

Debasis Mohapatra Vs. State of Orissa

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Court : Orissa

Decided On : Jun-25-1998

Reported in : 1999CriLJ1084; 1998(II)OLR342

Judge : P.K. Misra, J.

Acts : Indian Penal Code (IPC) - Sections 408

Appeal No. : Criminal Miscellaneous Case No. 2505 of 1998

Appellant : Debasis Mohapatra

Respondent : State of Orissa

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : Suraj Mohanty, Adv.

Judgement :

ORDER

P.K. Misra, J.

1. After this bail application was heard and orders were reserved, the counsel for the petitioner mentioned the matter and the matter was listed under the heading 'To be Mentioned'. The counsel for the petitioner submitted that the bail application had become infructuous as the petitioner had been taken into custody by Police

from Gujarat and produced before the concerned Magistrate at Rajkot City. The aforesaid submission of the counsel for the petitioner is correct and the bail application is liable to be disposed of as infructuous. However, in view of the question of law involved in the matter, it is appropriate to decide the question of law raised in the petition.

2. It is alleged that the petitioner had committed an offence under Section 408, Indian Penal Code. The case was registered as Malviya P.S. Case No. 149/98 in the State of Gujarat. It is alleged that the said offence had been committed by the petitioner while he was serving in a private Company in Rajkot City. It is further alleged that police officials of Malaviya P.S. arrested the petitioner with the assistance of local police at Patkura and the petitioner was produced in the Court of the S.D.J.M., Kendrapara. The bail application of the petitioner was rejected by the S.D.J.M., Kendrapara. Thereafter, the petitioner filed bail application before the Additional Sessions Judge, Kendrapara, which was rejected on the ground that the alleged offence had been committed in Gujarat and, therefore, the Additional Sessions Judge at Kendrapara had no jurisdiction to release the petitioner on bail. Subsequently, a fresh application for bail was filed by the petitioner before the very same Additional Sessions Judge, Kendrapara, who again rejected the bail application stating that the earlier bail application had been rejected. Thereafter the petitioner filed the present bail application in this Court.

3. After the matter was heard and orders were reserved, the counsel for the petitioner was required to produce a copy of the earlier order passed by the Additional Sessions Judge. On perusal of the earlier order, it is found that the bail application was rejected only on the ground that the alleged offence had been committed in Gujarat and as such the Additional Sessions Judge, Kendrapara, had no jurisdiction. This observation of the Additional Sessions Judge, Kendrapara, cannot be considered to be correct. Even though the alleged offence was committed outside the State, the petitioner was arrested in Orissa and was produced before the Magistrate at Kendrapara. It seems that the petitioner was not arrested pursuant to any warrant issued by any Court beyond the jurisdiction of Orissa. In such a case, the warrant itself would have shown the nature of allegations as well as the substance of the materials, so that the application for

bail, if any, by the arrested person can be dealt with by the Magistrate before whom the accused is produced. In such cases if the concerned Magistrate is prima facie satisfied that bail should be granted, the normal procedure is to grant bail for an interim period calling upon the accused to appear before the proper Court as indicated in the warrant itself. If accused would have been arrested pursuant to such warrant and Magistrate could have dealt with the matter in such manner, there cannot be any logic in stating that where an accused person is arrested by the police, even without warrant, the Magistrate or the higher Court will have no jurisdiction to deal with the accused person merely because the offence was alleged to have been committed beyond the jurisdiction of the Court. In such cases also the Magistrate has ample jurisdiction to consider the question of bail. Of course, such bail, if granted, must be for a temporary period to enable the accused person to appear before the proper Court within a fixed period and it would not be open to the Magistrate to reject the bail application by simply stating that the alleged offence had been committed beyond the jurisdiction of the Magistrate. In the present case, the Additional Sessions Judge should have considered the matter from that angle. However, as already indicated, the application itself has become infructuous, as the petitioner during the pendency of the bail application in this Court had been taken into custody and produced before the proper Court in Gujarat.

4. Subject to aforesaid observation, the Criminal Misc. Case is disposed of as infructuous.