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THE CROWN  
v.  
KRISHAN  
GOPAL.  
—  
BHIDE J.

The learned Government Advocate mentioned in the course of his arguments that the respondent was attempting to tamper with the prosecution witnesses. There is no affidavit before me in this connection and the matter would require enquiry. If there is any reliable evidence to show that the respondent is abusing his liberty it will be, of course, open to the learned Government Advocate to approach the learned Commissioners with an application for cancellation of the bail. With these remarks I dismiss the petition.

*N. F. E.*

*Revision dismissed.*

APPELLATE CIVIL.

*Before Tek Chand J.*

MUSSAMMAT JIWANI BAI AND OTHERS

(DECREE-HOLDERS) Appellants

*versus*

JALAL-UD-DIN (SURETY)

MUHAMMAD DIN (JUDGMENT-  
DEBTOR)

} Respondents.

Civil Appeal No. 1840 of 1932.

*Civil Procedure Code, Act V of 1908, Section 145: Surety — enforcement of liability against — Bond — attested by different Court.*

In March, 1926, the Senior Subordinate Judge at Lyallpur had issued a *robkar* to the Subordinate Judge at Gojra to the effect that in cases where judgment-debtors were brought before that officer under arrest in execution of decrees pending in any other Court he could, on attesting the security-bond for due appearance of the judgment-debtor in the proper Court, release him. The judgment-debtor in this case lived in Gojra and was arrested in the afternoon, so that if he had been taken to Lyallpur to appear before the Senior Subordinate Judge he would have had to be kept in custody for the night. He was accordingly produced before the Subordinate Judge at Gojra with a surety and that officer attested

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June 29.

a bond executed by the surety for the due attendance of the judgment-debtor at the Court of the Senior Subordinate Judge, Lyallpur, and ordered the release of the judgment-debtor, forwarding the bond to the Senior Subordinate Judge, Lyallpur, in whose Court it was duly placed on the execution record and the case adjourned from time to time for other proceedings in the case. The judgment-debtor having failed to appear on one of the dates fixed, application was made under section 145 of the Civil Procedure Code, for execution of the decree against the surety. The successor to the Senior Subordinate Judge held that the *robkar* was without authority and *ultra vires* and the surety could not be proceeded against under section 145 of the Civil Procedure Code.

*Held*, that there is no provision in the Code which requires a bond taken from a judgment-debtor in circumstances similar to those of this case to be attested by the Court which had issued the warrant. And the fact that the bond had been attested before another Court is not material, so long as, after attestation, it is forwarded to the executing Court and is placed by it on the record and is otherwise acted upon.

*And*, that section 145 of the Code was applicable.

*Joyma Bewa v. Easin Sarkar* (1), *Ram Nath v. Ram Nath* (2), *Nanjunda Row v. Marwadi Dhammaji Samniji* (3), relied on.

*Subbaraya Pillai v. Sathanatha Pandaram* (4), distinguished and not followed.

*Miscellaneous First Appeal from the order of Sardar Kartar Singh, Subordinate Judge, 1st Class, Lyallpur, dated the 30th August, 1932, holding that the surety cannot be proceeded against under section 145, Civil Procedure Code.*

NANAK CHAND, for Appellant.

MOHAMMAD DIN JAN, for (Surety) Respondent.

TEK CHAND J.—On the 14th of January, 1927, TEK CHAND J. Jamna Das obtained a decree for Rs. 7,000 against Mohammad Din from the Court of the Senior Sub-

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(1) (1926) I. L. R. 53 Cal. 515. (3) (1919) 53 I. C. 673.  
(2) (1930) 124 I. C. 677. (4) (1918) 48 I. C. 940.

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ordinate Judge, Lyallpur. In execution of this decree he got a warrant for the arrest of the judgment-debtor issued from the Court of the Senior Subordinate Judge. The judgment-debtor, who lived in a village near Gojra, was arrested on the 19th of June, 1927, but was released on one Jalal Din executing a security-bond for his attendance in the Court of the Senior Subordinate Judge on the date fixed and on all subsequent dates to which the proceedings might be adjourned, agreeing that if the judgment-debtor failed to do so he would pay to the decree-holder Rs. 2,004, the amount of the instalments for the recovery of which execution-proceedings had been taken against the judgment-debtor. This bond was written on a stamped paper of Rs. 15 and was addressed to the Court of the Senior Subordinate Judge. The judgment-debtor appears to have been arrested after 12 o'clock and if he had been taken to Lyallpur to appear before the Senior Subordinate Judge he would have had to be kept in custody for the night. He was accordingly produced before the Subordinate Judge, 4th Class, at Gojra, with the surety and that officer attested the bond, ordered the release of the judgment-debtor, and forwarded the bond to the Senior Subordinate Judge, Lyallpur. The bond was accordingly placed on the execution record and the case adjourned from time to time for other proceedings in the case. The judgment-debtor failed to appear on one of the dates fixed, and the decree-holder has now applied under section 145 of the Code of Civil Procedure, for execution of the decree for Rs. 2,004 against the surety.

