but that is the interpretation of the language of the various sections which are relevant in the present case.

We therefore allow the appeal, set aside the order of the High Court and convict the respondent of the offences charged, but in view of the fact that the appellant succeeds on a question of interpretation we do not think it necessary to increase the sentence of fine imposed by the learned Sessions Judge. The appeal is allowed to that extent.

Appeal allowed.

BEKARU SINGH

v.

STATE OF U. P.

(J. L. KAPUR, and RAGHUBAR DAYAL, JJ.)

Criminal Procedure—Surety bond—Substituting one surety for another—Procedure—If accused must execute personal bond with every surety bond—Forfeiture of bond—Code of Criminal Procedure, 1898 (Act V of 1898), ss. 499, 500, 502, Schedule V, Form No. XLII.

One R was granted bail on his furnishing a personal bond and three sureties which he did. On July 7, one of the sureties S applied for the discharge of his bond. On July 9, R made an application that the appellants surety bond be accepted in place of S, and the same day the appellant filed his surety bond. The appellant also filed an affidavit that he had property enough to satisfy the bond and a vakil also certified to that effect. The bond was sent for verification to the Tehsil and after verification was formally accepted on August 20. Subsequently R absconded and the appellant's bond was forfeited. The appellant contended that the forfeiture was illegal and that his bond was not properly accepted as no warrant was issued for the arrest of R when S applied for the discharge of his bond, as the bond of S was not formally discharged and as R had not executed a personal bond on the reverse of the form on which the appellant had executed his bond.

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Held, that the surety bond of the appellant had been properly accepted and the forfeiture was legally made. The provisions of s. 502 of the Code of Criminal Procedure were meant for the continuity of the surety bond and for enabling the accused to offer another surety bonds; they were not conditions precedent for the acceptance of a fresh surety in place of an earlier one. There was no occasion to issue a warrant for the arrest of R as he was present, in Court on July 7, when S applied for the discharge of his bond and may have intimated to the Court that he would offer fresh surety on July 9. The Court was interested in getting a fresh surety for letting R continue on bail and it did no wrong in accepting the appellant's surety bond which was offered. The bond of S stood cancelled and appellant's bond took its place. The bond of the appellant was really accepted on July 9 when the appellant filed the affidavit as required by s. 499 (3) of the Code and the Vakil also certified as to his solvancy. It was immaterial that the bond was formally accepted on August 20. Further, it was not necessary that each surety should execute the surety bond on the reverse of the personal bond of the accused.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 171 of 1959.

Appeal by special leave from the judgment and order dated August 3, 1959, of the Allahabad High Court in Criminal Revision No. 1080 of 1959.

O. P. Rana and *A. G. Ratanaparkhi*, for the appellant.

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

1962. March 26. The Judgment of the Court was delivered by

Raghubar Dayal J.

RAGHUBAR DAYAL, J.—One Ram Narain was ordered by the High Court of Allahabad, on June 9, 1958, to furnish a personal bond for a lakh of rupees and three sureties, two in the sum of Rs. 40,000/- each and one in the sum of Rs. 20,000/- in respect of the case against him for having committed criminal breach of trust with respect to the funds of the Pikaura Co-operative Society. He

was to furnish the personal bond and the sureties within three weeks from the date of the order. It was further ordered:

> "The applicant should furnish the personal bond and sureties as directed above within three weeks from today and during that period he will not be arrested. If he does not furnish the bonds and sureties within this period he will be liable to be re-arrested and detained till the necessary bonds and sureties are furnished."

It may be mentioned that Ram Narain had previously furnished a personal bond and sureties in connection with the embezzlement alleged to have been committed by him and that the necessity for a fresh order for furnishing personal bond and sureties arose on account of the police submitting more than one charge-sheet with respect to the amount embezzled and it was felt that the original security furnished might not be effective.

On June 26, 1958, Ram Narain executed a personal bond for Rs. 1,00,000/-and offered the required sureties. Kashi stood surety for Rs. 40,000/-, Safir Hussain for Rs. 40,000/- and Smt. Sona for Rs. 20,000/- respectively. The surety bond by Safir Hussain was not duly verified as he was in hospital at that time, but when it was put up to Safir Hussain for verification on July 12, 1958 he refused to verify it.

Prior to this, on July 7, 1958, Safir Hussain filed an application before the Magistrate praying that his surety bonds in connection with the embezzlement of Rs. 40,000/-and Rs. 80,000/-be cancelled. Ram Narain was present in Court that day. No particular order was passed on this application of Safir Hussain.

