Balraj S. Kapoor Vs The State of Bombay

Court: Bombay High Court

Date of Decision: Oct. 16, 1953

Acts Referred: Bombay Prohibition Act, 1949 â€" Section 65
Criminal Procedure Code, 1898 (CrPC) â€" Section 498, 514, 514(1), 514(2), 514(3)

Citation: AIR 1954 Bom 365 : (1954) 56 BOMLR 184 : (1954) ILR (Bom) 1007

Hon'ble Judges: Dixit, J

Bench: Single Bench

Advocate: R.A. Jahagirdar and A.A. Omar, for the Appellant; V.S. Desai, Addl. Asst. Govt. Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This is an application by a surety and it raises a question which arises not infrequently for decision and is, therefore, of some importance.

2. One Shivraj S. Kapoor was arrested at about 9-30 p.m. on 27-9-1951, in connection with an offence under the Bombay Prohibition Act 1849.

I am told the offence was one u/s 65(a) of the Act.

Upon the applicant standing a surety for the accused for his appearance in the Court of law, Shivraj S. Kapoor was granted bail and was released.

The bond executed by the applicant was lor a sum of Rs. 20,000. The obligation undertaken by the surety was to the effect that the accused would

appear in the Court of the Presidency Magistrate or in the Court of any other Magistrate to which the case might be transferred on 28-9-1051, or

on such other days that he might he thereafter required to attend to answer further to the charge pending against him until the case was finally

disposed of by the Presidency Magistrate trying the case.

On 8-2-1952, a charge-sheet was presented by the police against the accused before the 16th Court and the case was transferred to the 13th

Court on 24-10-1952. On February 10, 1953, the accused Shivraj S. Kapoor was convicted by the 19th Court in another case which was

pending against him in that Court, and he was sent to jail custody to carry out the sentence of imprisonment which had been imposed upon him. On

20-3-1853, the accused Shivraj S. Kapoor preferred an appeal from his conviction and sentence and this Court enlarged the accused Shivraj S.

Kapoor on bail.

After he was enlarged on bail, the accused Shivraj S. Kapoor absconded and this was at a time when the case against him u/s 65(a) of the

Prohibition Act was pending in the 13th Court. It appears that between 10-2-1053, and 16-3-1953, he was produced before the 13th Court on

several occasions, as many as 14 occasions.

2a. It so happened that on 20-3-1953, the accused Shivraj S. Kapoor did not appear because he had absconded and jumped bail and on 20-3-

1953, the bond executed by the applicant was forfeited. Against the order of forfeiture made by the learned trial Magistrate, the applicant came up

in revision before this Court, and that was by Criminal Revision Application No. 441 of 1953. That application was disposed of by the learned

Chief Justice on 3-7-1953.

Several contentions were taken in that application, including the contention about the validity of the bond and also about the liability of the surety

having come to an end and these contentions were rejected. Failing everything, the learned counsel for the applicant applied to the Court that the

amount of the bond was a very large amount and that the same should be made payable by instalments, and the learned Chief Justice directed that

the sum of Rs. 20,000 should be paid by four monthly instalments of Rs. 5,000 each, commencing from 17-8-1953, and the subsequent

instalments to be payable on the 17th of each succeeding month.

3. It appears that on 16-9-1953, the first instalment of RSECTION 5,000 was paid, but that was not paid on the due date because the due date

was 17-8-1953, and the instalment was paid just a day before the second instalment became due.

Before the payment of this instalment the accused had, it appears, been arrested on 23-7-1953. It is the case of the applicant that the accused

Shivraj S. Kapoor was arrested because of the efforts which the applicant made and because of the information which the applicant gave to the

police regarding the whereabouts of the accused.

4. The applicant then applied to the learned Magistrate, praying that by reason of the discretion vested in the Court u/s 514(5), Criminal P. C., the

Court should remit the amount of the penalty or a substantial portion thereof in view of the circumstances mentioned in the application. The learned

Magistrate rejected the application, and this rule is directed against the order made by the Magistrate on 18-9-1953.

5. Upon this application in revision, Mr. Jahagirdar for the applicant contends that the Court below was wrong in rejecting the application. He

relies, in the first instance, upon Section 514 (51, Criminal P. C. which provides that :

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

The contention is that an application for the remission or the reduction of the penalty may be made u/s 514(5) even after the date when the Court

has made an order directing the surety to pay the penalty of the bond.

In the alternative, Mr. Jahagirdar says that if Section 514(5) does not apply, he would rely upon 3. 561A, Criminal P. C. Section 561A provides

that :

Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give

effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The scope of Section 561A has been recently considered by a full bench of this Court in the case of -- The State of Bombay Vs. Nilkanth Shripad

Bhave and Another, . I think, therefore, that the provisions of Section 561A may also be invoked in support of this application. The position u/s

561A is, I think, simpler than that which arises u/s 514(5). The only relevant consideration u/s 561A is that, to justify an order to be made under

the provisions of that section, the order must be made, "inter alia", to meet the ends of justice and the expression ""ends of justice"" is such an elastic

and all-embracing expression that the Court has a very wide discretion to make an order in favour of an applicant.