This application has been rejected by the lower Court on the ground that section 145 is inapplicable

to the case in view of the fact that the bond was attested, not by the Senior Subordinate Judge in whose Court the execution proceedings were pending, but by the Subordinate Judge, 4th Class at Gojra, who was not seized of the case. In this connection reference has been made to a *robkar* issued by *Sheikh Abdul Aziz*, Senior Subordinate Judge, Lyallpur, to the Subordinate Judge at Gojra, on the 29th of March, 1926, to the effect that in cases where judgment-debtors were brought before that officer under arrest in execution of decrees pending in any other Court he could release the judgment-debtor on attesting the security-bond for appearance of the judgment-debtor in the proper Court on the date fixed. The present Senior Subordinate Judge, *Sardar Kartar Singh*, has held that this *robkar* had been issued without authority and was *ultra vires*. In support of this decision the learned Judge has referred to a ruling of the Madras High Court in *Subbaraya Pillai v. Sathanatha Pandaram* (1), where it was held that section 145, Civil Procedure Code, was confined to cases where the liability of the surety had been entered into in the face of the Court or had been recorded by the Court in accordance with the provisions of the Code, and that it did not extend to surety-bonds taken from the judgment-debtor *outside the Court*. The facts of that case are not very clearly stated in the judgment, but it appears from the argument of counsel printed at page 940, and certain observations made by the learned Judges, that the bond then in question had not been filed in Court and the Court had not acted upon it. In my opinion, that ruling has no bearing on the present case, the facts being entirely different.

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(1) (1918) 48 I. C. 940.

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TER CHAND J.

I am not aware of any provision in the Code which requires a bond taken from a judgment-debtor in circumstances similar to those of this case to be attested by the Court which had issued the warrant. It seems to me that the fact that the bond had been attested before another Court is not material, so long as, after attestation, it is forwarded to the executing Court and is placed by it on the record and is otherwise acted upon.

The wording of section 145 is very general and the Calcutta High Court has gone to the extent of holding that for the purposes of execution against a surety under that section, it is not necessary that the contract of suretyship should be in the form of a security-bond, or in writing, or that the contract of suretyship should be in favour of the Court [*Joyma Bewa v. Easin Sarkar* (1)].

In *Ram Nath v. Ram Nath* (2), it was held by a Single Bench of this Court that where a decree-holder and his debtor compromised the matter out of Court and a third person stood surety for the payment of the amount on default of the debtor, and the surety bond was filed in Court, though in the absence of the surety, and the Court passed an order certifying the compromise, and filing the case, the decree-holder was entitled to pursue his remedy against the surety in execution proceedings in spite of the fact that there was no specific statement in the bond that the decree could be executed against the surety. In this case *Subbaraya Pillai v. Sathanatha Pandaram* (3), on which the Lower Court has relied, was not followed.

(1) (1926) I. L. R. 53 Cal. 515. (2) (1930) 124 I. C. 677.

(3) (1918) 48 I. C. 940.

In *Nanjunda Row v. Marwadi Dhammaji Sammiji* (1), the Madras Court distinguished *Subbaraya Pillai v. Sathanatha Pandaram* (2), and held that a security bond executed in favour of a decree-holder to obtain the release of a judgment-debtor from imprisonment in execution, and filed in Court, whereupon the release of the judgment-debtor was ordered, must be regarded as a matter of record in the Court, as much as if it had been executed to the Court itself, and is consequently enforceable against the surety in proceedings in execution. In my opinion the order of the Lower Court holding that section 145 was inapplicable to this case is erroneous and must be set aside.

Mr. Mohammad Din Jan for the surety has argued, however, that the application of the decree-holder for proceeding against the surety is barred by limitation. On this point the Lower Court had framed an issue, but has not recorded any finding. The facts bearing on this question are not apparent on the present record, and it is not possible for me to come to a definite decision on the materials placed before me. The question, therefore, will have to be decided by the Lower Court itself.

I accept the appeal, set aside the order of the Lower Court and remand the case for disposal of the question of limitation and any other point that might arise on the pleadings.

Court fee on this appeal shall be refunded, other costs shall be costs in the cause.

*N. F. E.*

*Appeal accepted;*

*Case remanded.*

(1) (1919) 53 I. C. 673.

(2) (1918) 48 I. C. 940.

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