

REVISIONAL CRIMINAL

Before P. C. Pandit and B. S. Dhillon, JJ.

THE STATE OF HARYANA,—*Petitioner.*

versus

SATYA NARAIN,—*Respondent.*

Criminal Revisional No. 790-A of 1970.

March 13, 1973.

*Code of Criminal Procedure (Act V of 1898)—Section 514—
Surety bond taken by the police for appearance of an accused before
a Court—Whether can be forfeited.*

Held, that sub-section (1) of section 514 of the Code of Criminal Procedure, 1898 is divided into two parts. The first part relates to a bond which is taken by the Court under the Code and the second part deals with a bond taken for appearance before a Court. The language of the sub-section makes it apparent that it is only in the case for a bond covered by the first part that is taken by the Court and in the second part, it is not said that the bond has to be taken by the Court meaning thereby that the second part also refers to the bonds taken by the police officers. It can, therefore, be safely assumed that the second part would cover the cases where the bond has been taken under the provisions of the Code by the police officer for appearance before a Court. The second part of the sub-section cannot be interpreted to mean that it also deals with bonds which are taken by the Court only and not the bonds taken by the police officers. If a bond which is taken by a police officer for the appearance of an accused before a Court and the surety is unable to produce him is not liable to forfeiture under section 514 of the Code, the consequences will be that it will be practically meaningless for the police officers to take the bonds which will obviously result in great injustice. Hence the second part of section 514(1) of the Code applies to cases where a bond is taken by the police officers for appearance before a Court and it can be forfeited on the failure of the accused to appear before such Court.

(Paras 4 & 6)

Case referred by the Hon'ble Mr. Justice Bhopinder Singh Dhillon,—vide order dated 18th May, 1972, to a larger bench for deciding an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Prem Chand Pandit and Hon'ble Mr. Justice Bhopinder Singh Dhillon finally decided the case on 13th March, 1973.

Petition under section 439 Cr. P. C. for revision of the order of Shri B. L. Singal, Sessions Judge, Hissar, dated 8th May, 1970 revealing that of Shri Ram Nath Batra, Judicial Magistrate, 1st Class,

Bhiwani, dated 28th February, 1970, accepting the appeal and setting aside the impugned order of the learned Magistrate and directing that no money out of the bail bond shall be realized from the appellant and in case it has been realized, the same shall be refunded to him.

Proceedings:—Under section 514 Cr. P.C.

J. S. Malik, Advocate, for Advocate-General, Haryana, for the petitioners.

V. M. Jain, Advocate, for the respondent.

JUDGMENT

PANDIT, J—One Jagdish Lal of village Bishanpura, Police Station Pilani (Rajasthan), was involved in a case under section 304-A, Indian Penal Code. On 26th July, 1968, Satya Narain stood surety for him before the police undertaking to produce him either before the police or a competent Court, if and when required, and if he failed to do so, he undertook to pay Rs. 2,000 to the State of Haryana. The case against Jagdish Lal was tried by the Judicial Magistrate, 1st Class, Bhiwani, and he did not appear before the Court, with the result that the learned Magistrate issued non-bailable warrants against him but to no effect. Notice was, consequently, given to Satya Narain, surety, who took a number of adjournments to produce the accused in Court, but was unable to do so. As a result, the learned Magistrate passed an order under section 514 of the Code of Criminal Procedure, forfeiting the surety bond furnished by him and directed him to pay a fine of Rs. 1,000.

(2) As a result of the said forfeiture, Satya Narain filed an appeal against the above order and the same was accepted by the learned Sessions Judge, Hissar, on the basis of a decision of this Court in *Surjit Singh v. The State* (1), where it was held by Shamsheer Bahadur, J., that where an undertaking is given by the surety before a Police Officer that the accused would be produced before the Court, it was a promise made to a particular official and not to a court and such a security bond could not be forfeited under the provisions of section 514 of the Code of Criminal Procedure.

(3) Against that decision, the State of Haryana filed the present revision petition in this Court. It, in the first instance, came up

(1) 1964 Curr. L.J. 202.

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for hearing before my learned brother who was of the view that there was a conflict amongst the various High Courts regarding the interpretation of the provisions of section 514 of the Code of Criminal Procedure, and since an important question of law was involved, which was bound to arise in a number of cases, he thought it expedient to refer this case to a larger Bench. That is how the matter has been placed before us.

(4) The first question for decision is whether a bail bond which is taken by a police officer and not by a Court can be forfeited under section 514 of the Code of Criminal Procedure. The relevant portion of section 514 of the said Code reads :

“514. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such 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.”

