

1957

March 26.

## THE STATE OF UTTAR PRADESH

v.

MOHAMMED SAYEED

(BHAGWATI, JAFER IMAM and A.K. SARKAR JJ.)

*Surety bond—Undertaking to forfeit sum of money to King Emperor Qaisar-e-Hind on failure to produce accused—Whether bond legal and enforceable—Code of Criminal Procedure, ss. 499, 514, and 555—Adaptation of Laws Order, 1950, cl. 4.*

In 1953 the respondent executed a surety bond undertaking to produce the accused before the Magistrate and to forfeit Rs. 500 to King Emperor Qaisar-e-Hind as penalty if he failed to do so. Upon his failure to produce the accused, the Magistrate forfeited the bond to the extent of Rs. 300. The contention of the respondent was that the bond not being in favour of the Government, could not be forfeited.

*Heid*, that the bond was a bond unknown to the law of the Republic of India under the Code of Criminal Procedure at the time of its execution and could not be forfeited. The respondent did not execute a bond by which he bound himself to forfeit the said sum either to the Government of the Union of India or that of the State of Uttar Pradesh. To be a valid bond, the undertaking should have been to forfeit to the Government and not to the King Emperor. The words King Emperor Qaisar-e-Hind in the bond executed by the respondent could not be read, by virtue of cl. 4 of the Adaptation of Laws Order, 1950, to mean Government.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 130 of 1955.

Appeal under Article 134(1)(c) of the Constitution of India from the judgment and order dated March 11, 1955, of the Allahabad High Court (Lucknow Bench) at Lucknow in Criminal Revision No. 60 of 1954 arising out of the judgment and order dated February 21, 1954, of the Sessions Judge at Gonda in Criminal Appeal No. 292 of 1953.

*G. C. Mathur* and *C. P. Lal*, for the appellant.

1957. March 26. The Judgement of the Court was delivered by

IMAM J.—This is an appeal by the State of Uttar Pradesh against the decision of the Allahabad High Court on a certificate granted by that Court that the case was a fit one for appeal to this Court.

The undisputed facts are that one Mohammad Yasin was prosecuted under s. 379, Indian Penal Code. He was released on bail. The respondent along with one Ram Narain stood surety for him, having executed surety bonds under s. 499 of the Code of Criminal Procedure, undertaking to produce the accused Yasin before the Court to answer the charge and to forfeit Rs. 500 each to King Emperor Qaiser-e-Hind as a penalty if they failed to do so. Yasin absconded. All attempts to secure his presence before the Court were of no avail. Consequently notices were issued under s. 514 of the Code of Criminal Procedure to the sureties to show cause why their bonds should not be forfeited. The Magistrate, after giving the matter his consideration, ordered their bonds to be forfeited to the extent of Rs. 300 each. The respondent appealed to the Sessions Judge of Gonda who dismissed his appeal. Dissatisfied with the orders of the Magistrate and the Sessions Judge, the respondent filed a criminal revision in the High Court and Mulla J. allowed his application and set aside the order of the Magistrate forfeiting the bond executed by him. At the request of the Government Advocate the learned Judge granted the requisite certificate by virtue of which the present appeal is before us.

The only question for consideration is whether the bond executed by the respondent was one under the Code of Criminal Procedure and therefore capable of being forfeited in accordance with the provisions of s. 514, Criminal Procedure Code. Section 499 of the Code requires that 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. In Schedule V of the Code of Criminal Procedure various forms are set out and s. 555 of the Code provides that subject to the power conferred by s. 554 and by

