

## APPELLATE CRIMINAL.

*Before Mr. Justice Lentaigne.*

MAUNG NGE

v.

KING-EMPEROR.\*

1924

April 10.

*Criminal Procedure Code (V of 1898), section 514—Bond to appear before one Court discharged when case transferred to another Court—The former Court not entitled to forfeit the bond for failure to attend either before the other Court or before itself, after the transfer.*

Where a bail-bond was executed for due appearance of an accused before a certain Court and no provision was made therein for his appearance before any other Court to which the case might be thereafter transferred, *held*, that the bond had effected its purpose when the case was transferred, because it contained no clause providing for such an eventuality.

*Held, also*, that after such transfer, the former Court had no power to forfeit the bond on the ground of the non-appearance of the accused either before the Court to which the case was transferred or before itself.

*Nga Po Tin v. King-Emperor*, 4 U.B.R., 71; *Shamsuddin Sirkar v. Emperor*, 30 Cal., 107—followed.

*Lambert*—for the Applicant.

*Gaunt*, Assistant Government Advocate—for the Crown.

LENTAIGNE, J.—This is an application to revise a norder passed by the District Magistrate of Toungoo, dated the 2nd February, 1924, and directing a further enquiry as to whether a bail-bond executed by one Maung Kyaw Win and the applicants as his sureties should not be forfeited.

In Criminal Regular Trial No. 5 of 1923, the District Magistrate took cognizance of an offence under section 409, Indian Penal Code, alleged to have been committed by Maung Kyaw Win, the Bazaar Gaung, and directed the issue of a warrant of arrest returnable for the 26th February, 1923.

---

\* Criminal Revision No. 94B of 1924 from the order of the Second Additional Magistrate of Toungoo in Criminal Miscellaneous No. 6 of 1924.

1924  
 MAUNG  
 NGE  
 v.  
 KING-  
 EMPEROR.  
 LENTAIGNE,  
 J.

Maung Kyaw Win then applied to the Sessions Judge for bail, which was granted in Criminal Miscellaneous Case No. 2 of 1923 of the Sessions Court in the sum of Rs. 2,000, with three sureties. The bond was made out in the office of the Sessions Court in the printed form, No. 52, in Schedule V of the Code of Criminal Procedure, and stated "I Maung Kyaw Win being brought before the District Magistrate of Toungoo charged with the offence of criminal breach of trust under section 409, Indian Penal Code and required to give security for my attendance in his Court and at the Court of Sessions, if required, *do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Sessions, to be and appear before the said Court when called upon to answer the said charge against me ; and in case of my making default herein, I bind myself to forfeit to His Majesty the King-Emperor of India the sum of Rs. 2,000."*

The bond executed by the applicants as the sureties was in the following form:—"We hereby declare ourselves sureties for the said Maung Kyaw Win *that he shall attend at the Court of the District Magistrate on the 26th February 1923 and on every day of the preliminary inquiry into the offence charged against him and, should the case be sent for trial by the Court of Session, that he shall be and appear before the said Court to answer the charge against him, and in case of his making default therein and failing to pay the said sum, we bind ourselves jointly and severally to forfeit to His Majesty the King-Emperor of India the said sum of Rs. 2,000 in all."*

After the trial had proceeded for some time before the District Magistrate, he directed the arrest of a

Municipal Commissioner and of a peon to be tried jointly with Maung Kyaw Win under the same charge and section. But, as these accused objected to the case being tried by the District Magistrate, the District Magistrate on the 4th April, 1923, transferred the case to the Second Additional Magistrate, who proceeded to try the case and recorded evidence. The proceedings against the Municipal Commissioner were dropped in consequence of the failure to obtain the sanction of the Local Government, but the case proceeded against the two remaining accused. Maung Kyaw Win appeared in that Court on various dates up to the 16th November, 1923. Then there were certain adjournments for orders and, on the 5th January, 1924, Maung Kyaw Win was absent and was reported to have absconded. He is said to have absconded in consequence of some new prosecution.

Notice was then issued to the applicants as sureties to produce Maung Kyaw Win within seven days, that is on the 12th January, 1924. They failed to produce him and the outcome of subsequent proceedings in that Court was an order directing the sureties to pay the amount of the bond on or before the 31st January, 1924.

The applicants appealed against that order to the District Magistrate. Reliance was placed on the decision of the Calcutta High Court in the case of *Shamsuddin Sirkar v. Emperor* (1), as showing that a bond like this did not cover a failure to appear in a Court to which the case had been transferred.

