

(9) It may be mentioned that the learned counsel for the appellant also submitted that the plaintiffs' suit should not be decreed, because under the provisions of section 8-A referred to above, he had still to pay the mortgage amount, which would be determined by the Settlement Commissioner. That may or may not be so, but the appellant has nothing to do with that matter, which is to be settled by the Government with Behari Lal.

(10) No other point was raised.

(11) The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

K.S.K.

REVISIONAL CRIMINAL

Before Gopal Singh, J.

BHUP SINGH AND ANOTHER,—*Petitioner*

versus

THE STATE OF PUNJAB,—*Respondent*

Criminal Revision 375 of 1968.

November 15, 1968.

Punjab Good Conduct Prisoners (Temporary Release) Act (XI of 1962)—Sections 3 and 4—Punjab Good Conduct Prisoners (Temporary Release) Rules (1963)—Rules 3 and 10—Code of Criminal Procedure (V of 1898)—Section 514—Issue of warrant of temporary release of a prisoner—Whether to precede the execution of personal and surety bonds—Chronological Sequence of the execution of the bonds—Stated—Language of such bonds—Whether to be strictly construed.

Held, that the issue of warrant of temporary release of a prisoner under sections 3 or 4 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, in the prescribed form is to precede the execution of personal bond in Form 'C' and the surety bond in Form 'D'. It is after the warrant of release has been issued by the releasing authority to the Superintendent of Jail through the Inspector-General, specifying the period of release and the places to which the release has been confined that the personal bond and the surety bond have to be executed. As given in the prescribed form of surety bond, Form 'D', the execution of the personal bond in Form 'C' has to precede that of the surety bond. In order that the surety bond executed by the sureties under rule 3 of Punjab Good Conduct Prisoners (Temporary Release) Rules be a valid one,

Bhup Singh, etc. v. The State of Punjab (Gopal Singh, J.)

there must have been executed previously personal bond in Form 'C' by the prisoner. It is on the basis of that personal bond duly executed on behalf of the prisoner that surety bond has to be executed. (Para 10)

Held, that obligation to see due execution of bonds as provided in rule 3 read with Forms 'B', 'C' and 'D' is cast on the Courts concerned. They should strictly adhere to the letter of law. While construing the bonds or the statutory provision entailing the serious consequence of forfeiture of the amounts of bonds, their language has to be construed strictly. The approach for the purpose of construction of their language has to be the same as is to be made in the construction of penal provisions. The consequence of forfeiture to follow is essentially penal in character. (Para 11)

Petition under sections 435/439 Criminal Procedure Code for revision of the order of Shri Sewa Singh, Sessions Judge, Amritsar, dated 14th July, 1967 affirming that of Shri P. L. Kapoor, Sub-Divisional Magistrate, Amritsar, dated 20th April, 1967 for forfeiting the bonds and ordering that each of the petitioners is liable to pay the sum of Rs. 5,000 each to the State as surety.

A. S. BAINS, ADVOCATE, for the Petitioners.

M. S. DHILLON, ADVOCATE FOR ADVOCATE-GENERAL, PUNJAB, for the Respondent.

JUDGMENT

GOPAL SINGH, J.—This is revision petition by Bhoop Singh and Hazara Singh. It has arisen out of the judgment of Shri P. L. Kapoor, Sub-Divisional Magistrate, Amritsar, dated April 20, 1967 holding that the petitioners were liable to pay the sum of Rs. 5,000 each to the State of Punjab on account of forfeiture of their surety bond executed by them on behalf of Santa Singh convict prisoner. The petitioners feeling aggrieved of the order of the Sub-Divisional Magistrate preferred an appeal in the Court of Session. Shri Sewa Singh, Sessions Judge, Amritsar, by his judgment dated July 14, 1967 rejected the appeal. The petitioners have now invoked the revisional jurisdiction of this Court under section 439, Criminal Procedure Code.

(2) Under warrant dated May 9, 1959, Santa Singh was serving his sentence of life imprisonment in Central Jail, Ferozepur. Santa Singh applied under section 4 of the Punjab Good Conduct Prisoners (Temporary Release) Act, No. XI of 1962, for temporary release from jail for a period of four weeks. The application was granted subject to his furnishing personal bond in the sum of Rs. 5,000 and surety bond by two sureties in the sum of Rs. 5,000 each

