SUPREME COURT OF INDIA

Subodh Kumar Yadav

Vs.

State of Bihar

Crl.A.No.1234 of 2009

(R.V. Raveendran and J.M. Panchal JJ.)

15.07.2009

JUDGMENT

J.M. Panchal, J.

1. Leave granted.

2. This appeal is directed against judgment dated May 2, 2007, rendered by learned Single Judge of High Court of Judicature at Patna in Criminal Miscellaneous No. 2790 of 2004 by which order dated January 8, 2004, passed by learned Sessions Judge, Purnia in Criminal Miscellaneous No. 13 of 2003 cancelling the bail granted to the appellant by the learned S.D.J.M., Purnia vide order dated October 19, 2002, passed in C.A. No. 1098 of 2001 with reference to the complaint filed by the respondent No. 2 for alleged commission of offence punishable under *Section 498A IPC*, is confirmed.

3. The marriage of the appellant was solemnized with the respondent No. 2 on June 22, 1989. After the marriage, the respondent No. 2 started living with the appellant at her matrimonial home. During the subsistence of the marriage, the respondent No. 2 gave birth to two daughters. It is the case of the respondent No. 2 that the appellant and his family members started subjecting her to mental and physical cruelty for bringing insufficient dowry and also because she objected to illicit relations of the appellant with his sister-in-law Asha Devi. The case of the respondent No. 2 is that not only she was subjected to physical and mental cruelty, but money was extorted from her in order to get more dowry and an attempt to kill her was made as well as her streedhan was not returned to her in spite of several demands. Under the circumstances, she filed complaint case No. 1098 of 2001 in the Court of learned Chief Metropolitan Magistrate, Purnia and prayed to convict the appellant and others for commission of offences punishable under Sections 498A, 384, 307 and 406 IPC.

4. The learned Magistrate examined the respondent No. 2 on oath. The learned Magistrate thereafter called upon the respondent No. 2 to offer other witnesses for examination. Therefore, Bhageshwar Prasad Yadav, who is father of the respondent No. 2, was examined as witness No. 1, Birendra Kumar, an independent person, was examined as witness No.2

and Ramanuj Kumar, who is cousin of the respondent No. 2, was examined as witness No. 3. The learned Magistrate perused the statements made by the witnesses and was of the opinion that prima facie commission of offence punishable under Section 498A IPC was made out against the accused. He, therefore, took cognizance of the said offence and issued summons against the accused including the appellant. On receipt of summons, the appellant and others filed Criminal Revision No. 233 of 2002 in the Court of learned Sessions Judge, Purnia for quashing the same. Therefore, the record of the case was called for by the Sessions Court from the Court of learned Magistrate.

5. On October 19, 2002, the appellant surrendered before the Court of learned Judicial Magistrate First Class, Purnia and moved an application for bail. Since the original record was not available as the same was summoned by the Sessions Court, the learned Judicial Magistrate passed an order calling for the original record from the Court of learned District and Sessions Judge, Purnia. Though the copy of the application for bail was served on the learned Advocate for the original complainant, the learned Magistrate had not indicated in the order summoning record of the case from the Sessions Court that the bail application moved by the appellant would be heard on the same day. The original case record of Complaint Case No. 1098 of 2001 was received in the Court of learned Judicial Magistrate First Class on the same day, i.e., on October 19, 2002. The learned Magistrate took up the bail application for hearing on the same day. The learned Magistrate took into consideration the petition for divorce filed by the appellant against the respondent No. 2 in the year 2002 as well as other documents and without hearing either the respondent No.2 or her learned counsel, enlarged the appellant on bail.

6. Thereupon, the respondent No. 2 moved Criminal Miscellaneous No. 13 of 2003 in the Court of learned District and Sessions Judge, Purnia for cancellation of bail. The learned Session Judge heard both the parties. It was noticed by him that the bail application was submitted by the appellant on the same day on which he had surrendered before the Court of learned Judicial Magistrate First Class. It was further observed that after learning that the original record was lying in Sessions Court, Purnia in connection with Criminal Revision No. 233 of 2002, filed by the appellant and others for quashing issuance of summons, the learned Magistrate had passed an order calling for the record of the case from the Sessions Court. It was also noticed that the learned Magistrate did not hear the learned counsel of the complainant and no order was passed by him fixing hearing of the bail application, but bail was granted on the same day. It was noted by the learned Sessions Judge that though the complaint was filed by the respondent No. 2 on October 9, 2002, the learned Magistrate had taken into consideration divorce proceedings initiated by the appellant in the year 2000, i.e., after taking cognizance of the offence and had also relied upon other documents. Having taken into consideration relevant circumstances emerging from the record of the case, the learned Sessions Judge concluded that the learned Magistrate had enlarged the appellant on bail on considerations other than judicial. Therefore, the learned Sessions Judge, by order dated January 8, 2004, allowed the application filed by the respondent No. 2 and cancelled the bail granted to the appellant.

7. Feeling aggrieved, the appellant moved High Court of Judicature at Patna by way of filing Criminal Miscellaneous Application No. 2790 of 2004. The learned Single Judge of the High Court has rejected the application filed by the appellant vide judgment dated May 2, 2007, giving rise to the instant appeal.

8. This Court has heard the learned counsel for the parties and taken into consideration the documents forming part of the appeal.

