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necessarily imply that the person rendered incapable is suffering from physical incapacity. It would also cover the case where the incapacity is caused by other causes including the pressure of other work. The order of the learned Sessions Judge shows that on 22nd November, 1962, he was busy in the election petition. He accordingly, directed that the bail application should come up for hearing before the Additional Sessions Judge. The order clearly conveys that because of being busy in the election petition, the learned Sessions Judge was not capable of disposing of the bail application himself. In my opinion, it was for the learned Sessions Judge to decide whether, on account of the rush of work or otherwise, he was rendered incapable of disposing of the bail application, and his decision in this respect could not be questioned by the Additional Sessions Judge who, as stated in rule 4, Chapter 1-G of the Rules and Orders of the High Court, Volume IV, is under the general control of the Sessions Judge.

I, therefore, decline to accept the recommendation of the learned Additional Sessions Judge.

B.R.T.

REVISIONAL CRIMINAL

Before H. R. Khanna, J.

CHANAN SHAH,—*Petitioner.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 1531 of 1962.

1963

May, 30th.

Code of Criminal Procedure (Act V of 1898)—S. 499—Bond—Contents of—Non-compliance with the requirements of law—Surety—Wheter can be held liable.

Held: that the perusal of section 499(1) of the Code of Criminal Procedure goes to show that the time and place

at which the accused is to appear must be mentioned in the bond. A bond which merely stated that the accused would be produced in Court *Indal-talab*, that is, on demand but neither the name of the Court was given nor that of the place where the Court was functioning nor was the date or time, on which the accused was to appear before the Court mentioned, did not comply with the requirements of law and, therefore, no liability on the basis of such a bond can be fastened on the surety. As the provisions about the imposition of a penalty and the forefeiture of a bond are penal in character, it is essential that they should be strictly followed and it is not open to any one to depart from those provisions. ...

Petition under Sections 435 and 439 Cr. P. C., for revision of the order of Shri S. S. Bedi, District Magistrate, Ambala, dated the 26th July, 1962, modifying that of Shri Hargo Lal, Magistrate, 1st Class, Jagadhri, dated the 28th April, 1962, imposing Rs. 250 as penalty instead of Rs. 500.

S. M. SURI, ADVOCATE, for the Petitioner.

HAR BHAGWAN, ADVOCATE, for the Respondent.

JUDGEMENT

KHANNA, J.—This is a revision filed by Chanan Shah against the order of the learned District Magistrate, Ambala, affirming on appeal the forfeiture of the bail-bond of the petitioner but reducing the amount of penalty payable by him from Rs. 500 to Rs. 250. Khanna, J.

The brief facts giving rise to the present petition are that one Parma Nand was arrested in a case under section 61 of the Punjab Excise Act. He was released on bail by the police on the petitioner standing surety for him in the sum of Rs. 500. The petitioner in that connection executed bond on 9th August, 1961 and it was recited in the bond that the petitioner would produce Parma Nand 'Indal-talab' (which means, according to the Urdu English Dictionary by J. T. Platt, "on demand)" in Court, and in case of failure to do so

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would pay Rs. 500 as penalty. Perma Nand did not appear in Court and a notice was issued to the petitioner to produce Parma Nand. As the petitioner failed to produce Parma Nand, his bond was forfeited and penalty was imposed upon him. A plea was raised on behalf of the petitioner that the bond was defective this plea was repelled.

I have heard Mr. Suri, on behalf of the petitioner, and Mr. Har Bhagwan, on behalf of the State, and am of the view that the bond furnished by the petitioner was not in accordance with law and as such no penalty could be imposed upon him. Sub-section (1) of section 499 of the Code of Criminal Procedure prescribes the mode in which a bond is to be executed, and reads as under:—

> "499 (1) Before any persons is released on bail or released on his own bond, a bond for such sum of money as the Police-Officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-Officer or Court as the case may be."

