

1937

NAZIR
 UDDIN
 v.
 KHATIBAT
 ALI

Ziaul
 Hasan, J.

she and after her the present respondent have been in possession of the property adversely to the appellants and have thus perfected their title. I have however shown that the transfer was perfectly valid under the Mahomedan law and as found by the courts below the bequest was assented to by the plaintiffs 1 and 2. In these circumstances Musammat Ghahita cannot be said to have held the property adversely to the appellants and the respondent's possession does not extend to more than ten years.

I would therefore allow the appeal of the plaintiffs and decree their suit with costs.

HAMILTON, J.:—I agree.

By the COURT (ZIAUL HASAN and HAMILTON, JJ.):—The appeal is allowed and the plaintiffs' suit is decreed with costs throughout.

REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan

1937

December, 9

RAGHUBAR DAYAL (APPLICANT) v. KING-EMPEROR (COMPLAINANT-OPOSITE PARTY)*

Criminal Procedure Code (Act V of 1898), section 500—Accused released on surety executing bond—Court's power to impose restrictions on release under section 500—Court on releasing accused putting her by its order in an Ashram—Accused, whether released under section 500—Surety, if bound by terms of his bond on such release.

When a court orders the release of an accused under section 500 of the Code of Criminal Procedure, it has no right or power to put any restrictions on the accused's movements, and when an accused person is released on the suretyship of another, the intention is that the surety should have control over his movements, otherwise, there is no sense in making the surety responsible for the attendance of the accused in Court.

Where a person stood surety for a woman who was being prosecuted under section 380 of the Indian Penal Code but in spite of the fact that the Magistrate took bail from the accused he ordered her to be sent to the Mahila Ashram, and she failed to appear on the date fixed for hearing and thereupon the Magistrate ordered a portion of the amount of

*Criminal Revision No. 85 of 1937, against the order of W. Y. Madelcy, Esq., 1st Sessions Judge of Lucknow, dated the 17th of June, 1937.

the bond to be forfeited, *held*, that so long as the accused lived in the Mahila Ashram under the order of the court, she was virtually in the custody of the court, that is to say, she was not released within the meaning of section 500 of the Code of Criminal Procedure, and the surety was not bound by the term of his bond and the order of forfeiture was wrong.

Mr. *Ram Prasad Verma* (R. B.), for the applicant.

The Government Advocate (Mr. *H. S. Gupta*), for the Crown.

ZIAUL HASAN, J.:—This is an application in revision against an order of the learned Sessions Judge of Lucknow dismissing the applicant's application for revision against an order forfeiting a sum of Rs.200 out of Rs.1,000 for which he stood surety for one Musammat Uma Devi who was being prosecuted before a learned Magistrate of the first class under section 380 of the Indian Penal Code.

It appears that the case against Uma Devi was started in the Court of the Special Magistrate on the 13th of August, 1936. One Badri Prasad stood surety for her on the 11th of August, 1936. Subsequently Badri Prasad applied to be relieved of suretyship, and on the 24th of November, 1936, the present applicant filed a surety bond for a sum of Rs.1,000, and this bond was accepted after inquiry as to its sufficiency on the 23rd of December, 1936, and 9th of January, 1937, was fixed for the appearance of Uma Devi. On that day she was absent, but on the 15th of January, 1937, she appeared and explained her absence on the 9th of January by alleging that she had gone to Cawnpore to arrange for her defence. A notice was issued to the applicant to show cause why the amount of the bond should not be forfeited. On the 19th of January, 1937, he put in an application containing an explanation why he was unable to secure Uma Devi's attendance in Court on the 9th of January, 1937. His explanation was not accepted, and the learned Special Magistrate ordered that a sum of Rs.200 out of the amount of the bond be

1937

RAGHUBAR
DAYAL
v.
KING-
EMPEROR

1937

RAGHUBAR
DAYAL
v.
KING-
EMPEROR

forfeited. The applicant appealed against this order to the District Magistrate, but his appeal was dismissed. He applied in revision to the learned Sessions Judge, but the learned Judge also dismissed his application. Hence the present application.

Ziaul
Hasan, J.

The learned Counsel has argued that the order of forfeiture of the security was illegal on the following grounds:

(1) That the bond was not taken on the proper form, namely on form No. III of Schedule V of the Code of Criminal Procedure, but was taken on form No. XLII of the said schedule which is meant to be used in a case triable by the Court of Session.

(2) That as no bond was taken from Uma Devi herself along with the applicant, the bond executed by the latter was illegal.

(3) That the provisions of section 514 of the Code of Criminal Procedure were not complied with.

(4) That no information of the acceptance of the bond was given to the applicant.

(5) That no date and time were specified in the bond for the appearance of the accused.

(6) That the accused was not actually released by the Court, but was given in the custody of the Manager of the Mahila Ashram.

Grounds 1 to 5 do not appear to me to have much force, but as I am of opinion that the order of forfeiture must be set aside on the last ground, it is not necessary to discuss them. In the present case, in spite of the fact that the learned trying Magistrate took bail from the accused, he ordered her to be sent to the Mahila Ashram. It seems to me that when a Court orders the release of an accused under section 500 of the Code of Criminal Procedure, it has no right or power to put any restrictions on the accused's movements, and obviously when an accused person is released on the suretyship of

another, the intention is that the surety should have control over his movements. Otherwise, there is no sense in making the surety responsible for the attendance of the accused in Court. In my opinion the order of the learned Magistrate that the accused in this case should be kept in the Mahila Ashram relieved the surety of his responsibility under the bond as the accused was not actually "released". The learned Assistant Government Advocate, who argued against the present application, conceded that the order of the learned Magistrate sending the accused to the Mahila Ashram was wrong; but if it was wrong, it is extremely unfair that the surety should suffer for an error of the Court. So long as the accused lived in the Mahila Ashram under the order of the Court, she was virtually in the custody of the Court. That is to say, she was not released within the meaning of section 500 of the Code of Criminal Procedure, and this being so, the surety was not bound by the terms of his bond.

The application is allowed and the order of forfeiture passed by the learned trying Magistrate set aside. The money, if paid, shall be refunded.

Application allowed.

APPELLATE CIVIL

*Before Mr. Justice Ziaul Hasan and Mr. Justice
A. H. deB. Hamilton*

LALA SRI RAM AND OTHERS (DEFENDANTS-APPELLANTS) v.
MOHAMMAD ABDUL RAHIM KHAN AND ANOTHER,
PLAINTIFFS AND ANOTHER DEFENDANT (RESPONDENTS)*

1937

December,
10

*Oudh Estates Act (I of 1869), sections 7, 12, 13A and 21—
Evidence Act (I of 1872), sections 76, 90 and 114—Transfer
of Property Act (IV of 1882), section 14—Copy of Sanad not
bearing seal of keeper of Records of Government—No pre-
sumption that such officer was authorized to use seal—Other
formalities duly carried out—Sanad, if admissible in evi-
dence—Will more than 30 years old not produced—Certified*

*First Civil Appeal No. 56 of 1935, against the decree of Sheikh Ali Hammad, Civil Judge of Hardoi, dated the 31st of January, 1935.

1937
RAGHUBAR
DAYAL
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