9. Learned counsel for the appellant contended that cancellation of bail can be only with reference to conduct subsequent to release on bail and the supervening circumstances. According to him an application for cancellation will not be maintainable with reference to what transpired prior to the grant of bail. He relied upon the following observations in *State of U.P. vs. Amarmani Tripathi*[1], in support of the said contention: -

> "The decisions in *Dolat Ram v. State of Haryana*[2] *and Samarendranath Bhattacharjee v. State of West Bengal*[3] relate to applications for cancellation of bail and not appeals against orders granting bail. In an application for cancellation, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437, continue to be relevant. We, however, agree that while considering and deciding the appeals against grant of bail, where the accused has been at large for a considerable time, the post bail conduct and supervening circumstances will also have to be taken note of. But they are not the only factors to be considered as in the case of applications for cancellation of bail." [emphasis supplied]

10. A careful reading of the said observations shows that while considering the factors relevant for consideration of bail already granted vis-`-vis the factors relevant for rejection of bail, this Court pointed out that for cancellation of bail, conduct subsequent to release on bail and supervening circumstances will be relevant. The said observations were not intended to restrict the power of a superior court to cancel bail in appropriate cases on other grounds. In fact it is now well settled that if a superior court finds that the court granting bail had acted on irrelevant material or if there was non- application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety as for example failure to hear the public prosecutor/complainant where required, an order for cancellation of bail can in fact be made. (See *Gajanand Agarwal v. State of Orissa*[4] *and Rizwan Akbar Hussain Syyed v. Mehmood Hussain*[5].)

> "2. Further, while cancelling bail, the superior Court would be justified in considering the question whether irrelevant material were taken into consideration by the court granting bail.
>
> 3. The facts of the present case indicate that the appellant himself and others had moved the Sessions Court by way of filing revision for quashing summons issued by the learned Magistrate and, therefore, the learned Sessions Judge had called for the

record from the court of learned Judicial Magistrate First Class. On October 19, 2002, the appellant had, all of a sudden decided to surrender before the learned Judicial Magistrate First Class, Purnia and presented a bail application. The learned Magistrate found that the record of the case was lying in Sessions Court with reference to the revision, which was filed by the appellant and others. The learned Magistrate did not think it proper to wait at all and by passing a judicial order called for the record pending in a superior court. In view of the judicial order passed by the learned Magistrate, the Registry of the Sessions Court forthwith sent the record of the case to the court of learned Judicial Magistrate First Class. Thereafter, the learned Magistrate proceeded to hear the bail application submitted by the appellant. In the order summoning the record, it was nowhere indicated by the learned Magistrate that the application submitted by the appellant would be heard on the same day, i.e., on October 19, 2002. The learned advocate for the complainant was not put on notice at all and, therefore, could not remain present at the time when the bail application was taken up for hearing. The learned Magistrate considered the documents produced by the learned counsel for the appellant. Admittedly those documents were subsequent in point of time to taking of cognizance. After considering those documents, the learned Magistrate enlarged the appellant on bail. The undue haste exhibited by the learned Magistrate as well as his decision to hear the bail application on the same day without hearing the learned counsel for the complainant, compelled the learned Sessions Judge to draw adverse inferences against the learned Magistrate. On the facts and in the circumstances of the case, this Court is of the opinion that the learned Sessions Judge was justified in drawing adverse inferences against the learned Magistrate and holding that the order granting bail was passed by the learned Judicial Magistrate for considerations other than judicial. This finding of fact has been confirmed by the High Court in the following terms: -

"Heard the learned counsel for both the parties. Perused the complaint petition as well as the order of both the courts. There is no doubt that the bail of the petitioner was granted in a very mysterious circumstances. The entire office as well as the Presiding Officer was so in haste that all formalities including calling of the record from the Sessions Court were done on the same day and the order of granting bail was also passed on the same day behind the back of complainant's lawyer. The order of the learned lower court which runs in so many pages is sufficient to show how much the Presiding Officer was interested to grant bail to the petitioner who is husband of the opposite part no. 2."

2. The findings recorded by the learned Sessions Judge and the High Court make it clear that the learned Magistrate had exercised discretion vested in him under Section 437 with oblique motive. The learned Magistrate was apparently bent upon granting bail to the appellant and, therefore, not only decided to hear the bail application presented by the appellant on the same day, but had also called for record from the superior court and granted bail to the appellant without hearing the learned counsel for the complainant. As the judicial discretion was exercised by the learned

Judicial Magistrate First Class in an arbitrary manner and with oblique motives, the learned Sessions Court was justified in setting aside the order granting bail to the appellant. To say the least, the order passed by the learned Magistrate was the result of arbitrary exercise of discretion vested in him. Further the learned Magistrate had taken into consideration totally irrelevant documents which were never referred to in the complaint at all. By taking into consideration those documents the learned Magistrate exhibited his anxiety to release the appellant anyhow on bail. On the facts and in the circumstances of the case, this Court is of the opinion that the High Court did not commit any error in confirming the order of the Sessions Judge cancelling the bail which was arbitrarily granted to the appellant by the learned Judicial Magistrate First Class and, therefore, the instant appeal is liable to be dismissed.

3. For the foregoing reasons the appeal fails and is dismissed."

[1]*(2005) 8 SCC 21*
[2]*1995 (1) SCC 349*
[3]*2004 (11) SCC 165*
[4]*2006 (9) SCALE 378*
[5]*2007 (10) SCC 368*