Section 514(5) confers upon the Court a discretion, but curiously enough, Section 514(5) does not give any indication as to the circumstances

under which the Court will be justified in remitting a portion of the penalty, and indeed there is a justifiable reason for not giving an indication be

cause circumstances will vary in every case and there can be no such indication where the matter is one of discretion.

Mr. Jahagirdar says that it is open to a party to make an application u/s 514(5) even at a stage subsequent to the stage when the Court calls upon

the surety to pay the amount of the penalty. But as I read Section 514(1) and Section 514(5) together, it seems to me that the better view is that

the Court is called upon to require the surety to pay the amount of the penalty or to remit a portion of the penalty as soon as the bond is forfeited.

It is at that stage that the Court is called upon to consider the question as to whether the entire amount of the penalty should be ordered to be paid

or only a portion of the amount should be ordered to be paid. This interpretation is suggested by the language of Sub-section (5) which, "inter

alia", provides that the Court may remit a portion and enforce payment in part only and the mode of enforcement of the penalty is to be found in

Sub-sections (2), (3) and (4) of Section 514.

The question whether the discretion contemplated by Sub-section (5) is to be exercised at a subsequent stage or at the stage when the Court calls

upon the surety to pay the amount of the penalty is, I think, not free from difficulty. It is, I think, possible to take the view that the Court may, in its,

discretion, remit a portion of the penalty and enforce payment in part only even at a subsequent stage. But I would prefer to say that the Court can

insist upon the payment of the entire amount of the penalty or may make an order remitting a portion of the penalty as soon as the bond is forfeited

and the Court is called upon to apply its mind to the matter. However, I will assume in favour of Mr. Jahagirdar that the Court can exercise its

power u/s 514(5) even at a subsequent stage, and even if Mr. Jahagirdar were wrong in saying that the power can be exercised u/s 514(5) at a

subsequent stage, I see no difficulty in holding that the High Court can make a suitable order u/s 561A.

6. The question for decision, therefore, is whether this is a case in which there are circumstances justifying the Court in remitting a portion of the

penalty mentioned in the bond. The bond was executed by the applicant for a sum of Rs. 20,000. It was in connection with an offence u/s 65(a)

which, in the case of a conviction, imposes the maximum sentence, in the case of a first offence, of one year and fine which may extend to one

thousand rupees, and in such a case there is the minimum sentence provided which is a sentence of six months and a line which shall not be less

than five hundred rupees.

7. Now, when a person executes a bond, there are certain factors which are to be taken into consideration in determining the amount of the bond.

Among these may be mentioned (1) the nature of the offence for which the accused is prosecuted (2) the status and the position of the accused

and (3) the nature of the sentence which, in the case of a conviction, is likely to be imposed upon an accused person.

Now, in this case the offence was u/s 65 (a) for which the maximum sentence of imprisonment is a sentence of one year and a fine of Rs. 1,000,

but in which the law directs that the sentence shall not be less than six months" imprisonment and a fine of Rs. 500. I should have thought that in

respect of an accused person charged with an offence u/s 65 (a) the amount of the bond in a sum of Rs. 20,000 would obviously be excessive.

But I have no reason to suppose that the police had no good grounds for saying that a bond for a sum of Rs. 20,000 should be executed by the

surety. At any rate, if the amount of the bond was considered to be excessive, it was open to the accused to take the matter before a superior

Court and to have the amount of the bond reduced and this could have been done u/s 498 , Criminal P. C. Now, the purpose of a bond of the

type in the present case is to secure the presence of the accused or the attendance of the accused and the position of a surety is nearly always not

an easy one. The surety makes himself responsible for the conduct of the accused, and often enough the surety has no control over the conduct of

the accused. The surety expects the accused to act properly, but the accused, often, enough, does not choose to stand by the surety and

sometimes jumps bail, and this is exactly what has happened in the present case.

It is true, as is urged by Mr. Desai who appears for the State, that nobody compels a person to stand as a surety. It is a voluntary contract, and if a

person enters into a surety bond, with eyes wide open, and if the accused subsequently acts contrary to the terms of the bond, the surety cannot be

heard to complain that he should be relieved against from the operation of an act of the accused over which the surety has no control. It is then no

use suggesting that the surety has no control because the obligation under the bond upon the surety is that the surety will secure the attendance of

the accused before the Court.