(3) The petitioners executed surety bond dated February 13, 1965, Exhibit P.A. According to that bond, they undertook and bound themselves jointly and severally for the observance of the conditions to the effect that Santa Singh prisoner would during the period of his temporary release reside at village Talwandi Dasondha Singh in the district of Amritsar and that without the permission of the District Magistrate, he would not visit any other place, that the prisoner would not visit Bilaspur in the State of Madhya Pradesh, that at the time of his release the prisoner would give to the District Magistrate full particulars and the address of the place where he would stay during his temporary release and would also keep the District Magistrate informed of any subsequent change of his place of residence during that period, that after the expiry of the period of parole of four weeks, the prisoner would surrender himself to the Superintendent, Central Jail, Ferozepur to undergo the unexpired period of his sentence, that the prisoner would prior to his release on parole furnish to the satisfaction of the District Magistrate, Amritsar a personal bond in the sum of Rs. 5,000 for faithful observance of the said conditions. It was also undertaken in the bond that the amount of the bond would stand forfeited to Punjab Government in case any condition of the bond was in the opinion of the Government not fulfilled. The prisoner executed personal bond dated February 17, 1965 undertaking to abide by the above referred to conditions of his release on parole. This bond was executed by the prisoner just before he was released from jail on February 17, 1965.

(4) The prisoner was to surrender to the Superintendent, Central Jail, Ferozepur on March 18, 1965. He, however, did not surrender. He was arrested at Kanpur. While he was being brought from there to the Central Jail, Ferozepore, he absconded. Intimation about his absconsion was given on March 29, 1965 to the District Magistrate, Amritsar by the Inspector-General, Prisons, Punjab. Finding that the prisoner had failed to surrender on March 18, 1965 after the expiry of parole period of four weeks and also after the expiry of further time of ten days for which the Superintendent of Jail had to wait under sub-section (2) of Section 8 of Punjab Act No. XI of 1962 and the prisoner had absconded after arrest and the terms of the personal bond as well as of the surety bond had been clearly violated, the District Magistrate, Amritsar, by letter dated April 19, 1966, wrote to the Sub-Divisional Magistrate, Amritsar, directing him to "cancel the bail bond and take action under Section 514, Criminal Procedure Code against the sureties

Bhup Singh, etc. v. The State of Punjab (Gopal Singh, J.)

(Bhoop Singh and Hazara Singh) immediately and the result be intimated."

(5) By virtue of rule 10 of the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963, the procedure regarding forfeiture of bonds is to be regulated by Section 514 of the Code of Criminal Procedure. The Sub-Divisional Magistrate issued notice to the petitioners under that Section. After service of notice upon them and after recording evidence in the case, both the trial Magistrate and the Court of Appeal came to the conclusion that the prisoner had committed default in observance of the above referred to terms of his release on parole and consequently the sureties were liable to pay to the State of Punjab the sum of Rs. 5,000 each.

(6) Shri Ajit Singh Bains, who appeared on behalf of the petitioners, did not contest the case on justification of the order of forfeiture on the facts pertaining to the prisoner having failed to confine himself within the limits of village Talwandi Dasondha Singh as undertaken by him, having failed to surrender after the expiry of the parole period of four weeks and having not fulfilled the other conditions. He, however, contended that the surety bond was not in terms of the form of bond prescribed in Form 'D' appended to the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963 and was no bond in the eye of law and that in any case according to clause 7 of the bond, opinion of the State Government having not been obtained for fulfilment of the bond, the bond could not be held to have been validly forfeited and consequently the petitioners could not be held liable to pay the amount for which they executed the bond.

(7) As the questions raised are questions of law pertaining to construction of documents and certain statutory provisions, although raised for the first time before this Court, the same have been allowed to be argued.

(8) The surety bond, Exhibit P.A., which bears the thumb-impresions of both the petitioners as sureties is copy of Form 'B' prescribed under rule 3 of the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963, with the modification of there being added the expression, "we do hereby jointly and severally bind ourselves that" before each of the seven clauses prescribed in that form. Form 'B' is not at all a surety bond. It is warrant for

temporary release of prisoners under Section 3 or 4 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. That warrant is not to be signed by the sureties. It is only to be signed by the prisoner in token of his having received the warrant for temporary release and has nothing to do with the sureties. On the other hand, Form 'D' prescribed under rule 3 of the Rules is surety bond, which the petitioners in the present case as sureties had to execute in favour of the Government, Form 'D' as prescribed is reproduced below:—

"From 'D'

(Surety Bond)

In the Court of the District Magistrate _____
This Bond is made on the _____ by _____ (1st
surety) and _____ (2nd surety), (hereinafter
collectively referred to as the "sureties".

Whereas the Governor of Punjab (hereinafter referred to as the Government) is pleased to order the release of _____ (hereinafter referred to as the prisoner) on parole/furlough for a period of _____ weeks/days commencing from _____ and ending on _____ under section _____ of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, on the condition of the prisoner furnishing a bond as well as a surety bond each for the sum of Rs. _____ to observe the conditions on which the prisoner has been temporarily released;

And whereas the prisoner has on _____ executed a personal bond for the sum of Rs. _____ to observe the conditions specified therein.

