

State v. Rajender (Surety)

Present: Sh. Neeraj Verma, Learned APP for the State.
Accused Gajender declared PO vide order dated 04.02.2019 and proceeding dropped today.
Surety Rajender absent.

Death certificate of accused/P.O. Gajender received from concerned SHO as per which accused has expired on 28.03.2023. In view of these circumstances, **proceedings against accused Gajender is hereby dropped.**

NBW of surety Rajender received back with the report that he was not present in the house and had gone outside for his personal work. Heard.

It is worth-mentioning that instant are the proceedings under Section 446 of Code of Criminal Procedure. **Section 446 of Code of Criminal Procedure** reads as follows:-

“Procedure when bond has been forfeited-

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it

should not be paid. Explanation.- A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code. [provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and,; if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved”.

So, as such, it is amply clear where a bond under this Code is for appearance before the Court and it is proved to the satisfaction of the Court that the bond has been forfeited, the Court shall record the grounds of such proof and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid and if sufficient cause is not shown and the penalty is not paid, the Court may proceed to further recover the same as if such penalty were a fine imposed by it under this Code. In the instant case, accused have been called upon numerous times by way of their warrant of arrest but they have not appeared before the Court. As such, in such circumstances, the penalty imposed is to be recovered as a fine.

Section 421 of Code of Criminal Procedure provides for warrant for levy of fine. **Section 421 of Code of Criminal Procedure** reads as follows:-

“Warrant for levy of fine- (1) *When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-* (a) *issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;*

(b) issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter: Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order

for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law: Provided that no such warrant shall be executed by the arrest or detention in prison of the offender”.

So, as such when an offender has been sentenced to pay a fine, the Court passing the sentence may recover the fine either by issuing a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender or by issue a warrant to the Collector of the District, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter.

As such, in the instant matter, the Rajender was surety for one Gajender in case FIR No. 64 of 2017 under Section 323, 354, 452, 506 and 34 of IPC of Indian Penal Code, Police Station Women, Palwal. The accused was declared proclaimed offender vide order dated 04.02.2019 by the then Ld. JMIC, Palwal Since Rajender stood surety of him, therefore, proceedings under Section 446 of Code of Criminal Procedure were initiated against him.

So far as surety Rajender's property is concerned the surety was given against immovable properties, as per Section 421 of Code of Criminal Procedure, District Collector has authority to realize the amount in

accordance with the law relating to recovery of arrears of land revenue for immovable property. Keeping in view the same, **warrant be issued to District Collector, Palwal authorizing him to realize amount of Rs. 50,000/- i.e. amount of surety bonds which have been forfeited to State as arrears of land revenue from the immovable property against which surety was given** and deposit the same in State Treasury. Intimation be sent to this Court after realization of amount. File be consigned to record room after due compliance.

Pronounced in Open Court:

12.09.2023

Vinti,
JMJC/Palwal/12.09.2023.
(UID No. HR-0405.)

Typed by : Sonia
Stenographer Gr. II