

## CRIMINAL REVISION.

*Before Mr. Justice Caspersz and Mr. Justice Roy.*

BEHARI LAL CHATTERJEE

*v.*

EMPEROR.

RASH BEHARI SEN

*v.*

EMPEROR.\*

1909  
May 12.

*Bail-bond, forfeiture of—Bond for appearance before the Sessions Court—Production of the accused before such Court but not before the District Magistrate—Sureties, liability of—Bail-bond, terms of—Criminal Procedure Code (Act V of 1898). s. 514.*

A bail-bond providing only for the production of certain accused persons before the Sessions Court on a certain date is complied with by the appearance of the accused before such Court on such date, and the sureties are not bound to produce them subsequently before the District Magistrate.

A bail-bond to produce the accused in the Sessions Court on every date fixed for the hearing of an appeal, or whenever required, is also complied with by the attendance of the accused during the hearing; and, though a requisition might be made by the Court of Session for their subsequent production in that Court, the sureties are not bound to produce them thereafter before the District Magistrate.

A bail-bond should contain a clear proviso for the production of the accused before the Court or officer who is to take measures to secure their surrender and to re-commit them to jail in terms of the warrant.

*General Rules and Circular Orders (Criminal) of the High Court, Chap. I, Rule 119, referred to.*

THESE were two analogous Rules on behalf of the petitioners, who are muktears practising in the Criminal Courts at Khulna, to set aside two orders of the District Magistrate of Khulna, dated the 5th March 1909, directing forfeiture of ten *per cent.* of the amount of the bail-bonds entered into by them for the appearance of 28 appellants in the case of *Emperor v. Foyzuddi Sheikh and Others* whose appeals were

\* Criminal Revision Nos. 339 and 340 of 1909, against the orders of J. Johnston, Officiating District Magistrate of Khulna, dated March 5, 1909.

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admitted by the Sessions Judge of Khulna, and who were ordered to be released on bail of Rs. 200 each.

In Criminal Revision No. 339, two of the appellants, Nibaran and Punchanun, entered into a recognizance bond in Rs. 200 "to attend the Court of Session on the 1st December 1908, and, in default, to forfeit the amounts of the security bond." The petitioners, Behari Lal Chatterjee and Uzir Ali Sheikh, stood sureties in a joint bond "for the production of the above-named persons in the Sessions Court, on 1st December 1908, in the sum of Rs. 200 each," and, in default, they bound themselves "to forfeit the amount of security to the King-Emperor." Two other appellants and the same petitioners also executed a recognizance and bail-bond, respectively, in similar terms.

In Criminal Revision No. 340, Foyzuddi and 23 other appellants bound themselves "to attend the Sessions Court on 1st December 1908, or whenever required, and on every fixed date, and, in the case of making default, to forfeit to His Majesty the sum of Rs. 200 each." The petitioners, Rash Behari Sen and other muktears, by their joint bond, undertook "to produce them in the above-mentioned Court on every date that may be fixed for hearing, or whenever required, and, in case of default, to forfeit to His Majesty the sum of Rs. 200 in the case of each."

It appeared that the appellants were present in the Sessions Court on the 1st December 1908 and during the hearing of the appeals on the 10th instant. The appeals were dismissed on the 21st instant, and, on the 2nd January 1909, the District Magistrate passed an order in the following terms:—  
 "Ask sureties, Uzir Ali Sheikh and Behari Lal Chatterjee, to produce the appellants before this Court within 14 days." A similar order was made on the same date in the case of Rash Behari Sen and the other signatories to their bond. The orders were communicated to the petitioners on the 7th January, but were not complied with. On the 3rd February the District Magistrate called upon them to show cause, within two days, why they should not forfeit the

amounts of the bail-bonds. The petitioners showed cause in writing on the 5th, and produced the accused before the jail authorities. The District Magistrate, not being satisfied with the cause shown, by two orders of the same date, directed the two sets of petitioners to forfeit ten *per cent.* of the total amount of the bonds. No requisition was ever made by the Sessions Judge for the production of the accused before him at any time after the disposal of the appeal.

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*Babu Atulya Churn Bose*, for the petitioners. The bonds were for the appearance of the appellants before the Sessions Court, and the petitioners complied with the terms thereof by bringing them before that Court during the appeal. They were not asked by the Judge to produce the accused after the dismissal of the appeals, and the District Magistrate had no power to call upon the petitioners to enforce their attendance before his own Court.

CASPERSZ AND RYVES JJ. [*Criminal Revision No. 339 of 1909.*] This is a Rule upon the District Magistrate to show cause why his order, dated the 5th March 1909, directing forfeiture of ten *per cent.* of the amount of each bail-bond, executed by the petitioners on behalf of certain accused persons, should not be set aside.

We do not propose to enter into all the facts of this case, because, in our opinion, the petitioners are not liable for the forfeiture of their bonds, in accordance with the conditions mentioned therein. Now, the terms of each bail-bond are these :—

“We hereby stand surety for the production of the above-named persons in the Sessions Court, on the 1st December next, in the sum of Rs. 200 each, and that, in the case of default, we shall forfeit the amount of the surety to the King-Emperor.”

The accused did appear in the Court of Session on the 1st December 1908, and, consequently, the condition of the bond was satisfied. The subsequent proceedings, at the instance

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of the District Magistrate, were, therefore, not warranted by the terms of the bond. The Rule is made absolute, and the order complained of is set aside.

[*Criminal Revision No. 340 of 1909.*] The circumstances in which this Rule was issued resemble those in Rule No. 339 of 1909 which we have just disposed of. Here, however, the bail-bond is drawn up somewhat differently, namely, as follows :—

“ We hereby stand surety under the above conditions for the aforesaid accused persons, convicted under the above sections, and undertake to produce them in the above-mentioned Court on every date that may be fixed for hearing, or whenever required, and, in case of default, we bind ourselves to forfeit to His Majesty the King-Emperor of India the sum of Rs. 200 in the case of each.”

The language contemplates the production of the accused persons in the Court of Session, and the order of the District Magistrate, dated the 5th March 1909, has no reference to the failure to produce the accused persons in that Court, but rather to some subsequent failure with which the petitioners were not legally concerned. The interpretation of the words “ whenever required ” in the bail-bond means, in our opinion, that a requisition might be made by the Court of Session for the production of the accused in that Court. The Rule is made absolute. The order complained of is set aside.

We desire to add that the bail-bonds referred to in these two Rules were not accurately drawn up, and did not properly provide for the production of the accused persons after their appeals had been disposed of by the Sessions Judge. Such a bond should contain a clear proviso for the production of the accused persons before the Court or officer who is to take measures to secure the surrender of the accused and to re-commit them to jail in terms of the warrant: see General Rules and Circular Orders (Criminal), Chapter I, Rule No. 119, page 45.

*Rule absolute.*