

A. Trinath Patro Vs. the State

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Court : Orissa

Decided On : Nov-26-1992

Reported in : 1993(I)OLR180

Judge : L. Rath, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 17 and 20; Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1989 - Sections 37; Excise Act - Sections 47; Opium Act - Sections 9; Code of Criminal Procedure (CrPC)

Appeal No. : Crl. Misc. Case No. 1523 of 1992

Appellant : A. Trinath Patro

Respondent : The State

Advocate for Def. : S.S. Rao, Addl. Govt. Adv.

Advocate for Pet/Ap. : Manoj Misra, Adv.

Disposition : Application allowed

Judgement :

L. Rath, J.

1. The grievance raised by the petitioner in this case is the legality of an order passed by the JMFC, Digapahandi on 1-8-1991 cancelling the bail earlier granted to him in the prosecution faced by him Under Section 9(a) of the Opium Act and Under Section 47(a) of the Bihar and Orissa Excise Act. The petitioner faced the prosecution because of possession of 1300 gms. of opium and 1 kg, of Ganja which were seized from him. The learned Magistrate was of the view that since the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (briefly, 'the Act') makes provision in Section 82 that anything done or any action taken or purported to have been done or taken under any of the enactments repealed shall be deemed to have been taken under the Act, the offence committed By the petitioner/falls Under Sections 17 and 20(b) of the Act where the punishment is not less than ten years of rigorous imprisonment which may extend to twenty years and also liability to fine not less than one lakh rupees which may extend to two lakh rupees, the case had ceased to be within his jurisdiction to try being exclusively triable by the Court of Session and that as such he had no authority to allow the petitioner to continue on bail. Being of that view he cancelled the bail. The petitioner carried a revision before the Second Additional Sessions Judge, Ganjam where being unsuccessful he has approached this Court invoking the inherent powers Under Section 482, Cr PC.

2. Notice had been given for admission and final disposal. Facts, as accepted by the parties, are that the date of occurrence is 8-4- 1987 and on the next day the petitioner was produced in the Court and was released on bail. The charge-sheet against him was submitted on 31-8-1987 Under Section 47(a) of the Bihar & Orissa Excise Act and Section 9(a) of the Opium Act. The Court framed charge against him on 22-7-1988. The trial commenced and on 17-1-1989 PWs 1 and 2 were examined, cross-examined and were discharged.

3. There is no dispute that Section 37 of the Act, as it stands, became effective on 29-5-1989. That section puts an embargo on the power of the Court to enlarge on bail a person, accused of offence under the Act where the offence is punishable for a term of imprisonment of five years or more, unless inter alia the Court is of the opinion that the person is not guilty of the offence and that if released on bail, he is not likely to commit any offence. It is the submission of Mr. Misra that the

provision having come into force after the offence has been committed, it cannot be taken recourse to cancel the bail already granted.

4. A perusal of the order of the learned Magistrate does not show him to have cancelled the bail applying the provisions of Section 37 of the Act. He was on the other hand of the view that since Section 82(1) & (2) of the Act makes provision for saving of actions taken under the repealed Act, the offence committed by the petitioner would be one Under Sections 17 and 20(b) of the Act and as such he had no jurisdiction to try the offence, for which reason he would also not have the power to continue the petitioner on bail earlier granted to him. It has hence to be seen as to whether the conclusion reached by the learned Magistrate is correct.

5. The reasons adopted by the Teamed Magistrate to cancel the bail are exceptionable.. Sections 36, 36-A, 36-B, 36-C, 36-D and 37 were amended and added to the Act by Act 2 of 1989 with effect from 29-5-1989. The provision that all offences under the Act are to be tried by the Special Court, the constitution of the Special Court and the procedure to be followed by it were provided for under the amended provisions. Prior to it, the offences under the Act were to be tried by the Courts which had jurisdiction to try the cases under the Code of Criminal Procedure in accordance with the extent of sentence impossible. For such reason, offences Under Sections 17 and 20 (b) of the Act which the petitioner is alleged to have committed were triable by the Court of Session. The learned Magistrate is correct to the extent that since the Act itself had come into force in 1985, the offence committed by the petitioner fell Under Sections 17 and 20(b) of the Act and he is to be charged under those provisions and not Under Section 9(a) of the Opium Act and Section 47(a) of the Bihar & Orissa Excise Act. But all the same prior to the Amending Act 2 of 1989 all such offences were to be tried by the Court of Session in accordance with the procedure under the Code of Criminal Procedure and because of that the learned Magistrate before whom the accused was produced had the authority to grant bail acting under the provisions of Section 437 of the Code of Criminal Procedure. The bar regarding grant of bail as contemplated Under Section 37 of the Act only came on 29-5-1989. It hence has to be held, as is also fairly conceded by the learned Additional Government Advocate, that at the time the petitioner was enlarged on bail the learned

Magistrate had not acted beyond his jurisdiction and that there is no illegality in continuing the bail validly granted earlier. It is however submitted by him that the offences committed being ones Under Sections 17 and 20 of the Act, the petitioner should not have been enlarged on bail and that for such reason the cancellation of bail should not be interfered with.

6. The submission is hardly acceptable as in cancelling the bail the learned Magistrate was not persuaded for such reason but merely because by the fact that the case being one exclusively triable by the Court of Session, he had lost jurisdiction in the case and as such was not authorised to continue the accused on bail in a case not triable by him. There has been no move made by the State also Under Section 439(2) Cr PC for cancellation of bail. Hence in the particular facts of the case, the power Under Section 437(5) Cr PC was not exercisable.

7. In that view of the matter, the application is allowed, the order cancelling the bail of the petitioner as impugned in this case is set aside, and the petitioner is directed to continue on the bail as before.