8. Now, in the present case it is a fact that on 28-7-1053, the accused was arrested. That means that whatever inconvenience was caused to the

Court by the non-appearance of the accused on 20-3-1953, no longer existed and the accused could be dealt with in accordance with law, and it

is possible to take the view that in such a case the law will be vindicated and the course of justice will not be interrupted. As I already said, no

indication is to be found in Section 514(5) as to the circumstances under which the Court will be justified in making an order in conformity with

Section 514(5). But it is clear that a case for the exercise of the discretion u/s 514(5) will properly arise in cases where the accused has been

subsequently arrested or the amount forfeited is excessive and the surety is unable to pay. It is also relevant to consider in such cases whether the

surety did not act irresponsibly and there was no connivance or negligence on the part of the surety.

In the present case no negligence is alleged or suggested and no connivance is also alleged or suggested against the surety. What happened was

that on 20-3-1953, the accused was expected to be present before the 13th Court and on that date the High Court granted him bail and he

jumped bail. This was at a time when the accused was in jail custody, i.e., between 10-2-1953, and 20-3-1953, when he was released on bail,

and as was pointed out by the learned Chief Justice rejecting the contentions of the applicant, that did not put an end to the liability of the surety

under the bond. But it is clear that there is no suggestion of any negligence or connivance on the part of the surety. The fact, however, remains that

the accused has been arrested.

9. Now, Mr. Jahagirdar points out four circumstances which have a bearing upon this question. He says, firstly, that the amount of Rs. 20,000 is

excessive, secondly, that the accused ha-s been arrested, thirdly, that the surety is unable to pay the amount of the penalty and, fourthly and lastly,

that it was in consequence of the order of the High Court that the accused was released on bail and he was not, therefore, in a position to produce

the accused before the 13th Court on 20-3-1953. I think the first and the fourth grounds must be rejected. Those grounds are not open to the

applicant in view of the previous decision of the learned Chief Justice on 3-7-1953. No grievance was made about the amount being excessive at

that time and an indulgence was given to the surety to pay the amount by four equal monthly instalments.

The last ground also was rejected by the High Court. It was observed by the learned Chief Justice that the mere fact that the accused was in jail

custody was no ground for saying that the liability of the surety had come to an end and that the surety was not bound to secure the presence of the

accused before the 13th Court. The two other grounds, however, remain, viz. that the accused has bean subsequently arrested and that the surety

is unable to pay. Now, all that the applicant said in his application before the lower Court was that he was in great pecuniary embarrassment and

had sustained heavy losses in business. This application was made on 4-9-1953. The judgment was delivered by the learned Chief Justice on 3-7-

1953, and if on 3-7-1953, the position of the surety was such as would enable him to pay the amount by monthly instalments, I do not see how the

position was made worse on 4-9-1953, and that the surety is not in a position to pay the amount of the penalty. I do not suggest that a person who

is rich on 3-7-1953, may not become poor on 4-9-1953, but beyond the word of the applicant, there is nothing upon the record to show that the

surety was in fact not in a position to pay the amount of the penalty.

There is, however, one ground which still survives, and that is that the accused has been subsequently arrested and the presence of the accused is,

therefore, secured, so that the Court will proceed with the trial of the accused according to law. In -- "Francis D"Souza v. State", Cri Revn Appln

No 316 of 1952, D/- 20-6-1952 (Bom) (B) the learned Chief Justice made an order in favour of a surety under the following circumstances.

There was a surety bond for Rs. 500. The bond was forfeited and the surety was called upon to pay the amount of the bond. The surety paid the

amount by instalments. The accused was subsequently arrested and the surety made an application to the Court asking that in view of the arrest of

the accused the amount which he had paid should be refunded to him. The learned Chief Justice then relied upon the poverty of the surety as a

circumstance in his favour, and in the end this Court directed the amount of Rs. 500 to be refunded to the petitioner. The judgment is based upon

the circumstance that the surety in that case was too poor to pay the amount. As was pointed out by the learned Chief Justice,

Now that the accused has been found and there has been no miscarriage of justice and the State can proceed against the accused, I see no reason

why the State should keep this sum of Rs. 500 and not pay it back to the petitioner, who needs it much more than the State.

With respect, following this decision, I am of the opinion that in this case the amount of the penalty should be reduced or remitted. The surety has

already paid an instalment of Rs. 5,000 on 16-9-1953. It would appear that the surety-applicant has not paid the second instalment which was due

on 17-9-1953, and the third instalment would be due on 17-10-1953. Taking into consideration all the facts and the circumstances of the case, I

am inclined to take the view that in this case the ends of justice will be met by requiring the surety to pay an amount of Rs. 10,000. This is upon the

basis that of the four grounds urged by the learned advocate on behalf of the applicant I am taking into consideration one of the four grounds, viz.

the subsequent arrest of the accused. The application will, therefore, succeed in part.

10. The application will be allowed and the order of the Court below set aside and it is directed that the applicant will pay a sum of Rs. 10,000

and not the sum of Rs. 20,000 which is the amount of the penalty mentioned in the bond. The rule will be made absolute.

11. Rule made absolute.