A bare reading of this provision would show that this sub-section is divided into two parts. The first part relates to a bond which is taken by the Court under the Code of Criminal Procedure, and the second part talks of a bond for appearance before a Court. The proceedings in respect of the bonds which are covered by the first part can be taken either by the Court by which the said bond had been taken or the Court of a Presidency Magistrate or the Court of a Magistrate of the first class. Whenever it is proved to the satisfaction of either of the three Courts that such bond, namely, the bond which has been referred to in the first part, has been forfeited, the said 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. The second part deals with a bond which is taken only for appearance before a Court. In that case, when it is proved to the satisfaction of that Court before whom the accused had to appear that such bond had been forfeited, the said 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. From the language employed in this sub-section, it will be apparent that in the first part, the bond is taken by the Court, whereas in the second part, it is not said that the bond has to be taken by the Court meaning thereby that the second part also refers to the bonds taken by the police officers. Under the second part, all that is essential is that the bond is taken for the appearance of the accused before a Court. It may further be noticed that in the first part, it has been specifically mentioned that the bond has to be under the Code of Criminal Procedure. But in the second part, the words "under this Code" have not been incorporated after the word "bond" and it could perhaps be then argued that under the second part, it was not necessary that the bond should be under the Code of Criminal Procedure. This matter has been set at rest by the Supreme Court in *State of Uttar Pradesh v. Mohammed Sayeed* (2), where it has been laid down that the words "such bond" occurring in section 514(1) refer to the words "bond under this Code" in the first paragraph of the sub-section and include only bonds executed under the Code of Criminal Procedure. In other words, if the bond was not in favour of the State or the Central Government, it was not one under the Code of Criminal Procedure to which section 514 thereof would apply. As I have already said, in the first part it has been stated that the bond is taken by the Court, whereas in the second part, it is not so stated, and all that is mentioned is that the bond has to be for appearance before a Court. It can, therefore, be safely assumed that the second part would cover those cases where the bond has been taken under the provisions of the Code by the police officer for appearance before a Court. It is beyond dispute that there are provisions in the Code of Criminal Procedure, e.g., sections 170, 496 and 499, which deal with bonds for appearance before the Court. This is also beyond dispute that under the Code bonds are taken by the police officers as well. If it were to be held that the second part of section 514(1) also deals with bonds which are taken by the Court only, and not the police officers, then the result will be that if a police officer takes a bond for the appearance of a person involved in a criminal case before a Court and the surety is unable to produce him before the said Court, such a bond will not be forfeited under section 514, Code of Criminal Procedure. Concededly, there is no other section in the Code which deals with forfeiture

(2) A.I.R. 1957 S.C. 587

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of a bond. The consequence will be that it will be practically meaningless for the police officers to take bonds or the appearance of persons involved in criminal cases before a Court, and that will obviously result in great injustice. I am, therefore, of the view that the second part of section 514(1) will also apply to cases where the bonds are taken by the police officers under the Code for appearance before a Court.

(5) Shamsheer Bahadur, J. in *Surjit Singh's case* (1) (*supra*) relied on a decision of the Supreme Court in *Rameshwar Bhatia v. The State of Assam* (3), in coming to the conclusion that he did. I have gone through the facts of the Supreme Court authority and in my opinion, the learned Judges have not laid down that if a police officer takes a bond for the appearance of the accused before a Court then such a bond cannot be forfeited under section 514(1) of the Code of Criminal Procedure, if the surety is unable to produce the accused before the Court. The Supreme Court in that ruling had dealt with a case where a shopkeeper was in possession of foodgrains in excess of the permitted quantity. A Procurement Inspector raided the shop and allowed the shopkeeper to keep the said foodgrains under a security bond by which an undertaking was given that the seized foodgrains would be produced before the Court when required. The bond was executed in favour of the Procurement Inspector. The surety later on was not able to produce the foodgrains before the Court, with the result that the surety was directed to procure the same quantity of foodgrains after taking an appropriate licence and hand over the same to the Procurement Department. Against that order, the District Magistrate made a reference to the High Court under section 438, Code of Criminal Procedure, for enhancement of the sentence. The High Court accepted the reference. As regards this security bond, the High Court remanded the case to the trial Court for taking action under section 514, Code of Criminal Procedure, for forfeiture. The surety filed an appeal in the Supreme Court against the order of his conviction and remand. The Supreme Court, in those circumstances, held that the provisions of section 514, Code of Criminal Procedure, were not applicable, inasmuch as the bond had been given to the Procurement Inspector and observed :

“That High Court was in error in thinking that section 514, Criminal Procedure Code, applied. Action could be

taken only when the bond is taken by the court under the provisions of the Code such as section 91 for appearance, the several security sections or those relating to bail... The language is perfectly clear; the power to forfeit and the imposition of the penalty provided for in the later parts of the section arise only if the preliminary conditions are satisfied."

