

Amrendra Verma, Vs. the State of Bihar

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Court : Patna

Decided On : May-01-2006

Judge : Chandramauli Kr. Prasad, J.

Acts : Indian Penal Code (IPC) - Sections 120B, 147, 148, 149, 302 and 307;
Code of Criminal Procedure (CrPC) - Sections 207, 208, 209 and 441(3)

Appeal No. : Cr. Misc. No. 29512 of 2004

Appellant : Amrendra Verma, Dharmendra Verma, Ranjan Verma and Anita Verma

Respondent : The State of Bihar

Advocate for Def. : P.K. Shahi, Adv. General and Sunil Kumar Mandal, APP

Advocate for Pet/Ap. : Ramesh Prasad Singh and Sanjay Kumar, Advs.

Disposition : Application allowed

Judgement :

Chandramauli Kr. Prasad, J.

1. This application has been filed for quashing the orders dated 21.2.2002 and 20.3.2004 passed by the 3rd Additional Sessions Judge, Patna in Sessions Trial No. 102 of 1997 whereby he had cancelled the bail bonds of the petitioners and

directed for issuance of bailable and non-bailable warrants of arrest against them respectively.

2. Short facts giving rise to the present application are that the petitioners are accused in a case in which they have been charge sheeted under Sections 147, 148, 149, 302, 307 and 120B of the Indian Penal Code. They were granted bail in the case even before the case was committed to the Court of Session. Ultimately, they were committed to the Court of Session by the Judicial Magistrate, 1st Class, Patna by order dated 25.11.1996.

3. It is relevant here to state that the learned Magistrate, while committing the case to the Court of Session, did not indicate any date of appearance of the petitioners. It came up for consideration before the learned Session Judge on 5.2.1997, who directed that the same be put up in serial order. The Sessions Judge, by order dated 7.6.1997, transferred the case to the court of 3rd Additional Sessions Judge for disposal. By orders of different dates, the 3rd Additional Sessions Judge, directed for issuance of summons. There is nothing on the record to show that summons, in fact, were served on the petitioners but by the impugned order dated 21.2.2002, the learned Judge, cancelled the bail bonds of the petitioners and directed for Issuance of bailable warrants of arrest. Thereafter also, the record does not suggest that bailable warrants of arrest were served on the petitioners and by the impugned order dated 20.3.2004, he directed for issuance of non-bailable warrants of arrest.

4. Mr. Ramesh Prasad Singh, appearing on behalf of the petitioners, submits that once petitioners were granted bail before the case was committed to the Court of Session, at the time of the commitment of the case. the committing court, i.e. the learned Magistrate, had not given any date of appearance before the Sessions Court and in that view of the matter, petitioners could have appeared only after the service of summons on them by the Sessions Court. He points out that although the learned Judge had directed for issuance of summons and non-bailable warrants of arrest, but those were not served at all, still their bail bonds have been cancelled and ultimately, non-bailable warrants of arrest have been issued. He submits that without service of summons, the bail bonds ought not to have been

cancelled and non-bailable warrants of arrest ought not to have been issued.

5. As the bail bonds of the petitioners have been cancelled and non-bailable warrants of arrest issued without service of summons. I am of the opinion that those orders cannot be allowed to stand. Accordingly, I direct the petitioners to appear before the 3rd Additional Sessions Judge, Patna in Sessions Trial No. 102 of 1997 within two weeks from today and furnish fresh bail bonds of Rs. 10.000/- (ten thousand) with two sureties of the like amount each and they doing so, be released on bail.

6. This case has brought before me a peculiar practice, followed by the committing courts while committing the case to the Court of Session. It is stated that the Committing Courts, while committing the case, do not fix any date of appearance of the accused persons and it is the Sessions Court where the case is committed for trial, take steps for appearance of the accused persons by issuing summons, bailable warrants of arrest and non-bailable warrants of arrest.

7. It is common knowledge that this had unnecessarily burdened the Sessions Court and its offices and hence, I had requested the learned Advocate General to enlighten me as to whether there is any legal impediment in the way of the Committing Courts in fixing the date of appearance of the accused before the Session Court, while committing the case. The learned Advocate General very emphatically submitted that the Committing Court, while committing the case to the Court of Session, can fix the date of appearance of the accused persons and no law prohibits that.

8. However, to put the record straight, Mr. Singh points out that in view of the judgement of the Supreme Court in the case of Free Legal Aid Committee, Jamshedpur v. State of Bihar : 1982 CriLJ1943 , such a course is not open.

9. I have given my most anxious consideration to the contentions aforesaid and I am entirely in agreement with the stand of the learned Advocate General that there is no legal impediment in the way of the Committing Court to fix the date of appearance of the accused persons while committing the case to the Court of Session. In fact, the practice of not fixing the date of appearance by the

committing court has done more harm than good to the system. Section 209 of the Code of Criminal Procedure, hereinafter referred to as the Code, provides for commitment of the case to the Court of Session when offence is triable exclusively by it. Same reads as follows:

209. Commitment of case to Court of Session when offence is triable exclusively by it.- When in a case instituted on a police report or otherwise. the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall

(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

10. From a plain reading of Section 209 of the Code, it is evident that the Magistrate can commit the case to the Court of Session when the accused appears or is brought before him. Thus, the order for commitment of the case to Court of Session, can be passed only when the accused appears or is brought before the learned Magistrate and in that situation, I am of the opinion that for smooth dispensation of justice, the accused must be told the date on which he has to appear before the Court of Session. Very concept that inferior court can not fix the date of appearance of an accused before the superior court does not appeal to me at all. I do not know from where this concept had emerged but it is high-time that to avoid derailment of the criminal justice system, this be shed off. It is common knowledge that a large number of cases are pending before the Court of

Sessions for appearance of the accused persons. The practice as followed by the Committing Courts presently of not fixing the date of appearance of the accused has done serious harm to the system. Today, it has no relevance at all.

