

Arun Kumar Singh Vs. State

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Court : Delhi

Decided On : Sep-13-1999

Reported in : 1999VAD(Delhi)716; 81(1999)DLT622

Judge : M.S.A. Siddiqui, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 81 and 438; [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 498-A

Appeal No. : Crl. M. No. 7716/99 in Cr. M. (M) 1875/99

Appellant : Arun Kumar Singh

Respondent : State

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : P.K. Dey, Ad

Judgement :

ORDER

M.S.A. Siddiqui, J.

1. A Motion has been moved before this Court by the State to quash the order dated 23.7.1999 passed by the Additional Sessions Judge, Delhi.

2. The backdrop of the above order can be summarised thus: On the FIR No.259/99 lodged by the petitioner's wife Smt. Smita Chaudhry, a case under Sections 498-A/406 IPC was registered against the petitioner. In the course of the investigation that followed, the petitioner was arrested by the Delhi Police in Moradabad and was produced on the same day before the Chief Judicial Magistrate for remand. At the time of arrest, the petitioner was admitted in the Hospital at Moradabad. The petitioner filed an application before the Chief Judicial Magistrate, Moradabad for grant of bail. By the order dated 12.5.1999, the Chief Judicial Magistrate granted bail to the petitioner under Section 81 Cr. P.C. with a direction to appear before the Court concerned after discharge from the hospital. On 25.6.1999, the petitioner filed a petition before this Court for grant of bail under Section 438 Cr.P.C. Thereafter the petitioner filed an amended petition (Crl. M. No. 4798/99) in terms of the order dated 28.6.1999 for a direction to the concerned Court to allow the petitioner to remain on bail granted by the Chief Judicial Magistrate, Moradabad. By the order dated 27.7.1999, this Court rejected the petition filed on behalf of the petitioner on the ground that the CJM, Moradabad had no Jurisdiction to admit the petitioner on bail under Section 81 of the Code of Criminal Procedure. During pendency of the said petition before this Court, i.e., on 22.7.1999, the petitioner filed an application under Section 438 Cr. P.C. before the Addl. Sessions Judge for grant of anticipatory bail till disposal of the said petition by this Court. By the order dated 23.7.1999, the learned Addl. Sessions Judge directed the petitioner to appear before the CAW (Cell) Sarai Rohilla on 16.8.1999. restrained the police from arresting the petitioner and posted the application for hearing on 18.8.1999. Blessed by the said restraint order against his arrest, the petitioner appeared before the Metropolitan Magistrate, Delhi on 27.7.1999. and moved some application. By the order dated 28.7.1999. learned Metropolitan Magistrate directed the petitioner to comply with the order dated 23.7.1999 passed by the Addl. Sessions Judge. On 18.8.1999, when the application under Section 438 Cr.P.C. came up for hearing before the Addl. Sessions Judge, he again adjourned the matter for 10.9.1999 restraining the police from arresting the petitioner till the next date date of hearing.

3. After hearing learned counsel for the parties, I am constrained to observe that the order passed by the learned Additional Sessions Judge entertaining the petition

under Section 438 Cr.P.C. is, on the face of it, erroneous, and to say the least, unfortunate. It was known to the Additional Sessions Judge that the matter pertaining to the petitioner's bail was subjudice before this Court. In such a situation, instead of directing the petitioner to approach this Court for resorting to the steps contemplated by law, the learned Additional Sessions Judge passed the order restraining the police from arresting the petitioner. I mean no disrespect to the learned Addl. Sessions Judge in emphasizing the necessity for self imposed discipline in such matters in obeisance to such weighty institutional considerations like the need to main decorum and comity. The better wisdom of the Court below must yield to the higher wisdom of the court above. That is the strength of the hierarchical judicial system. In the hierarchical system of Courts which exists in our country, it is necessary for each lower tier to avoid institutional embarrassment. However, I am constrained to observe that in the present case, the principles of judicial discipline have been respected in their breach.

4. As noticed earlier, the learned ASJ has also restrained the police from arresting the petitioner. It is significant to mention that in the scheme of the provision of Section 438 Cr. P.C. there is no set or stage at which a Sessions Judge can pass an order restraining arrest of the applicant. In other words, Section 438 Cr.P.C. in its entirety does not give any jurisdiction to the Court of Sessions to restrain the police from arresting the applicant. By 'jurisdiction' is meant the extent of the power which is conferred upon a Court by the statute to try or entertain a proceeding, its exercise cannot be enlarged because an extra-ordinary situation requires the Court to exercise it. That being so, the impugned order of the learned Addl. Sessions Judge restraining the police from arresting the petitioner cannot be sustained in law. That is a manifest illegality which stares the Court in the face and it compels me to interfere in the matter in exercise of inherent jurisdiction under Section 482 Cr. P.C.

5. For the foregoing reasons, the impugned order dated 23.7.1999 is quashed to the extent it restrains the police from arresting the petitioner. The Addl. Sessions Judge is directed to dispose of the petition filed by the petitioner under Section 438 Cr. P.C. in accordance with law. The petition is disposed of accordingly. Registrar of this Court is directed to send a copy of the order to the Sessions Judge/Addl.

Sessions Judge of the State for their guidance.

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