On July 9, 1958, an application on behalf of Ram Narain was filed stating that Bekaru's surety

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be accepted in place of Safir Hussain's surety. Bekaru filed the surety bond offering himself to stand surety for Rs. 40,000/-for Ram Narain's appearance in Court. He was identified by Sri Ahmad Husain, Vakil, who certified that Bekaru Singh possessed sufficient property to stand surety for Rs. 40,000/-. The Magistrate ordered for the verification from the Tehsil and on receipt of the report from the Tehsil, accepted the bond on August 20, 1958. The Tehsil report, however, indicated that the house mentioned in the surety bond and alleged to be worth Rs. 60,000/-was estimated to be worth Rs. 16,075/-.

The police charge-sheet in the case appears to have reached the Court on August 20, 1958, when summons for the appearance of Ram Narain was ordered to be issued for September 1, 1958. The summons was not served. When Ram Narain did not appear on September 1, 1958, September 9, and September 23, the Court, on September 24, ordered action under ss. 87 and 88 Cr.P.C. against him and the issue of notices to the sureties to produce him in Court. When he did not appear in Court on October 29, the Court forfeited the personal bond executed by Ram Narain and the bail bonds executed by the sureties and ordered issue of notice to the sureties to pay the penalty or show cause as to why the amount be not recovered from them. Bekaru objected to the forfeiture of his surety bond. On April 20, 1959, the objection was disallowed and the learned judicial officer ordered that the amount of Rs. 40,000/-be recovered from his movable property through attachment and sale. Bekaru appealed but his appeal was dismissed by the learned Sessions Judge. His revision application to the High Court was also dismissed. He has preferred this appeal by special leave.

The main contention for the appellant is that the learned Magistrate should not have accepted

Bekaru Singh's surety bond without first taking action contemplated by sub-sections (2) and (3) of s. 502, Cr.P.C. Section 502 reads:—

> "(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.
>
> (2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.
>
> (3) On the appearance of such person pursuant to the Warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicant, and shall call upon such person to find other sufficient, sureties, and, if he fails to do so, may commit him to custody."

It is urged that the Magistrate had to issue a warrant for the arrest of Ram Narain when Safir Hussain had presented his application for the discharge of his surety bond and that when Ram Narain would have appeared before the Court in execution of that warrant, the Magistrate had to first discharge Safir Hussain's surety bond and only then could have called upon Ram Narain to furnish other surety. The Magistrate took no such step and therefore could not have legally accepted the surety bond offered by Bekaru on July 9, 1958. We do not agree with this contention. These provisions of s. 502 are meant for the continuity of the surety bond on the basis of which an accused has been released on bail till such time that the accused is before the Court and for taking further action in case the accused desires to offer another security in place of the one who is to be discharged. They are not conditions precedent for the acceptance of

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a fresh surety in place of the earlier one. In the circumstances of the present case, there was no occasion to issue a warrant for the arrest of Ram Narain on Safir Hussain's applying for the discharge of his surety bond. We do not know in what circumstances no particular order was passed on July 7, 1958 on the application of Safir Hussain. Ram Narain who was present in Court that day, may have intimated to the Court that he would offer a fresh surety on July 9. Anywav a fresh surety was offered on that day viz; July 9. Bekaru stood surety. An application on behalf of Ram Narain was presented praying for the acceptance of Bekaru's surety bond in place of Safir Hussain's. In accepting Bekaru's surety bond the Court committed no wrong. It was interested in getting a fresh surety for letting Ram Narain continue on bail. Bakaru offered the surety bond. His competence to stand surety for Rs. 40,000/- was certified by a Vakil, Safir Hussain's bond therefore stood cancelled and Bekaru's took its place. We do not therefore consider that there was any incompetency in the Magistrate's accepting Bekaru's surety bond in place of Safir Hussain's.

It is true that Bekaru's surety bond was formally accepted on August 20, 1958, but that does not matter. Sub-section (1) of s. 499, Cr. P. C. provides that before any person is released on bail bond must be executed by such person and bonds be also executed by sureties for the attendance of that person in Court. Sub-section (3) of s.499 is :

> "(3) For the purpose of determining whether the sureties are sufficient, the Court may, if it so thinks fit, accept affidavits in proof of the facts contained therein relating to the sufficiency of the sureties or may make such further enquiry as it deems necessary."

When Bekaru furnished the surety bond he also filed

an affidavit stating therein that the house mentioned in the surety bond was worth over Rs. 40,000/- . Sri Ahmed Husain Vakil, certified that Bekaru possessed sufficient property to stand surety for Rs. 40,000/- . In the circumstances, the Magistrate could accept Bekaru's surety bond. Of course the Magistrate could make further enquiry as well and it was for the purpose of further enquiry that he ordered verification from the Tehsil. Bekaru's bond, in our opinion, was accepted on July 9, subject to further orders on the receipt of the Tehsil report.