11. It is vaguely suggested that this practice started after the judgement of the Supreme Court in the case of Free Legal Aid Committee, Jamshedpur (supra) which, according to Mr. Singh, prohibits the Committing Courts to fix the date of appearance of the accused before the Court of Session.

12. As the entire practice is purportedly on the strength of the order of the Supreme Court in the case referred to above, I consider it apt to reproduce the same in extenso.

2.- The first interim direction sought by Mr. Sibal is that when an accused is released on bail, he should not be required to appear in court until the charge-sheet is filed and process issued by the Court. Mr. Sibal states that today what happens in many of the Magistrates' Courts in Bihar is that the accused is required to appear before the Court every fourteen days even though he is on bail and this causes considerable harassment to the accused. He submits and in our opinion rightly that this is not required by law, and Mr. K.G. Bhagat, learned advocate appearing on behalf of the State of Bihar, fairly concedes that law does not require that an accused on bail need appear before the Court before the charge-sheet is filed and process issued by the Court. We, therefore, direct that whenever an accused is released on bail, he need not be required to appear before the Court until the charge-sheet is filed and the process is issued by the court. There is also another difficulty pointed out by Mr Sibal and it is that in cases triable by the Court of Session, the Practice followed is that when an accused is released on bail by the Magistrate, the bail is granted to him only during the pendency of the inquiry before the Magistrate. With the result that when the case is committed to the Court of Session, he is rearrested and brought before the Court of Session where he has to apply once again for fresh bail. This causes considerable inconvenience to the accused without any corresponding advantage so far as the administration of criminal justice is concerned. This situation can however easily be avoided because there is a provision in Section 441 Sub-section (3) of the Cr.P.C. under

which bail can be granted to an accused so as to bind him to appear before the Court of Session, in which event, on committal, he would not have to be re-arrested and brought before the Court of Session. It is also clear from S.209, cl.(b) of the Cr.P.C. that the Magistrate has discretion to release the accused on bail 'during and until completion of trial' even in cases where the offence is triable by the Court of Session. We, therefore, feel that it would avoid hardship to an accused if the Magistrate, while releasing the accused on bail, requires execution of a bond with or without surety, as the case may be, binding the accused not only to appear as and when required before him but also to appear when called upon in the Court of Session. Mr. K.G. Bhagat on behalf of the State of Bihar also agrees that this is a procedure which can be legitimately followed by the Magistrates. We hope and trust that hereafter this procedure will be followed by the Magistrates unless there are any particular reasons for not doing so.

(Underlining mine)

13. In the aforesaid case, the Supreme Court was faced with a practice prevailing in the courts of the Magistrates in the State where an accused released on bail is required to appear before it even during the pendency of the investigation. Said practice did not find favour with the Supreme Court and it directed that whenever an accused is released on bail, he need not be required to appear before the court until the charge sheet is filed and the process is issued by it. Another practice which did not find favour with the Supreme Court was the practice of allowing the accused on bail during the pendency of the inquiry before him. With the result, that when the case is committed to the Court of Session, he is re-arrested and brought before the Court of Session where he has to apply once again for fresh bail. The Supreme Court finding the practice unjust, observed that the Magistrate, while releasing the accused on bail, require the accused not only to appear as and when required before him, but also to appear before the Sessions Judge. The direction by the committing court to the accused fixing a date of appearance shall in no way dilute this direction of the Supreme Court and in fact, an accused released on bail, shall continue to be so, and only rider would be that he appears before the Court of Session on the date fixed by the Committing Court.

14. It is relevant here to state that at the time of commitment of the case to the Court of Session, accused persons are obliged to appear before the learned Magistrate and only in their presence, the case can be committed to the Court of Session. Hence, it shall be in the interest of both the accused and the administration of justice that the accused must be told about the date of appearance before the Court of Session. It is worthwhile mentioning that during the course of investigation and till the submission of the charge sheet, accused released on bail is not obliged to appear before the Magistrate but at the time when the case is posted before the Magistrate for commitment, accused has no option than to be present at that point of time. I do not find any observation in the case of Free Legal Aid Committee (supra) which in any way, suggests that at the time of commitment, the Magistrate can not fix the date of appearance of the accused and if does so it shall be in the teeth of any observation made in the said case.

15. Accordingly, I direct all the Magistrates exercising the power of the Committing Court to fix the date of appearance of the accused before the Court of Session while committing the case. The Committing Courts shall ensure that while committing the cases to the Court of Session, records are transmitted well in advance. Courts of Session may be on account of pendency of cases not able to take up the cases on the date fixed, in order to avoid undue hardship to the accused may allow representation liberally.

16. Let this order be forwarded to all the District and Sessions Judges for onward communication and compliance

17. In the result, the application is allowed with the direction aforesaid.