It would, thus, be seen that the Supreme Court was dealing with a case where the bond was taken for the production of some property and it was executed in favour of a Procurement Officer, and it was then held that provisions of section 514, Code of Criminal Procedure, did not apply.

(6) The view that I have taken finds support from a Bench decision of the Calcutta High Court in *Sailesh Chandra Chakraborty v. The State*, (4) where it was held that in respect of appearance of an accused before the Court, it was sufficient under section 514, Code of Criminal Procedure, that the bond was taken by the police and it was not necessary that it should be taken by the Court itself. In this authority, reference was made to *Rameshwar Bhartia's case* (3) (*supra*) and distinguished. The same view was taken by the Gujrat High Court in *Chhaganlal Kikabhai v. State of Gujrat* (5).

I, therefore, hold that the bail bond taken by the police for the appearance of the accused before the Court can also be forfeited under section 514, Code of Criminal Procedure. *Shamsher Bahadur, J.*, in *Surjit Singh's case* (1), had not, if I may say so with respect, correctly interpreted the decision in *Rameshwar Bhartia's case* (3).

(7) The learned counsel for the respondent then submitted that the bond given by his client in the instant case could not be forfeited, because it was vaguely worded and it did not mention the time and place for the production of the accused. The bond, as I have already said, was given to the police and it was stated therein,—“I shall make Jagdish Lal aforesaid appear to answer the charge under section 304-A, Indian Penal Code, on the appointed date and time on being required by the police or Court of competent jurisdiction. In case of default, I shall pay a sum of Rs. 2,000 by way of

(4) A.I.R. 1963 Cal. 309.

(5) 1969 Cr. L.J. 1164.

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penalty to the State of Haryana." It will thus be seen that it does not mention as to when, at what time and where the surety was required to produce Jagdish Lal. It is undisputed that the provisions about the imposition of a penalty and the forfeiture of a bond are penal in character and it is essential that they should be strictly followed. Reference in this connection may be made to a Supreme Court case reported as *State of Bihar v. M. Homi and another* (6). Section 499(1), Criminal Procedure Code, says,—

"Before any person 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."

This sub-section requires that the time and place at which the accused is to appear must be mentioned in the bond. It has been held in *Chanan Shah v. The State* (7), that if there is infraction of the statutory provisions mentioned in section 499(1), Code of Criminal Procedure, no liability on the basis of the bond can be fastened on the surety. As already stated, neither the time nor the place at which the accused was to appear before the Court had been mentioned in the bail bond in the instant case. That being so, no liability can be fastened on the surety on the basis of this bond.

(8) It was argued by the learned counsel for the petitioner that the bail bond in the present case was given under section 170, Criminal Procedure Code, the relevant part of which reads :—

"170. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from

(6) A.I.R. 1955 S.C. 478.

(7) 1963 P.L.R. 716.

him for his appearance before such Magistrate on a day fixed for his attendance from day to day before such Magistrate until otherwise directed."

There is, however, nothing on the record to show that the bond was given under the provisions of this section. If there is a doubt as to whether the bond is given under section 499 or section 170, Code of Criminal Procedure, then the benefit of doubt has to be given to the person whose bond is going to be forfeited. I, therefore, hold that on the wording of the bond itself, no liability can be fastened on the surety for the non-appearance of Jagdish Lal before the Court.

(9) The result is that though the petitioner succeeds in getting a finding in its favour that a bail bond taken by a police officer for the appearance of an accused before the Court can also be forfeited under section 514, Code of Criminal Procedure, but the surety, in the instant case, cannot be penalised and his bail-bond forfeited because of the language employed therein. The order passed by the learned Sessions Judge is, therefore, upheld but on a different ground. The revision petition is, accordingly, disposed of as indicated above.

DHILLON, J.—I agree.

B. S. G.

CIVIL MISCELLANEOUS

Before Prem Chand Jain, J.

TEJINDER SINGH SANDHU,—*Petitioner*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 3294 of 1972.

March 15, 1973

*Punjab Agricultural Produce Markets Act (XXIII of 1961)—
Sections 3 and 29—Punjab Civil Services (Punishment and Appeal)*