BONDS AND THEIR FORFEITURE.

Chapter XLII deals with the bonds and their forfeiture. It consists of sections 513 to 516 Cr.P.C. Section 513 provides that when any person is required to execute a bond with or without surety, the Court may permit such person to deposit a sum of money of such amount as the Court may fix. This provision however, is not applicable to a case of a bond for good behavior. It does not authorize a Court to demand a cash security but the same can be permitted if opted by the accused. (1996 MLD 502).

There are two classes of bonds with respect to which an order of forfeiture is passed under Section 514 Cr.P.C. Firstly, a bond under the Code taken by a Court and secondly, a bond for appearance before the Court. The first class of bond is subject to two limitations i.e. it must be taken by a Court and should be taken under the Code. Bond of second class is a bond for appearance before the Court.

The bond is a contract of civil nature. Its wording should be definite and clear particularly with reference to the requirement to appear, the date on which one is to appear and name of the Court in which the appearance is required. Any vague wording would not entail forfeiture or imposition of penalty.(1981 P.Cr.L.J. 387+ 1992 P.Cr.L.J. 1649). Therefore, the Court should construe the conditions of bond strictly. (1992 P.Cr.L.J. 2238).

FORFEITURE OF THE BOND.

Under Section 514 Cr.P.C. the following are essential requirements regulating the procedure of forfeiture of bond.

i) It must be proved to the satisfaction of the Court that a bond has been forfeited.

ii) The Court must record grounds for such forfeiture.

iii) The surety should be called upon to pay the forfeited amount or to show a cause why the penalty should not be recovered from him.

iv) If sufficient cause is not shown or the penalty is not paid, the Court may proceed to recover the same.

v) The recovery can be made by issuing a warrant for attachment and sale of movable property belonging to the surety. (1996 P.Cr.L.J. 860).

There are four stages of the process of forfeiture of the bond and realization of the imposed penalty.

a) A declaration by the Court regarding forfeiture of bond on the basis of proof to the satisfaction that forfeiture has been caused.

b) Calling upon the surety to pay the forfeited amount or to show cause why the penalty should not be recovered from him.

c) Order regarding exoneration or imposition of penalty upon consideration of the cause shown by the surety.

d) The process for realization of the imposed penalty:

i) issuance of warrant of attachment and sale of movable property of the surety;

ii) order for imprisonment of the surety in case the amount is not realized;

Strict compliance of the provisions of Section 514 Cr.P.C. is to be made by taking action step by step in order as enjoined in the Section. (2001 P.Cr.L.J. 35). The procedure so contemplated is mandatory in nature and any non observance or deviation from the said procedure is to result in setting aside of the order passed under Section 514 Cr.P.C. (2003 P.Cr.L.J. 347).

Each bond has to be construed on its own terms. It is a question of fact whether any breach causing forfeiture of bond has taken place or not? In case of the bonds other than the bonds for appearance, the

Court is to satisfy itself on the basis of valid evidence, of course, after giving opportunity to defend the executants whether forfeiture has been caused by any violation or breach of the term of the bond? **However, where the bond is taken for appearance of the accused, there does not appear to be any need to conduct an inquiry or take evidence before forfeiting the bond as breach of the undertaking term is evident from the absence of the accused in the trial.**

Anyhow, a bond for appearance cannot be forfeited:

i) Where failure to appear is due to the cause beyond the control of the parties i.e. death of the accused (1993 P.Cr.L.J. 44 + 2002 P.Cr.L.J. 2063)

ii) If accused is arrested by the police or detained in jail. (1994 P.Cr.L.J.1041).

iii) When the Court gives permission to the accused to leave the place of business.

iv) If the accused is present in the Court on the date fixed.

v) Failure due to the escape of accused from police escort while being brought from jail to court as convict in another case. 1966 Cr.L.J. 323(1).

vi) If non appearance is for the reason beyond control of the surety. (1994 P.Cr.L.J. 2242)

vii) Bail order recalled in presence of the accused. (1999 P.Cr.L.J.561)

The Court is obliged to pass a specific order narrating the facts, circumstances and grounds causing forfeiture of a bond and to declare that the bond stands forfeited. The Court ought to examine circumstance leading to the absence of

an accused and to ascertain as to whether surety had in any manner connived at his absence. The wisdom behind introducing section 514

Cr.P.C. by Legislature is that in case accused absconds, then penalty imposed upon surety could be recovered from his property. **When the bond is for appearance for a particular Court, only that court can initiate the proceeding U/S 514 Cr.P.C. (PLD 2003 Kar 247).**

The **second stage** arises after the bond is forfeited i. e. calling upon the surety to pay the penalty thereof or to show cause why the same should not be recovered from him. Prescribed formats are provided in schedule (V) of Cr. P.C at No.XLV & XLVI.

(I.) If the surety so called upon to pay the penalty, pays the penalty then the proceedings are to end to his extent.

(II.) If he does not turn up in response to the show cause notice and the Court is satisfied on the basis of valid evidence that absence of the surety is intentional, then the Court may pass an order imposing the penalty by presuming that the surety did not have any cause to show.

(III.) In case, the surety turns up and shows a reasonable cause, then he may either be exonerated from the liability to pay the penalty or remission of any portion of the penalty may be ordered.

(IV.) If the cause being shown by the surety is not sufficient then the penalty in full is to be imposed and to be recovered from him.