The District Magistrate took the view that this objection was sound; but that the bond could be forfeited on proof of absence from the Court of the District Magistrate on the dates fixed for the hearing

1924  
 MAUNG  
 NGE  
 v.  
 KING-  
 EMPEROR.  
 LENTAIGNE,  
 J.

(1) (1902) 30 Cal., 107.

1924  
 MAUNG  
 NGE  
 v.  
 KING-  
 EMPEROR.  
 ———  
 LENTAIGNE,  
 J.

before the Second Additional Magistrate; and he, therefore, directed that an enquiry be held before himself as to whether the accused, Maung Kyaw Win, had failed to appear in his Court on the 5th and 12th January, 1924. He directed that such inquiry should be held in the presence of the sureties, and he directed that notice should issue to Maung Kyaw Win. It is obvious that such a notice could not be served on an absconder.

The District Magistrate also took the view that the bond covered the preliminary inquiry in whatever Court it was held, and that the preliminary inquiry was still pending.

The present application is to revise the above order, and, at the hearing, this Court was requested to also revise the subsequent proceedings. It is sufficient to state that, on the date fixed, formal evidence was given that Maung Kyaw Win was not present in the Court of the Second Additional Magistrate, or in the Court of the District Magistrate on the 5th and 12th January, 1924; and such facts were deposed to by the respective Bench Clerks of these Courts. On that evidence the District Magistrate by an order dated the 12th February, 1924, directed that the bail-bond be forfeited; that Maung Kyaw Win be liable for Rs. 2,000; and that, on his default, the sureties be jointly and severally liable for half that amount, namely, Rs. 1,000. The reduction in favour of the sureties to half the amount was allowed because the absconding was due to another case, and there had been great delay.

I have heard Mr. Lambert for the applicant, and Mr. Gaunt for the Crown, and I am satisfied that these proceedings cannot stand.

I may first point out that the District Magistrate has in some respects, taken an erroneous view as to

the Courts which have power to order a forfeiture on a breach of a bail-bond. It is clear, I think, that a bail-bond must come under the second paragraph of sub-section (1) of section 514, which reads:—"or, where the bond is for appearance before a Court, to the satisfaction of such Court"; and, therefore, it is necessary that the forfeiture should be established to the satisfaction of the Court before which the accused was bound by the bond to appear, and that is the proper Court to exercise the power.

It has been held in the case of *Shamsuddin Sirkar v. Emperor* (1), and in some decisions in unofficial reports that a bond must be construed strictly (2), and that it will not authorize a forfeiture of the amount of the bond in the case of failure to appear in a Court to which a case is transferred, if the obligation to appear in that Court has not been specified in the bond. I think that decision really only follows the plain meaning of section 499 of the Code of Criminal Procedure. Sub-section (1) of that section expressly imposes on police officers and Courts the duty of expressly stating in the bond the condition that the 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.

If we apply that provision to the present bond, Maung Kyaw Win was directed to attend the Court of the District Magistrate, and the bond did not contemplate his attendance at any other Court except in the eventuality of the case being sent for trial by the Court of Session. In my opinion the accused, Maung Kyaw Win, complied with the condition of that bond and attended, and continued to attend, the Court of the District Magistrate until he was otherwise

1924  
 MAUNG  
 NGE  
 v.  
 KING-  
 EMPEROR.  
 LENTAIGNE,  
 J.

(2) (1921) *Nga Po Tin v. King-Emperor*, 4 U.B.R., 71.

1924  
 MAUNG  
 NGE  
 v.  
 KING-  
 EMPEROR.  
 ———  
 LENTAIGNE,  
 J.

directed by that Court. Once he was directed to attend the Court of the Second Additional Magistrate, that was a direction otherwise within the sub-section. Consequently, the bond has effected its purpose when the case was transferred, because it contained no clause providing for such an eventuality.

This construction is also borne out by a reference to sub-section (2) of section 499, which expressly provides that, if the case so requires, the bond shall also bind the person released on bail to appear, when called upon, in the High Court, Court of Sessions or other Court to answer the charge. This provision when read with sub-section (1) means that the bond must expressly provide for such contingencies. The present bond did provide for the contingency of a trial before a Court of Session, but it omitted to provide for trial before any other Magistrate than the District Magistrate.

For these reasons, I hold that the orders passed by the District Magistrate, both on the 2nd February and on the 12th February, 1924, were illegal, and that, on those dates, he had not power to declare a forfeiture of the bond in question.

I, therefore, set aside the said orders, and direct that if any portion of the amount has been levied from the applicants, the same shall be refunded to them.