

CRIMINAL REVISION.

Before Edgley J.

GIANI MEHER SINGH

v.

EMPEROR.*

1939

Mar. 13.

Bail bond—*Undertaking not to deliver speech, if may be included in the bond—Breach of undertaking—Forfeiture of bond—Code of Criminal Procedure (Act V of 1898), ss. 499, 514.*

There is no provision in the Code of Criminal Procedure whereby an undertaking by an accused not to deliver a speech can be included in a bail bond.

An accused person was released on bail on a bond executed by himself and the surety by which the accused undertook not to deliver any speech pending the disposal of the case. He delivered a speech and the bond was forfeited under s. 514 of the Code for breach of the undertaking.

Held that the forfeiture was illegal.

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One Giani Meher Singh was accused of an offence under s. 124A of the Indian Penal Code and arrested. He was released on bail on a bond executed by himself and the surety, Girin Das Gupta. The bond *inter alia* contained the conditions that the accused would attend Court on the days fixed for hearing and that he would not deliver any speech pending the disposal of the case. The surety further bound himself to forfeit Rs. 500 in the event of breach of the bond. Subsequently the accused delivered a speech upon which the bond was forfeited by the Magistrate and the accused was fined Rs. 200. The accused and the surety both moved the High Court against the orders of the Magistrate.

Anil Chandra Ray Chaudhuri for the petitioner.

Probodh Chandra Chatterjee for the Crown.

*Criminal Revision, Nos. 179 and 180 of 1939, against the order of B. B. Sarkar, Additional District Magistrate, 24-Parganas, dated Dec. 19, 1938.

EDGLEY J. This Rule is directed against the order of the Additional District Magistrate of 24-*Parganâs*, dated December 19, 1938, in which he directed that a bond which had been executed by a man named Giani Meher Singh should be forfeited and that he should pay a penalty of Rs. 200.

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It appears that the petitioner, Giani Meher Singh, had been accused of an offence under s. 124A of the Indian Penal Code. After his arrest he gave an undertaking to the effect that he would not deliver any speech and thereupon he was released on bail. The bail bond was executed by Giani Meher Singh himself and Babu Girin Das Gupta executed the bond as a surety, whereby he bound himself to forfeit to His Majesty the sum of Rs. 500 in the event of any breach of the bond. The conditions mentioned in the bond were to the effect that Giani Meher Singh would give security for his attendance in Court on August 8, 1938, and on subsequent days fixed for the hearing of the case against him and further he undertook not to deliver any speech until the disposal of the case. It has been found by the learned Magistrate that Giani Meher Singh in fact delivered a speech on November 7, 1938, and it was due to this fact that he held that the bond should be forfeited.

It was argued by the learned advocate for the petitioner that the order of forfeiture is illegal because there is no provision in the Code of Criminal Procedure whereby an undertaking for good behaviour such as that which has been embodied in the bail bond in this case can be so included. The object of bail is primarily to ensure the appearance of an accused person on a certain day and place. The offence in respect of which Giani Meher Singh was accused was a non-bailable one punishable with transportation for life. Strictly speaking this man ought not to have been released on bail at all having regard to the provisions of s. 497 (1) of the Code of

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Criminal Procedure and, doubtless, had it not been for the fact that he was prepared to give an undertaking to the effect that he would not deliver any speech, he would never have been so released. The fact remains, however, that under the provisions of s. 499 of the Code of Criminal Procedure it is provided that, before any person is released on bail or released on his own bond, a bond for such a sum of money as the police officer or the 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 the Court, as the case may be. It follows, therefore, that the only condition contemplated by a bail bond is a condition for attendance in Court and it further follows that a bail bond in which any other condition is included of the nature of the condition with which we are now dealing, such a bond cannot be regarded as a bond under the Code. Section 514 of the Code of Criminal Procedure, which prescribes the procedure to be followed on the forfeiture of a bond, only relates to bonds taken under the Code. In this view of the case, I do not think that the learned Magistrate had jurisdiction to forfeit the bond executed by the petitioner and his surety in this case as that bond could only be regarded as a bond taken under the Code in so far as the bond is for the appearance of the petitioner in Court. In view of the undertaking which had been given by Giani Meher Singh I consider that the procedure which should have been adopted in a case of this sort would have been for the police to bring to the notice of the Court the fact that there had been a violation of the undertaking, in order that the Court might thereupon cancel the bail bond in the exercise of its inherent jurisdiction. It is also possible that by violating his undertaking the petitioner may have committed a contempt of Court. I am of opinion, however, that this undertaking not

to make any speech should not have been imported into the bail bond and that the forfeiture of this bond was therefore illegal.

The Rule must accordingly be made absolute, and the order of the learned Magistrate dated December 19, 1938, is set aside.

Criminal Revision No. 180 of 1939.

In view of my judgment in the other Rule, the Rule obtained by Girin Das Gupta must also be made absolute and the order of the learned Magistrate dated December 19, 1938, is also set aside.

Rules absolute.

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