Now, therefore, the sureties jointly and severally do hereby bind themselves to forfeit to Government the sum of Rs. _____ in case the prisoner makes a default in observing any of the conditions specified in his personal bond.

Accepted for and on behalf
of the Governor, Punjab.

Signature of the
first surety.

Signature of the
second surety."

(9) According to the language used in Form 'D', the surety bond has to be executed in pursuance of an order of the Governor of Punjab directing the release of a prisoner on parole or furlough. The document, Exhibit P. A. Thumb-marked in the present case does not at all say that the prisoner had been released on parole by the order of Governor of Punjab. As given in the prescribed form, the Section of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, under which a prisoner is released has to be mentioned in the order of the Governor. Again, as prescribed in that form, it has to be mentioned that a prisoner as ordered by the Governor would be released on the condition of his furnishing a bond and also a surety bond for certain amount of money to observe the conditions on which the prisoner has been temporarily released. The surety bond also mentions the fact that the prisoner has on a given date executed a personal bond in the sum of the fixed amount to observe the conditions specified therein. At the end of these clauses, it is mentioned that the sureties bind themselves jointly and severally to forfeit to the Government the amount given in the bond in case the prisoner makes a default in observing the conditions specified in the personal bond. In the warrant of release as thumb-marked by the sureties, the above referred to conditions, which are required by the prescribed form were not undertaken to be complied with either by the prisoner or by the petitioners. I may mention here that the personal bond thumb-marked and executed by the prisoner is in terms the same as the warrant for the temporary release, Exhibit P.A., (form 'B'), except that the first part of every sentence of the seven clauses has been prefaced by the expression, "That I do hereby bind myself", in place of the expression, "That we do hereby jointly and severally bind ourselves that". In other words, the personal bond executed by the prisoner is also in Form 'B', the warrant for his temporary release. This Form 'B' is different from the personal bond in Form 'C' prescribed under rule 3 of the Rules as appended thereto. Various clauses of the form of personal bond so prescribed have obviously to be and are different from those given in the form of warrant for the temporary release of prisoners, Form 'B' as referred to above. Thus, in the present case, there is neither any personal bond as prescribed in Form 'C' nor there is any surety bond as prescribed in Form 'D'. The Chief Judicial Magistrate, who attested the document Exhibit P.A., did not realise that what he was attesting was not in fact the surety bond, but warrant for temporary release of the prisoner with the thumb-impressions of the sureties appended to it.

(10) Issue of warrant of release in the prescribed form is to precede the execution of personal bond in Form 'C' and the surety bond in Form 'D'. It is after the warrant of release has been issued by the releasing authority to the Superintendent of Jail through the Inspector-General, specifying the period of release and the places to which the release has been confined that the personal bond and the surety bond have to be executed. As given in the prescribed form of surety bond, Form 'D', the execution of the personal bond in Form 'C', has to precede that of the surety bond. In order that the surety bond executed by the sureties under rule 3 of the Rules may be a valid one, there must have been executed previously personal bond in Form 'C' by the prisoner. It is on the basis of that personal bond duly executed on behalf of the prisoner that surety bond has to be executed.

(11) Obligation to see due execution of bonds as provided in rule 3 read with Forms 'B', 'C' and 'D' is cast on the Courts concerned. They should strictly adhere to the letter of law. While construing the bonds or the statutory provision entailing the serious consequence of forfeiture of the amounts of bonds, their language has to be construed strictly. The approach for the purpose of construction of their language has to be the same as is to be made in the construction of penal provisions. The consequence of forfeiture to follow is essentially penal in character.

In *State of Bihar v. M. Homi and another* reported in (1), there was executed a bond on October, 19, 1946, in the sum of Rs. 50,000.00 by two sureties binding themselves for payment of the said sum of Rs. 50,000.00, in case Maulavi A. Ali Khan, prisoner failed to surrender to the Deputy Commissioner of Singhbhum within three days of the receipt of notice of the order or judgment of the judicial Committee if by the said order or judgment the sentence was upheld either partly or wholly. As a result of the constitutional changes, the jurisdiction of the Judicial Committee of the privy Council was transferred to the Federal Court and eventually to the Supreme Court. The Supreme Court dismissed appeal in November, 1952. On failure of the sureties to produce A. Ali Khan within three days, the sureties were called upon to show-cause against the forfeiture of the bond. Their Lordships of the Supreme Court took the view that

(1) A.I.R. 1955 S.C. 478.