Further, Ram Narain's continuing on bail is justified by the provisions of s. 500, Cr. P. C., once Bekaru's surety bond had been filed. Its sub-s. (1) provides that as soon as the bond has been executed, the person for whose appearance it has been executed shall be released. This contemplates that the accused is to be released on the execution of the bonds which should be accepted on their face value in the first instance. Section 501, Cr. P. C. provides for the issue of a warrant of arrest of the person so released on bail if it is subsequently found that through mistake, fraud or otherwise, insufficient sureties had been accepted, or if they afterwards became insufficient. We are therefore of opinion that formal acceptance of Bekaru's surety bond on August 20, 1958 by the Magistrate does not in any way affect Bekaru's liability on that bond from July 9, 1958. Any way, he was liable on that bond for the non-appearance of Ram Narain on a date subsequent to August 20, 1958.

It may be mentioned that it was urged up to the appeal stage that the surety bond was accepted on the 20th of August 1958 after the Magistrate had known of the absconding of Ram Narain. The Courts found against this allegation as there was no evidence in support of it.

Another point urged is that the surety bond executed by Bekaru Singh did not have on the other

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side the personal bond executed by Ram Narain and that in the absence of a personal bond by Ram Narain, the surety bond executed by Bekaru could not be legally accepted. Reliance is placed on the case reported as *Brahma Nand* v. *Emperor* (1) and a few other cases expressing the same view. These cases are distinguishable on facts. In *Brahma Nand's case* (1) the accused himself had not executed any bond and therefore it was held that the surety bonds could not be forfeited. In the present case Ram Narain executed bond on June 26, 1958. Kashi, one of the sureties, executed the surety bond printed at the back of the bond executed by Ram Narain. Ram Narain had already bond himself to pay Rs. 1,00,000/- in case he failed to appear in Court when required. Other sureties bond themselves to pay the various amounts in case Ram Narain did not appear. Their surety bond are good by themselves. Bekaru's surety bond is therefore as effective and legal as Kashi's bond which is just on the back of Ram Narain's bond. It is not required by any provision of the Code of Criminal Procedure that all the sureties should execute the bond printed at the back of the form on which the accused execute the personal bond or that the accused must execute as many bonds in identical terms as there are surety bonds by individual sureties. The mere fact that Form No. XLII, Schedule V. Criminal Procedure Code, prints the contents of the two bonds, one to be executed by the accused and the other by the surety, together, does not mean that both these bonds should be on the same sheet of paper.

We are, therefore, of opinion that Bekaru's bond can be forfeited if Ram Narain does not comply with the terms of his bond executed on June 26, 1958 and that Ram Narain had not to execute a

(1) A. I. R. 1939 All. 682.

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bond afresh when Bekaru furnished fresh surety in place of Safir Hussain's surety bond. We therefore hold that the appellant's bond has been rightly forfeited on the non-appearance of Ram Narain in Court. We therefore dismiss the appeal.

Appeal dismissed.

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March 27,

VITHAL KRISHNAJI NIVENDKAR

v.

PARDUMAN RAM SINGH & ANOTHER

(J. L. KAPUR and RAGHUBAR DAYAL, JJ.)

Rent Control—Donation received by a person for charitable trust—When an offence—Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. 57 of 1947) s. 18 (1).

The appellant was the President, Trustee and Secretary of a Sangh, which was a public trust registered under the Bombay Public Trust Act, 1950. The appellant agreed to grant the lease of a residential block, which was owned by the Sangh, at a monthly rent of Rs. 85.00 in favour of the first respondent on payment of Rs. 3,251/- as donation to the building fund of the said Sangh, which was paid before the first respondent actually occupied the premises. The appellant was convicted under s. 18 (1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, by the Presidency Magistrate who held that the amount was received as premium, as a condition precedent for letting the premises. On appeal the High Court held that the aforesaid payment even if it did not come within the expression "premium or other like sum" for granting the tenancy of the premises, it was received by the appellant as "consideration other than the standard rent" in respect of the grant of a lease of the premises and dismissed the appeal. The appellant came up by special leave in appeal to the Supreme Court.

The question is whether a sum of money paid ostensibly as a donation by a person to the person acting on behalf of the landlord, which was a charitable trust, in respect of the grant a lease of the premises, came within the expression "fine, premium or other like sum or deposit or any consideration other than the standard rent" in sub-s. (1) of s. 18 of the Act.