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These difficulties are insurmountable. The appeal as it stands is imperfectly constituted and it is not possible to proceed with it. In the result the appeal is dismissed with costs.

REVISIONAL CRIMINAL

Before Mr. Justice Mulla

EMPEROR v. BRAHMANAND MISRA*

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August, 11

Criminal Procedure Code, sections 64, 196—Power of Magistrate to arrest for any offence committed in his presence—Immaterial that the offence is such that the Magistrate can not take cognizance without sanction of Local Government—Criminal Procedure Code, sections 499, 514—Bail bond by surety—Requirements of valid bond—Time, place and court for attendance of accused must be specified—Personal bond by accused must be taken before bail bond by surety—Forfeiture order must be set aside if bond itself invalid.

Under section 64 of the Criminal Procedure Code a Magistrate has power to arrest and to release on bail a person who commits any offence in the presence of the Magistrate within the local limits of his jurisdiction, although the offence may be such that the Magistrate cannot take cognizance of it without the sanction of the Local Government. In acting under section 64 the Magistrate does not function as a court, and section 196 of the Code does not control the powers of a Magistrate under section 64 but only prevents a court from taking cognizance of certain offences except upon complaint by or sanction of certain authorities.

The provisions laid down in section 499 of the Criminal Procedure Code as to the nature and contents of a bail bond are imperative and must be strictly fulfilled. The time and place where, or the court before which, the person released on bail is to appear must be specified in the bail bond. Again, section 499 provides that when a person is released on bail he must himself execute a bond, and so it is incumbent under the section to get a bond executed by the person who is released on bail, and unless that is done there can be no valid bail bond by a surety alone. Non-fulfilment of these provisions renders the bail bond of the surety invalid and illegal.

*Criminal Revision No. 443 of 1939, from an order of F. G. Cracknell, Additional District Magistrate of Cawnpore, dated the 1st of December, 1938.

and an order under section 514 of the Code for forfeiture of such a bond must be set aside. Further, where no court is specified in the bail bond for appearance, no court can legally take any proceeding under section 514 for determining whether the undertaking given in the bond has or has not been forfeited.

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Mr. S. N. Verma and Dr. M. N. Agarwala, for the applicant.

The Deputy Government Advocate (Mr. Sankar Saran), for the Crown.

MULLA, J.:—This is an application in revision by one Brahmanand Misra from an order passed against him under section 514 of the Criminal Procedure Code forfeiting a portion of a bond executed by him in the following circumstances.

The applicant was one of several candidates for a seat on the Cawnpore Municipal Board at an election held in December, 1936. A man named Ganga Kishan acted for him as well as for another candidate as an identifier of the voters who came to the polling station and asked for ballot papers. It appears that a man accompanied by Ganga Kishan came to the polling station and called for a ballot paper in the name of one Madan Kahar. He was identified in the ordinary course by Ganga Kishan, but his effort to obtain a ballot paper did not succeed because an objection was taken on behalf of another candidate to the effect that the man was falsely personating another voter whose name was entered in the list. The objection was upheld by the Presiding Officer who happened to be a Magistrate of the first class named Mr. Niaz Muhammad. The Magistrate put Ganga Kishan under arrest, apparently for having committed an offence under section 171D of the Indian Penal Code, but released him soon afterwards on the present applicant giving him an undertaking to produce Ganga Kishan if necessary for a trial later on. The undertaking was scribed by the Magistrate himself in the

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following terms: "Mr. Brahmanand undertakes and stands surety of Rs.500 for B. Ganga Kishan identifier in case he is prosecuted and required by court."

This undertaking which is obviously couched in extremely vague language has been treated by the prosecution as a bond under section 499 of the Criminal Procedure Code which has been forfeited. It may be mentioned here—and it is a very important fact—that no bond was taken from Ganga Kishan himself. I have seen the record of the case myself and have also asked the learned Deputy Government Advocate to do so, but there is no trace of any such bond, so that it was a curious case of a man being released on bail, without executing any bond himself, merely upon an undertaking given by another person as a surety. As might well have been expected in these circumstances Ganga Kishan who had nothing to lose absconded and the present applicant in spite of every possible effort on his part failed to produce him later on when he was required for being tried on a charge under section 171 D of the Indian Penal Code. A notice was then given to the present applicant to show cause why his bond should not be forfeited and a Magistrate of the first class named Mr. Altaf Husain ultimately passed an order to the effect that the bond furnished by the applicant was forfeited to the extent of Rs.125. It is from this order that the applicant has come up in revision to this Court.