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Art. 227 of the Constitution, the forms, set forth in that Schedule, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient. Form XLII of that Schedule sets forth the contents of a bond to be executed by an accused and his surety. The bond is in two parts—one part to be signed by the accused and the other part to be signed by his surety or sureties. Both the accused and the sureties in executing such a bond guarantee the attendance of the accused in Court whenever called upon to answer the charge against him and in case of default also bind themselves to forfeit to Government the specified sum of money mentioned therein. This is what the bond should state since the Adaptation of Laws Order, 1950, dated January 26, 1950. Previous to that Order the word Government did not appear in the bond. By virtue of cl. 4 of the said Order, whenever an expression mentioned in column 1 of the Table thereunder occurred (otherwise than in a title or preamble or in a citation or description of an enactment) in an existing Central or Provincial Law whether an Act, Ordinance or Regulation mentioned in the Schedules to the Order, then unless that expression was by the Order expressly directed to be otherwise adapted or modified, or to stand unmodified, or to be omitted, there shall be substituted therefor the expression set opposite to it in column 2 of the said Table. In column 1 of the Table the words "Crown" "Her Majesty" and "His Majesty" appear and against them in column 2 the word "Government" appears. The plain reading of this clause is that wherever the words "Crown", "Her Majesty" or "His Majesty" appear, for them, the word "Government" shall be substituted in the existing Central or Provincial Laws mentioned in the First Schedule to the Order. The Code of Criminal Procedure is one of the Central Laws mentioned in the said Schedule wherein Schedule V of the Code of Criminal Procedure is mentioned and the Order directs that throughout Schedule V of the Criminal Procedure Code, except where otherwise provided, for the words "Her Majesty The Queen"

and "His Majesty The King" the word "Government" shall be substituted. Previous to the Adaptation of Laws Order, 1950, there was the Adaptation of Laws Order, 1948 and the words "Empress of India" appearing in the bond were repealed and in place thereof the words "Her Majesty The Queen" were substituted. India attained Dominion status in 1947 and became a Republic in 1950. The Adaptation of Laws Order, 1948 and that of 1950 were consequential upon the change of status of India into a Dominion and then into a Sovereign Republic. Since January 26, 1950, therefore no bond executed in favour of the Empress of India could be said to be a bond executed under the Code of Criminal Procedure. The bond which the respondent had executed was to forfeit to the King Emperor a certain sum of money if he made default in procuring the attendance of the accused before the Court. He did not execute a bond by which he bound himself to forfeit the said sum either to the Government of the Union of India or that of the State of Uttar Pradesh. The bond executed by him in 1953 was a bond unknown to the law of the Republic of India under the Code of Criminal Procedure at the time of its execution. Section 514 of the Criminal Procedure Code empowers a court to forfeit a bond which has been executed under the provisions of that Code and since the bond executed by the respondent is not one under the Code of Criminal Procedure, resort could not be had to the provisions of s. 514 of the Code to forfeit the same.

It was, however urged on behalf of the State that under cl. 4 of the Adaptation of Laws Order, 1950 the form of the bond stood amended by the substitution of the word "Government" therein in place and stead of the words "Her Majesty The Queen" and the bond should be read accordingly. The words King Emperor Qaisar-e-Hind must be deemed as no longer existing in the forfeited bond. Clause 4 of the Order, however, directs that the word "Government" shall be substituted for the words "Crown", "Her Majesty" and "His Majesty". There is no mention therein of the words king Emperor or Emperor of India, Queen Empress or Empress of India or Qaiser-e-Hind as being so

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substituted. The words King Emperor Qaisar-e-Hind in the bond executed by the respondent cannot therefore be read, by virtue of cl. 4 of the Order, to mean Government. There has undoubtedly been some error, carelessness or negligence on the part of those on whom a duty lay to make the necessary changes in the phraseology of the bond set out in Schedule V of the Code of Criminal Procedure to be executed under s. 499. The fact, however, remains that the respondent had not bound himself either to the Government of the Union of India or that of the State of Uttar Pradesh to have his bond forfeited on his failure to produce the accused before the court and he is entitled to say that no order of forfeiture could be passed against him with respect to a bond which was not one under the Code and which was one unknown to the law, as contained in the Code, at the time of its execution. The objection raised by the respondent to the order forfeiting the bond executed by him is a substantial one and the said order was made under a misapprehension that it could be made under s. 514 of the Code of Criminal Procedure.

The appeal is accordingly dismissed.

*Appeal dismissed.*

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