

1955

March 24

THE STATE OF BIHAR

v.

M. HOMI AND ANOTHER

[VIVIAN BOSE, JAGANNADHADAS and SINHA, JJ.]

Surety bond—Stipulations of a penal nature—Whether should be construed strictly.

In a surety bond the sureties bound themselves for payment of Rs. 50,000 “only in case Mr. Ali Khan fails . . . to surrender to the Deputy Commissioner of Singhbhum within three days of the receipt of the notice of the order or judgment of the Judicial Committee if by the said order or judgment the sentence is upheld either partly or wholly”. As a result of the constitutional changes the jurisdiction of the Privy Council came to be transferred to the Federal Court, and eventually Ali Khan’s appeal to the Privy Council was heard and dismissed by the Federal Court. Thereupon the Deputy Commissioner issued notice to the sureties to produce Ali Khan within three days.

Held, that the proceedings taken against the sureties were entirely misconceived as the penalty stipulated had not been incurred, in view of the terms of the bond set out above.

Provisions in a surety bond which are penal in nature must be very strictly construed and there is no room for the application of a legal fiction that the judgment of the Federal Court must be deemed to be the judgment or order contemplated by the parties to the surety bond.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 62 of 1953.

Appeal under Article 134(1)(c) of the Constitution from the Judgement and Order dated the 27th March 1953 of the High Court of Judicature at Patna in Criminal Revision No. 1290 of 1951 arising out of

the Judgment and Order dated the 12th November 1951 of the Court of Sessions Judge, Singhbhum in *The State of Bihar* Criminal Revision No. 16 of 1951.

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Mahabir Prasad, Advocate-General for the State of Bihar (Shyam Nandan Prasad and M. M. Sinha, with him), for the appellant.

S. N. Mukherji, for the respondent.

1955. March 24. The Judgment of the Court was delivered by

SINHA J.—In this appeal we did not think it necessary to hear the counsel for the respondents on the merits of the decision appealed from in the view we have taken, as will presently appear, of the terms of the surety bond which was being sought to be enforced against the sureties, the respondents in this Court. The surety bond in question was taken in circumstances which clearly appear from the following resolution of the Government of Bihar dated the 17th October 1946:—

“Whereas one Maulavi A. Ali Khan, who was convicted under section 120-B read with section 420, Indian Penal Code by the First Special Tribunal, Calcutta and sentenced to four years’ rigorous imprisonment and a fine of rupees one lac which conviction and sentence have been subsequently upheld by the Patna High Court, has submitted to the Provincial Government a petition praying for suspension of his sentence in order to enable him to prefer an appeal against the said conviction and sentence to the Judicial Committee of the Privy Council.

And whereas the Provincial Government have granted the prayer of the petitioner subject to the conditions hereinafter specified which the petitioner has accepted:

Now, therefore, the Governor of Bihar hereby orders that the execution of the aforesaid sentence of Maulavi A. Ali Khan be suspended pending the hearing of the proposed appeal to the Judicial Committee of the Privy Council on his furnishing security worth Rs. 50,000 with two sureties of Rs. 25,000 each to the

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satisfaction of either the Sub-Divisional Officer, Jamshedpur or the Deputy Commissioner of Singhbhum and undertaking (1) to furnish proof by the 1st December, 1946 of his having taken all necessary steps for the filing of the appeal and also (2) to surrender to the Deputy Commissioner of Singhbhum within three days of the receipt of the notice of the order or judgment of the Judicial Committee if by the said order or judgment the sentence is upheld either partly or wholly. The petitioner, if in custody, may be released if he complies with the above conditions.

By order of the Governor of Bihar,

(Sd.) T.G.N. Ayyar,

Secretary to Government".

In pursuance of that resolution the surety bond in question was taken from the respondents. The material portion of the bond (Ex. 2) is in these terms:

"We, S. T. Karim, son of Abdul Wahab, by caste Mohammedan, by occupation Contractor and Proprietor Jamshedpur and Star Talkies, Jamshedpur, residing at Sakchi, police station Sakchi in Town Jamshedpur, district Singhbhum, (2) Manik Homi, son of late Homi Engineer, by caste Parsee, by occupation zamindar of Mango, residing at Mango, police station Sakchi, district Singhbhum,

Stand surety for the amount of Rs. 25,000 only each and bind ourselves to the Government of Bihar of which we bind ourselves, our heirs, executors and successors firmly for payment of Rs. 50,000 only in case Mr. Ali Khan fails to furnish proof by the 1st December 1946 of his having taken all necessary steps for the filing of the appeal and to surrender to the Deputy Commissioner of Singhbhum within three days of the receipt of the notice of the order or judgment of the Judicial Committee if by the said order or judgment the sentence is upheld either partly or wholly".

It is dated the 19th October, 1946. As a result of the constitutional changes the jurisdiction of the Privy Council came to be transferred to the Federal Court by virtue of the Abolition of the Privy Council Juris-

diction Act (Constituent Assembly Act V of 1949) which came into force on the 10th October, 1949. As from that date ("the appointed day") all appeals pending before the Judicial Committee of the Privy Council by virtue of section 6 stood transferred to the Federal Court. Ali Khan's appeal to the Privy Council thus got transferred to the Federal Court and in due course was heard by this Court. This Court dismissed the appeal in November 1950. In the meantime Ali Khan, the convicted person, who had gone to London to look after his appeal there, migrated to Pakistan and thus placed himself beyond the jurisdiction of the courts in India. In December 1950 the Deputy Commissioner of Singhbhum issued notice to the sureties, the respondents, to produce Ali Khan within three days. On their failure to do so, the Deputy Commissioner called upon the sureties to show cause why their bond should not be forfeited. The sureties raised certain legal objections to the proceedings taken by the Deputy Commissioner. They contended that he had no jurisdiction to initiate the proceedings. The Deputy Commissioner postponed the decision of the preliminary objections and directed that all the points in controversy shall be heard and determined at the final hearing. Against that order the respondents moved the Sessions Judge of Singhbhum who by his orders dated the 12th November, 1951 overruled their objections and held that the Deputy Commissioner had jurisdiction to initiate the proceedings. It is not necessary to set out his reasons. The respondents moved the High Court in revision against the orders aforesaid of the Sessions Judge. A Division Bench of the High Court allowed the application holding that the Deputy Commissioner had no such jurisdiction as he purported to exercise in the matter of enforcing the terms of the surety bond against them. Accordingly, the High Court quashed the proceedings before the Deputy Commissioner. Hence this appeal by the State of Bihar.

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From the terms of the surety bond quoted above it would appear that the sureties bound themselves for

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payment of Rs. 50,000 "only in case Mr. Ali Khan fails.....to surrender to the Deputy Commissioner of Singhbhum within three days of the receipt of the notice of the order or judgment of the Judicial Committee if by the said order or judgment the sentence is upheld either partly or wholly". 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 has 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. In our opinion, there is no substance in this contention, firstly, because there is no term in the bond to the effect that the surety would be bound by any judgment or order given by such other court as may succeed to the jurisdiction then vested in the Judicial Committee of the Privy Council to hear the appeal preferred by Ali Khan against his conviction by the courts in India; and secondly, because there is no room, while construing the penal clause of a surety bond, for the application of a legal fiction as suggested on behalf of the appellant. The Government through their legal advisers were not

circumspect enough to insert any such alternative clause as would have given the judgment or order of this Court the same effect as is contemplated by the terms of the suréty bond quoted above.

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The appeal must therefore be dismissed *in limine*.

Appeal dismissed.