

Ganapati and ors. Vs. the State of Mysore

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Court : Karnataka

Decided On : Mar-19-1971

Reported in : 1972CriLJ417

Judge : M. Santhosh, J.

Appellant : Ganapati and ors.

Respondent : The State of Mysore

Judgement :

ORDER

M. Santhosh, J.

1. The five petitioners before this Court are accused in the court of the J. M. F. C., at Alland. A charge sheet was filed by the Police Norona against the petitioners before the said Magistrate alleging that they had committed offences under Sections 147. 148. 149. 447 and 307 I. P. C. On 28-10-1970 all these petitioners were produced before the learned Magistrate and he released all the petitioners on bail and thereafter posted the case for hearing to 9-11-1970. On 9-11-1970. all the five petitioners appeared before the court and thereafter the case, as shown in the order sheet was adjourned to 19-11-1970-Later on the very day i. e. 9-11-1970. the learned Magistrate passed the impugned order which reads as follows:

Heard in open court. Perused the affidavits and records. Bail cancelled. Issue non-bailable warrant to accused. Call on 17/11.

Sd/- J. M. F. C.

This order dated 9-11-1970 passed by the learned Magistrate is challenged in this revision petition.

2. Sri Santhosh Hegde, the learned Counsel appearing on behalf of the petitioners has contended that it is not open to the learned Magistrate to take cognizance of any application filed by a private person and take action against the accused on the strength of it, when the charge sheet against the accused has been filed by the police. It is also pointed out that the learned Magistrate having once granted bail to the accused, cannot cancel bail, behind the back of the accused without hearing them or giving them opportunity of being heard. The accused had appeared in court on 9-11-1970 and after the case had been adjourned to 19-11-1970, the learned Magistrate subsequently on the same day on an application said to have been filed by the person who had given a complaint to the police, cancelled the order of bail without hearing the accused behind their back and issued non-bailable warrant.

3. There is force in the contention of the learned Counsel. The learned Magistrate seems to have acted in an extraordinary manner. The order sheet discloses that on 9-11-1970, the petitioners-accused who had been released on bail were present in court and the case was adjourned to 19-11-1970. Subsequently, on the same day on an application given on behalf of the complainant, the learned Magistrate without notice to the accused and behind their back passed the impugned order cancelling the bail granted to the petitioner-accused. Not only did he cancel the bail -granted to the petitioners-accused but he also issued non-bailable warrants against the accused who had appeared in court on the very same day. Another peculiar feature of this case is that though he had adjourned the case to 19-11-1970, the learned Magistrate seems to have advanced the case and posted it to 17-11-1970. The impugned order passed by the learned Magistrate cannot at all be justified. Once the police had filed a charge sheet in the case, the Magistrate was not at all justified in entertaining any petition filed on behalf of the

private complainant and that too acting upon it. behind the back of the accused and cancelling the bail granted to the petitioners-accused.

4. The learned Magistrate has failed to act in judicial manner. I have therefore no hesitation in setting aside the impugned order passed by the learned Magistrate.

5. In the result, the revision petition is allowed and the impugned order dated 9-11-1970 passed by the learned Magistrate. Alland. in C. C. No. 285 of 1970 cancelling the bail granted to the petitioners-accused is set aside.

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