Perusal of the above provision of law goes to show that the time and place at which the accused is to appear must be mentioned in the bond. The requirements of law in this respect were not complied with in the bond which was got executed from the petitioner because the place where he was to produce the accused was not mentioned. All that was stated was that the petitioner would be produced in Court but neither the name of the Court was given nor that of the place where the Court was function. The date or time, on which

the petitioner was to appear before the Court, was also not mentioned. As the provisions about the imposition of a penalty and the forfeiture of a bond are penal in character, it is essential that they should be strictly followed and it is not open to any one to depart from those provisions. If, as in the present case, there is infraction of the above statutory provisions, no liability on the basis of the bond can be fastened on the surety. I may in this connection refer to case *Emperor* v. *Chintaram* (1), decided by Vivin Bose J., as he then was, the relevant head-note of which reads as under:—

> "Bail proceedings are special proceedings about which there are specific provisions in the Code and they must be strictly followed. S. 499 states that the time and place at which the accused is to appear must be mentioned in the bond and Clause (2), S 499 says that if the accused is to appear in some other Court the bond must expressly say so. It is not open to the Court to depart from these provisions.
>
> Where therefore there is no mention in a surety-bond of the Court in which the accused is directed to appear and all that is mentioned is that the surety undertakes to produce the accused in "the Court at B till the decision", it is impossible to enforce a vague and slovenly bond of this character. What the surety himself thought about his liability under the bond is immaterial, for the terms of the surety bond have to be determined by the language used in the bond itself. Also, it is not for the surety to show that the bond is illegal but for the Crown to show that the document, which it wishes to enforce against him, is one which can be so enforced under the law."

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

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In *Brahma Nand Misra* v. *Emperor*, (2), it was observed that the mentioning of a definite Court before which the accused person is to appear is an essential condition of a bond in section 499 of the Code of Criminal Procedure, and that in the absence of that no proceedings can be initiated under section 514 of the Code against the person who had furnished the bond. To the similar effect are the observations made in *Roshan Lal* v. *State* (3), *Gourishankar Chatterjee and another* v. *The State* (4), decided by Calcutta High Court, and *Balwant Singh and another* v. *State* (5).

Mr. Har Bhagwan has referred to case *Mon Mohan Chakravarti and another* v. *King-Emperor*, (6), but the facts of that case are clearly distinguishable as the sureties in that case undertook to produce the accused at the Sessions Court at Dacca whenever called upon to do so. It would, thus, appear that the Court and the place where the accused was to be produced had been specified in the bond in that case, while it is not so in the present case. Another case cited by Mr. Har Bhagwan is *Harbilas* v. *The State*, (7). Perusal of the facts of that case goes to show that on construction of the bail.-bond it was held that the surety undertook to produce the accused before the Sub-Divisional Magistrate concerned whenever and wherever called upon to do so. It would, thus, appear that the Court in which the accused was to be produced in that case had been specified. This circumstance distinguishes the facts of that case from those of the present case. Apart from that, the terms of the bond in the present case are quite different and, as stated above, the dictionary meaning of the word 'Indal-talab' is "on demand". The undertaking by the petitioner to produce

(2) A.I.R. 1939 All. 682.
(3) A.I.R. 1957 All. 765.
(4) (1949) D.L.R. 186.
(5) A.I.R. 1958 J. & K. 38.
(6) A.I.R. 1928 Cal. 261.
(7) A.I.R. 1952 M.B. 2.

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the accused 'Indal-talb' cannot be equated with an undertaking to produce an accused wherever and whenever called upon to do so.

I, therefore, hold that the bond, which was furnished by the petitioner, was not in accordance with law and as such no penalty can be imposed upon him under that bond.

The revision petition is consequently accepted and the order of the Courts below imposing penalty upon the petitioner is set aside.

B.R.T.

FULL BENCH

Before Mehar Singh, S. B. Capoor and Gurdev Singh, JJ.

MAJOR SINGH,—*Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 796 of 1962.

1963

May, 30th

Penal Code (XLV of 1860)—S. 354—Causing injuries to the private parts of a girl of 7½ months by fingers—Whether amounts to an offence under S. 354.

Held, by majority (Mehar Singh and Capoor, JJ.—Gurdev Singh, J. Contra)—Modesty has some relation to the sense of propriety of behaviour in relation to the woman against whom the offence is said to have been committed. In addition, therefore, to the intention or the knowledge of the accused person of which section 354 of the Indian Penal Code speaks, there must be not merely the physical act of the accused, that is, assault or the use of the criminal force, but a subjective element so far as the woman against whom the assault is committed or the criminal force used. A girl of the age of 7½ months is physically incapable of having any sense of modesty or propriety of behaviour and all that can be said is that if she was sufficiently grown-up to have developed such a sense, the act of the accused would