

CRIMINAL REVISION

Before, Kapur, J.

NATHU RAM,—Petitioner.

versus

THE STATE,—Respondent.

Criminal Revision No. 121-D of 1954

Code of Criminal Procedure (Act V of 1898)—Section 499—Surety bond—Requirements of—Rule stated.

Held, that the requirements of a surety bond under Section 499 of the Code of Criminal Procedure are that a specific Court should be mentioned and so also the time and it cannot be said that if it is stated in the bond that the surety will produce the accused in a particular Court or such Court to which the case is transferred the bond becomes unenforceable. A person can be released on bail on his undertaking to attend at the time and place mentioned in the bond and that he shall continue to do so unless otherwise directed by the Court. He can be required to appear at the High Court, Court of Sessions or another Court to answer the charge under paragraph 2 of Section 499.

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Man Mohan Chakravarti v. King Emperor (1), followed; *Brahma Nand Misra v. Emperor* (2), and *Emperor v. Chintaram* (3), not followed.

Petition under Section 439 of the Code of Criminal Procedure for revision of the order of Shri Satish Chandra, District Magistrate, Delhi, dated the 27th May 1954, affirming that of Shri Kishan Singh Narula, Magistrate 1st Class, Delhi, dated the 18th February, 1954, convicting the petitioner.

CHAMAN LAL PREM, for Petitioner.

BISHAMBER DAYAL, for Respondent.

JUDGMENT

KAPUR, J. These two rules issued against Shri Kishan Singh Narula, Magistrate 1st Class, Delhi, to show cause why the orders of forfeiture passed in two cases should not be set aside. This matter was taken to the District Magistrate in appeal and he has refused to interfere.

Kapur, J.

(1) A.I.R. 1928 Cal. 261
 (2) A.I.R. 1939 All. 682
 (3) A.I.R. 1936 Nag. 243

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Two persons Ram Singh and Uma Kant were arrested under section 109, Criminal Procedure Code on the 24th September, 1952. On the 25th September 1952 they were produced before the Duty Magistrate and each one of them entered into a separate bond which runs as under:—

“IN THE COURT OF THE DUTY MAGISTRATE, DELHI.

STATE v. UMA KANT

I, Uma Kant, son of Nathu Ram.....
 The court has called upon me to furnish a bond of Rs. 1,000 to appear in the said Court and for answering the charge above-mentioned. I, the accused, therefore, by means of this bond undertake that I shall appear at every hearing up to the date of final decision in the said Court or in such Court where the case is taken up.....
 and if I do not do so I shall pay Rs 1,000.

The surety undertook the following liability:—

“That Uma Kant accused has been called upon to give security of Rs. 1,000 for appearance and to attend the said Court till the case is decided. Therefore, I undertake that the said accused will appear at every hearing at every place where the Court may call upon him to appear and if I do not do so, I shall be liable to pay Rs. 1,000

(signed) NATHU RAM
 Surety ”

On that date the Court ordered that the accused persons should give security of Rs. 1,000 each and if they did not do so they should be produced on the 3rd October, 1952, and if they gave security they should appear in the Court of the *Ilaqa* Magistrate on the 3rd October 1952. On the 3rd October 1952, it appears, no proceedings were taken and on the 13th October when the case was called neither of the two persons who were proceeded against under section 109 appeared and the surety was called upon to show cause why the bonds should not be forfeited.

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In the case of Uma Kant the petitioner stated that he must have been arrested in some other case and that is why he did not appear and in the case of Ram Singh he said that he did appear on the 3rd October but as the case was not taken up in time the accused went away.

The learned Magistrate forfeited Rs. 500 in each case which on appeal to the learned Sessions Judge was confirmed. Mr. Prem for Nathu Ram surety submits that the bond was contrary to section 499 of the Criminal Procedure Code in that the correct name of the Court or the time when the accused should appear are not given. He relies upon a judgment of the Allahabad High Court in *Brahma Nand Misra v. Emperor* (1), where it was held that the provisions of section 499 are imperative and it is necessary that a bond in order to be valid should be executed in accordance with the provisions of that section and a definite Court before which the accused person is to appear is an essential condition of the bond. The opinion of Nagpur Judicial Commissioner's Court in *Emperor v. Chintaram* (2), goes further

(1) A.I.R. 1939 All. 682

(2) A.I.R. 1936 Nag. 243

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that a person who executes a bond under section 499 does not undertake to produce the accused in any Court but he only undertakes to produce in that particular Court and where it is stated that he will be produced in any Court to which the case is sent or transferred the liability is not enforceable.

In my opinion the requirements are that a specific Court should be mentioned and so also the time and it cannot be said that if it is stated in the bond that the surety will produce the accused in a particular Court or such Court to which the case is transferred the bond becomes unenforceable. The requirements of section 499 are that a person can be released on bail on his undertaking to attend at the time and place mentioned in the bond and that he shall continue to do so unless otherwise directed by the Court. In paragraph 2 of this section the person getting himself released on bail can be required to appear at the High Court, Court of Session or other Court to answer the charge. The view taken by the Calcutta High Court in my opinion seems to be more reasonable. In *Man Mohan Chakrawarti v. King Emperor* (1), the sureties had undertaken to produce the accused in the Sessions Court at Dacca whenever called upon to do so. It was held that this bond was not illegal as the place was specified and the time mentioned was "whenever called upon to do so". In the present case the surety undertook to produce the persons complained against before the Duty Magistrate or such other Court to which the case was sent but it appears that he never produced them anywhere in one case he says he did.

(1) A.I.R. 1928 Cal. 261

In any case in my opinion there has been a forfeiture of the bond and it has been rightly forfeited. The only question is what should be the amount in the present case which should be forfeited. In my opinion in both the cases a sum of Rs. 200 will meet the ends of justice and I order accordingly.

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CIVIL MISCELLANEOUS

Before Kapur, J.

OM PARKASH,—Petitioner.

versus

DAROGHA MAL,—Respondent.

Civil Miscellaneous No. 425 of 1954

Trade Marks Act (V of 1940) Sections 6, 8, 24—Petition for rectification of register under Sections 46 and 47—Requirements of—Petition after 7 years of the Registration of Trade Mark—When can be entertained.

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Held, that under Section 24 a trade mark which has been registered for seven years or more is valid in all respects and is not open to attack under section 46 of the Act except on the ground of fraud or unless it offends against the provisions of Section 8. Sub-section (3) of section 6 as indeed sub-section (2) deals with distinctiveness and section 8(a) also deals with something which is likely to deceive or cause confusion and therefore is not distinctive. As the mark was registered it must be taken that the provisions of section 6(2) and (3) were complied with. In the petition for rectification of the register there being no allegation of fraud and the allegations made not amounting to fraud it does not come within Section 24 of the Trade Marks Act and is thus liable to dismissal.

Imperial Tobacco Company v. De Pasquali & Co. (1), followed; Joshua Wigfull & Sons, Ltd. v. John Jackson & Son, Ltd. (2), noticed.

Application for the rectification of the Register or the removal of the Trade Mark from the Register, under Sections 46 and 47 of the Trade Marks Act, 1940 by Shri Om Parkash, son of Shree Karam Chand, Partner M/s Parkash Thread Ball Factory, Saddar Bazar, Delhi.

HIRA NAND, for Petitioner.

RADHIKA NARAIN, for Respondent.

(1) (1918) 2 Ch. 207

(2) (1916) 1 Ch. 213