been taken.....that such a 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.

4. It is clear that in order to justify the procedure prescribed by section 514 of the Code of Criminal Procedure, the bond must be a bond under

the Code of Criminal Procedure. If in a particular case the bond is not a bond under the Code of Criminal Procedure, I should think that the Court

has no jurisdiction to take action u/s 514 of the Code of Criminal Procedure. I have already held that the bond in the present case does not comply

with the requirements of section 499, and section 514B admittedly does not apply. Accordingly the bond cannot be said to be a bond under the

Code of Criminal Procedure and, therefore, the Court has no jurisdiction to apply the provisions of section 514 of the Code of Criminal

Procedure.

5. I shall now proceed to consider the authorities on this point At the outset I may state that reliance was place by Mr. Bagchi upon the judgment

of a Division Bench of this Court in the case of Hiralal Sarkar v. State (1) [Criminal Revision Case No. 1036 of 1952 decided by Mitter and Sen,

JJ., on the 23rd March, 1953 (unreported)]. If that judgment had taken a view which is contrary to that which I have already taken, I would have)

been bound by that judgment But on a careful consideration of that judgment. I have come to the conclusion that the point which has been raised in

the present case was not at all raised before their Lordships. The only point which was raised on behalf of the petitioners in that case was that as

the original bond was not produced and the order of forfeiture was based upon a bond which was described as a duplicate bond, the order of

forfeiture was bad in law. Mitter, J., in delivering the judgment of the Court observed that that point was of no substance and it was further

observed that the fact that the bond bore the signatures of the petitioners was sufficient. It was not argued that the presence of the signatures of the

sureties alone was not valid in the absence of the signature of the accused. As the point which has been raised in the present case was not raised in

the Revision Case No. 1036 of 1952, I am of opinion that that decision has no application to the facts of the present case. Amongst the decisions

of other High Courts I may mention that the view which has been taken by me is supported by the decisions in Brahma Nand Misra Vs. Emperor,

; AIR 1936 243 (Nagpur); AIR 1928 318 (Lahore); Baidyanath Misra Vs. Emperor, ; Govinda Chandra v. State-(6) (AIR 1951 Orissa 18);

Chamra Meher v. State of Orissa (7) (A.I.R. 1951 Orissa 179). The decisions in which a contrary view has been taken are these; AIR 1940 339

(Lahore); Nisar Ahmad Vs. Emperor, ; Abdul Aziz and Another Vs. Emperor, and Sripal Singh and Another Vs. The State, . As has been pointed

out by my learned brother Guha Ray, J., of these decisions only two are Bench decisions, namely those reported in Abdul Aziz and Another Vs.

Emperor, Chamra Meher v. State of Orissa (7) (AIR 1951 Orissa 179).

6. Mr. Bagchi appearing for the State has strongly relied upon the reasonings given by Allsop, J., in the case of Abdul Aziz and Another Vs.

Emperor, . In that judgment. Allsop, J., made the following observations :-

It is quite clear from the terms of sec. 499, Criminal Procedure Code, and the form of the bail and security bond given in the schedule of form that

the surety does not guarantee the payment of any sum of money by the person accused, who is released on bail but guarantees the attendance of

that person. He is a surety for attendance and not a surety for payment of money. His contract and the contract of the person released on bail are

independent of each other.

7. With great respect, I fail to see how this fact can be taken into consideration in deciding the question whether under the provisions of section

499 of the Code of Criminal Procedure, that bail bond must be signed by the accused as well as by the surety. It is, not suggested by anybody that

if the surety had guaranteed the payment of money, the bail bond would require the signatures of both and if the surety guaranteed merely the

attendance of the accused, it might be signed by the surety alone. As I have held upon a construction of section 499 that in order to constitute a

valid bail bond under that section, the execution of the bond by the accused as well as by the surety is imperative, I do not see any reason, why I

should hold that if the surety had been for the attendance of the accused only and not a surety for payment of money, execution of the bail bond by

the accused might be dispensed with, The observations of Malik, J., in the case of Nisar Ahmad Vs. Emperor, , seem to be in the nature of obiter.

In that case Malik, J., set aside the order of forfeiture made u/s 514 of the Code of Criminal Procedure on the ground that the surety bond in that

case had not been registered and also on the ground that the surety bond had not been accepted by the Court at all. He, however, repelled certain

contentions advanced on behalf of the surety to the effect that the bail bond, having been executed by the surety alone and not by the accused as

well, could not be validly enforced. It seems to me that it was not necessary for his Lordship to go into the question as to the validity of the bond

on account of the absence of execution by the accused and so the observations made in that case on this point are in the nature of obiter dicta. The

case reported in (11) (Sripal Singh and Another Vs. The State,), simply follows the earlier decisions of the Allahabad High Court on that point.

None of the cases of the Allahabad High Court proceeds upon a construction the relevant provisions of the Code of Criminal Procedure and with

the greatest deference to the learned Judges, who decided those cases, I am unable to agree with the conclusions arrived at by them. The same

remarks apply to the decision of the Lahore High Court in the case of AIR 1940 339 (Lahore) Amongst the decisions which have taken the view

which I have taken on a plain construction of the different sections of the Code of Criminal Procedure, I may mention the case of Baidyanath Misra

Vs. Emperor, , and I respectfully agree with the reasons given by the learned Judge in that case. Ray, C.J., of the Orissa High Court has reviewed

all the decisions of other High Courts in the case of Govinda, Chandra v. Stat-: (6) (AIR 1951 Orissa 18), and he has also arrived at the same

conclusions at which I have arrived in an earlier part of this judgment.

8. Guha Ray, J., and Sen, J., have differed from each other on the question whether the term ""surety"" as used in sections 499 and 514B of the

Code of Criminal Procedure is to be interpreted in the light of the definition of that term as given in section 126 of the Indian Contract Act. Guha

Ray, J., has relied upon the relevant sections of the Indian Contract Act which regulate the relationship between the principal debtor and the surety.

But Sen, J., has taken the view that those sections cannot be referred to for the purpose of interpreting an expression which has been used in the

Code of Criminal Procedure. It seems to me that the Code of Criminal Procedure is a self-contained Code. u/s 4 sub-section (2) of the Code of

Criminal Procedure only the definitions given in the Indian Penal Code have been incorporated into the Code of Criminal Procedure. I am of the

opinion that it is not open to a Court to interpret the expressions used in the Code of Criminal Procedure in the light of the definition given in the

Indian Contract Act and on this point, I respectfully agree with the opinion expressed by Sen, J. But confining myself to the different provisions of

the Code of Criminal Procedure itself, I have reached the conclusion that the bail bond in the present case is not one under the Code of Criminal

Procedure. For these reasons, I respectfully agree with my learned brother, Guha Ray, J., that this Rule should be made absolute. I accordingly

order that this Rule be made absolute and the order of the Special Judge, dated the 30th of March, 1954, be set aside.