(V.) While making exoneration or remission of the forfeited amount, a balance is to be kept. Undue leniency may lead to abuse of the procedure and on the other hand undue severity may lead to unwillingness on the part of the neighbors and friends to come forward.

Imposition of penalty by the Court while forfeiting the bond is **discretionary**. The approach should be dynamic and progressive

oriented with the desire to discourage the accused persons to jump bail bonds. There is no legal embargo that full bail bond amount should not be forfeited. On the contrary, once an accused jumps bail bonds, the entire surety amount becomes liable to be forfeited in the absence of any mitigating circumstances. (PLD 1997 SC 267+ PLD 1998 SC 50). However, standing surety for some one is an act of benevolence and unless and until it is established that the surety had got the accused released on bail for any ulterior motive, the surety is not to be treated harshly without there being extra ordinary circumstances calling for full forfeiture of the surety bond. (2002 P. Cr.L.J. 2063). While forfeiting the bonds, the Courts are not supposed to act in a mechanical way. They are required to hold some sort of balance while determining to what extent a bond is to be forfeited. The Court should make investigation for arriving at a just conclusion with respect to a just quantum for the purpose of forfeiture. (2000 P.Cr.L.J. 172).

The following are some cases where the Courts took lenient view of the matter and reduced penalty on the basis of cause shown.

1. Accused produced by surety forfeiture of entire bond not justified. Amount reduced to 50%. (1999 YLR 353, 1999 YLR 1353)

2. Surety illiterate and poor tenant standing surety for the accused not for any monetary or personal gain but out of humanitarian consideration. Order of forfeiture set aside. (PLD 1996 Lah 600)

3. Surety appearing before the Court arrested and detrained for about two weeks in jail, accused also arrested later. No exception to the forfeiture of bail bond, however, imposition of penalty amount reduced from Rs.10,000/- to Rs.2000/- (1991 P.Cr.L.J. 2060, 1985 = NLR 1991 Cr.L.J. 649)

4. Surety showing inability to produce accused but later on by their efforts accused produced before Court, forfeiture of bond though legal, amount reduced. (1991 P.Cr.L.J. 949)

5. Absconding accused surrendering within 2.1/2 months and lodged in jail, process of law against accused having restarted, amount of bail bond forfeited reduced. (1993 P.Cr.L.J. 332)

6. Surety causing the accused arrested before next date of hearing. Penalty reduced to 1/5th of total surety amount. (1993 P.Cr.L.J. 2041)

7. Petitioner not appearing to have either gained any benefit from standing surety for his daughter or he was in any way connected with criminal activity of his daughter or with her escape. Amount of bond reduced. 1993 P.Cr.L.J. 2272

8. Surety not obtaining any monetary advantages but standing surety out of keen benevolence, amount reduced to 1/5th. (1999 YLR 1932)

9. Absentee accused arrested and on trial acquitted. Case of mitigation made out for reduction of confiscated amount. (1986 P.Cr.L.J. 2110)

10. Compromise arrived at between accused and complainant that the prosecution did not wish to prosecute accused more. Penalty reduced. (2002 YLR 361)

If the imposed penalty is not paid by the surety, then a warrant for attachment and sale of his movable property is to be issued for its execution through District Officer Revenue within the local limits of whose jurisdiction such property is found**. It must be kept in mind that only movable property of the surety is to be attached and sold**. **The Court cannot attach or sell immovable property of the accused**. (1990 P.Cr.L.J. 951= 2001 P.Cr.L.J.145). However, if the bond is forfeited in the life time of the surety and

thereafter, his death takes place, then for the execution of the warrant, his estate can also be attached. (1993 P.Cr.L.J. 44). A prescribed format for warrant of attachment and sale is provided in schedule (v) at No.XLVII of Cr.P.C.

In case the penalty is not realized either by payment or by recovery through attachment and sale, the surety becomes liable to imprisonment in civil jail for a term which may extend to 6 months. Therefore, the Court should order imprisonment of the surety if the imposed penalty is not paid or recovered.

POINTS TO BE KEPT IN MIND WHILE DEALING WITH FORFEITURE OF THE BOND.

1. The wording of the bond should strictly be considered and construed.

2. A specific order regarding forfeiture of bond containing facts, circumstances and the grounds causing the forfeiture be passed.

3. The surety be called upon to pay the forfeited amount or to show cause why the penalty should not be recovered.

4. A balance should be maintained in leniency and severity while imposing the penalty.

5. The inquiry under Section 514 Cr.P.C. is of a summary character and the Court will not start taking evidence to satisfy the surety that what he maintains is without any evidence in support. It is satisfaction of the Court and not that of surety which would matter. (1993 P.Cr.L.J.1053)

6. The processes of issuance of show cause notice and warrants of attachment and sale of the property be issued in prescribed form as provided in schedule (v) of Cr.P.C.

7. Necessary care should be taken with regard to service of the surety with respect to the processes issued by the Court. It would be just and proper to record the statement of the process

server in case it is reported that the surety has refused to accept the service or the surety does not turn up even after his service is reported.

8. The surety cannot be treated as an accused and his attendance cannot be procured through a warrant of arrest.

9. Only movable property of the surety can be attached and soled for realization of the imposed penalty.

10. Every bond is to be considered and construed with reference to its contents.

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