Bhup Singh, etc. v. The State of Punjab (Gopal Singh, J.)

the bond was to be forfeited if the order or judgment was to be given by the Privy Council and not by the Supreme Court and the consequence of forfeiture of the bond could not follow. Their Lordships of the Supreme Court observed as follows :—

“In view of this clear provision in the bond, the terms of which being penal in nature must be very strictly construed, it cannot be said that the contingencies contemplated by the parties have occurred. There was no judgment or order of the Judicial Committee upholding either in part or in whole the sentence against Ali Khan. As the terms of the bond so construed cannot be said to have been fulfilled, the penalty stipulated has not been incurred. It must, therefore, be held that the proceedings taken against the respondents were entirely misconceived. It was in these circumstances that we did not think it necessary to hear the appeal on its merits, that is to say, on the point of jurisdiction on which the case had been decided by the High Court.”

“It was contended by the Advocate-General of Bihar, who appeared in support of the appeal that in the events which had happened there could be no judgment or order of the judicial Committee and that, therefore, the judgment of this Court, which by virtue of the constitutional changes had come by the jurisdiction vested in the Privy Council, should be deemed to be the judgment or order contemplated by the parties to the surety bond. ”

This contention was repelled by their Lordships.

(13) The principle of the clauses of surety bond and the statutory provisions pertaining thereto being construed strictly was applied by their Lordships of the Supreme Court to the case of *Uttar Pradesh v. Mohammed Sayeed* (2). In that case, surety bond was executed in 1953 in favour of King Emperor of India. Default having occurred on the part of the accused to appear in Court, the sureties were proceeded against. It was held that the amount of the bond forfeited could not be recovered under Section 514, Criminal Procedure Code either by the Union of India or by the State

concerned as the forfeiture was in favour of neither of them. Their Lordships of the Supreme Court held as follows:—

“Since 26th January, 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 or 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, 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 Section 514 of the Code to forfeit the same.”

(14) Thus, the surety bond executed in the present case suffers from three defects (1) In terms, the surety bond is different from the one prescribed in Form ‘D’ under rule 3 of the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963. Instead, warrant of release in Form ‘B’ has been treated as surety bond and got thumb-marked by the petitioners. (2) Execution of personal bond in Form ‘C’ anterior to the execution of surety bond in Form ‘D’ is a condition precedent in order to enable the sureties to know as to what exactly are the terms and conditions of the personal bond on the basis of which sureties are binding themselves for forfeiture of the amount for which the security bond is being executed. It is only after satisfying themselves that the conditions on which the prisoner is being released are acceptable to them that the sureties can execute a bond. Form ‘C’ is a detailed form giving the conditions of the release of the prisoner on parole. Form ‘D’ is a brief form in turn referring to the conditions specified in the personal bond of the prisoner. In a given case, the sureties are entitled to refuse to decline to agree to the terms incorporated in the personal bond and to refuse to execute the surety bond. (3) In the present case, the so-called personal bond was executed on February 17, 1965 whereas the surety bond had already been executed on February 13, 1965. The

chronological order of the two bonds as required by rule 3 and the tenor of prescribed language of Forms 'B', 'C' and 'D' have to be followed and complied with prior to the date of execution of the surety bond. On that score too, the security bond executed by the petitioners is invalid.

(15) According to clause 7 of the surety bond, Exhibit P.A. as executed, even if such a bond could at all be held to be valid and in order, the forfeiture of the bond could not take place in the absence of opinion expressed by the Government regarding the justification of the forfeiture of the bond. Clause 7 runs as follows:—

“In addition to the action under sub-sections (2) and (3) of Section 8 of the Act, the amount of the bond shall stand forfeited to the Punjab Government in case any condition of the bond, is in the opinion of the Government not fulfilled.”

There is nothing on the file to show that the opinion of the Punjab Government was sought and given as contemplated by clause 7 of the bond.

(16) The District Magistrate, by his letter dated April 19, 1966, addressed to the Sub-Divisional Magistrate, wrote to him as follows:—

“* * * * As such, you are requested to please cancel the bail bond and take action under Section 514, Criminal Procedure Code against the sureties (Bhoop Singh and Hazara Singh) immediately and the result be intimated.”

(17) The above reproduced last sentence of the letter is nothing but a mandate issued to the Sub-Divisional Magistrate to cancel the bond by taking action against the sureties under Section 514, Criminal Procedure Code. The case so arising under Section 514, Criminal Procedure Code for justification or otherwise of cancellation of the bond had to be considered judicially by the Magistrate dealing with it and had to be determined according to its merits on facts or in law. The District Magistrate should have refrained from addressing the letter to the above effect and left the matter open to the trial Court to decide as he thought fit and not necessarily cancel the bail bond as suggested by him in that letter.

(18) In the result, the revision petition is allowed and the judgments of the Courts below are set aside.