Two points have been urged on behalf of the applicant; firstly that Mr. Niaz Muhammad could not take cognizance of an offence under section 171 D of the Indian Penal Code without the previous sanction of the Local Government and hence he had no jurisdiction to arrest Ganga Kishan and to demand any security from the present applicant, and secondly that the undertaking given by the applicant which has been treated as a bond under section 499 of the Criminal

Procedure Code does not fulfil the imperative requirements of that section inasmuch as it does not fix any time or place for the appearance of the accused person and hence it is not legally enforceable. With regard to the first contention it is enough to point out that Mr. Niaz Muhammad, when he put Ganga Kishan under arrest, was not functioning as a court but only as a Magistrate acting under section 64 of the Criminal Procedure Code which runs as follows: "When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody." The word "offence" used in section 64 of the Criminal Procedure Code is obviously wide enough to include an offence under section 171 D of the Indian Penal Code. Mr. Niaz Muhammad being a Magistrate and the offence having been committed in his presence he was in my opinion fully authorised to arrest the offender Ganga Kishan and to release him on bail. It has, however, to be borne in mind that the release on bail was to be governed by the provisions contained in the Code. Section 196 of the Criminal Procedure Code does not control the powers of a Magistrate under the Code, but only prevents a court from taking cognizance of certain offences without there being a complaint made by order of or under authority from the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in this behalf. There is consequently no force in the first contention urged on behalf of the applicant that Mr. Niaz Muhammad had no jurisdiction to arrest Ganga Kishan and to release him on bail inasmuch as he could not take cognizance of the offence under section 171 D of the Indian Penal Code.

The other contention is, however, well founded and must prevail. The release of an accused person on

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bail and the conditions under which that is permitted by the law are governed by section 499 of the Criminal Procedure Code, and the provisions laid down in that section as to the nature and contents of the bail bond are in my judgment imperative and must be strictly fulfilled. The section runs as follows: "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."

The objection taken on behalf of the applicant is that in view of this section it was incumbent upon Mr. Niaz Muhammad to mention a time and a place for the appearance of the accused person Ganga Kishan who was being released on bail. In my judgment this objection is obviously sound and cannot but prevail. The learned counsel for the applicant has relied upon the case of *Emperor v. Chintaram* (1). In that case it was held that "Bail proceedings are special proceedings about which there are specific provisions in the Code and they must be strictly followed. Section 499 of the Criminal Procedure Code states that the time and place at which the accused is to appear must be mentioned in the bond, and clause (2) of that section 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." I am in entire agreement with this interpretation of section 499 of the Criminal Procedure Code and I think, therefore, that the objection raised by the learned counsel for the applicant in the present case must be upheld.

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

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I must, however, mention two more points which in my judgment fortify the conclusion at which I have arrived. In the first place it will appear from a perusal of section 499 of the Criminal Procedure Code that when a person is released on bail he must himself execute a bond. The law does not contemplate any person being released on bail without executing a bond himself merely upon an undertaking or security given by a surety. The only exception to this rule is to be found in section 514B of the Criminal Procedure Code which runs as follows: "When the person required by any court or officer to execute a bond is a minor, such court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only." This to my mind makes it perfectly clear that it is incumbent under section 499 of the Criminal Procedure Code to get a bond executed by the person who is released on bail and unless that is done there can be no valid bond by a surety alone. As I have stated above, no bond was taken in the present case from Ganga Kishan who was released on bail and it is not surprising that he took advantage of that fact and made himself scarce. I have no hesitation in holding that as no bond was taken from Ganga Kishan it was not legally open to Mr. Niaz Muhammad to demand any undertaking or security from the present applicant alone. The whole proceeding was, therefore, illegal and must be set aside.

Again, it would appear from a perusal of section 514 of the Criminal Procedure Code that the mentioning of a definite court before which the accused person is to appear is an essential condition of a bond under section 499 of the Criminal Procedure Code. Section 514 of the Criminal Procedure Code runs as follows: "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

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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." Now it is evident that where a person is arrested by a police officer or a Magistrate and is released on executing a bond which does not fix any place where or the court in which the accused person is to appear it is not possible to take any proceeding under section 514 of the Criminal Procedure Code for determining whether the bond has been forfeited or not. When the bond has been taken by some court it is that court alone or the court of a Presidency Magistrate or of a Magistrate of the first class that can initiate a proceeding under section 514 of the Criminal Procedure Code for determining whether a bond has been forfeited. When the bond is for appearance before a particular court it is again only that court which can start a proceeding under section 514 of the Criminal Procedure Code for determining whether the bond has been forfeited. If a bond has been taken by a Magistrate or a police officer and no court is mentioned therein I fail to see how any proceeding can be taken under section 514 of the Criminal Procedure Code at all. In the present case if we attach some definite meaning to the vague terms of the undertaking scribed by Mr. Niaz Muhammad and hold that the applicant undertook to produce Ganga Kishan for trial before some court, still the point remains that no court having been specified no court can legally take any proceeding under section 514 of the Criminal Procedure Code for determining whether the undertaking or the bond given by the applicant has or has not been forfeited.

The result therefore is that I allow this application in revision and setting aside the order passed by the courts below forfeiting the applicant's bond to the extent of Rs.125 direct that the money if realised will be refunded to him.