

Sandeep Kohli Vs. State

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Court : Delhi

Decided On : Feb-01-1996

Reported in : 1996IAD(Delhi)813; 61(1996)DLT720; 1996(36)DRJ471

Judge : Vijender Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Miscellaneous Appeal Nos. 820, 3245 and 3246 of 1995

Appellant : Sandeep Kohli

Respondent : State

Advocate for Pet/Ap. : R.D. Mehra,; Satish Tamta,; Sanjay Parikh and;

Judgement :

Vijender Jain, J.

(1) By this petition (Crl.M.3245/95) under Section 482/483 of the Code of Criminal Procedure (in short 'Cr.P.C.') read with Article 227 of the Constitution of India, the petitioners/applicants inter alias prayed for quashing of orders dated 9th June, 1995 and 8th August, 1995 passed by the Metropolitan Magistrate, New Delhi.

(2) This petition came up for hearing before my learned brother A K Srivastava, J., who listed this matter for appropriate orders before Hon'ble the Chief Justice to be

listed before me as the Criminal Miscellaneous (Main) No-820/95 filed under Section 438 of the Cr.P.C. was disposed of by me vide order dated 8th May, 1995, that is how this petition (Crl.M-3245/95) was listed before me.

(3) MR.R D Mehra, learned counsel appearing for the petitioners, has contended that after passing of the order dated 8th May, 1995 by this Court, orders passed by the Metropolitan Magistrate dated 9th June, 1995 and 8th August, 1995 could not have been passed. By impugned order dated 8th August, 1995, Metropolitan Magistrate came to the conclusion that there existed no bail order in view of the revocation of the bail order by the Division Bench of this Court dated 13th March, 1995 and no bail orders were operating in favor of the accused persons. Mr.Mehra has contended that this Court vide its order dated 8th May, 1995 has detailed the factual position, which inter alias incorporated that the petitioners filed a writ petition under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C., which was listed as Criminal Writ No.288/94. On 19th April, 1994 the Division Bench of this Court stayed the arrest of the petitioners and thereafter on 13th March, 1995 interim order passed by the Division Bench was vacated. However, Division Bench on 17th February, 1995, granted anticipatory bail to the petitioner and it was further ordered by the Division Bench that in the event of the their arrest, they shall be released on bail on furnishing personal bonds in the sum of Rs. 5,000 with one surety in the like amount to the satisfaction of the Arresting Officer and subject to condition that the petitioners join the investigation as and when called upon to do so. This order was recalled by the Division Bench on 13th March, 1995 and thereafter the petitioners withdrew the petition.

(4) From the order passed by this Court on 8th May, 1995, Mr.Mehra has contended that the Metropolitan Magistrate has committed a grave irregularity, Magistrate formed an opinion without hearing the petitioners and not taking into consideration High Court order dated 8th May, 1995. Metropolitan Magistrate vide impugned order dated 9th June, 1995 held that petitioners were not on bail, said Finding was manifestly perverse.

(5) Thereafter it seems that another application was moved by the petitioners herein before the Metropolitan Magistrate praying that the petitioners were on bail

pursuant to the orders of anticipatory bail passed by the Division Bench of the High Court of Delhi and their bail having not been cancelled, a valuable right had accrued in their favor and, therefore, they were on bail. Mr.Mehra has further contended that vide order dated 8th May, 1995 High Court has taken the totality of the facts into consideration and the fact that the orders of the Division Bench granting bail were executed, bail bonds were filed, same were also attached with the charge-sheet, therefore, the order of the Metropolitan Magistrate holding that no bail order exists, has to be set aside.

(6) On the other hand, learned counsel for respondent No.2, Mr.Parikh, has contended that the present application is not maintainable as the main petition filed by the petitioners under Section 438 of the Cr.P.C. was finally disposed of on 8th May, 1995 and this Court cannot modify, review or alter its order dated 8th May, 1995. Another argument advanced by the learned counsel for the respondent No.2 is that even if an error was committed by the Metropolitan Magistrate by passing the impugned orders dated 9th June, 1995 and 8th August, 1995, the petitioners could have availed of other remedies provided pursuant to the provisions of Sections 397 and 401 of the Cr.P.C. In support of his submissions, he has cited *State of Uttar Pradesh v. Shri Brahm Datt Sharma and anr.* : [1987]2SCR444 and *Mosst. Simrikhia v. Smt. Dolley Mukherjee alias Smt. Chabbi Mukherjee & anr.* . Mr.Parikh has contended that orders of Metropolitan Magistrate were unassailable as bail order, pursuant to which interim bail granted by Division Bench of this Court on 17th February, 1995, was revoked on 13th March, 1995 and, therefore, there was no option for Metropolitan Magistrate but to hold that no bail order was in existence when the charge-sheet was filed and matter was listed before the Metropolitan Magistrate.

(7) Repelling the arguments of respondent Mr.Mehra, has contended that at the first instance order disposing of or allowing anticipatory bail is neither a judgment nor a final order. In support of his contentions, he has cited *Usmanbhai Dawoodbhai Memon and ors. v. State of Gujarat* : 1988 CriLJ938 and has contended that the orders made on anticipatory bail or bail application are not final orders but are interlocutory orders. To the similar effect, he has also cited the case of *Balasundara Pavalar* : AIR1951 Mad7 . In any event, Mr.Mehra has contended

that he has not moved an application for review or modification of the earlier order but has filed a separate petition in the Registry under Section 482 of the Cr.P.C. but as the effect of the order made on 8th May, 1995 was to be considered, it was listed before Hon'ble Mr. Justice A K Srivastava but the Hon'ble Judge after hearing the matter thought it appropriate to list this petition before this Court and, therefore, the contention of learned counsel for respondent No.2 that the present petition under Section 482 of the Cr.P.C. is not maintainable is totally erroneous.

(8) I have heard the arguments advanced by the learned counsel appearing for both the parties at length. Let me first deal with the submission of teamed counsel for the respondent No.2 that this application is not maintainable as no review or modification of any judgment or Final order is permissible on account of complete bar under Section 362 of the Cr.P.C. I am afraid that this submission of the learned counsel for the respondent is wholly untenable in the facts of this case. The petition before me is not a petition for review or modification of the order dated 8th May, 1995. The present petition is an independent petition Filed under Section 482 of the Cr.P.C. read with Article 227 of the Constitution of India. This petition (CrI.M.3245/95) was filed in Criminal Miscellaneous (Main) N 0.820195. On filing, this petition was listed before brother A.K.Srivastava, J. As the order dated 8th May, 1995 had a bearing upon the present petition, this petition was placed before me after obtaining orders from Hon'ble the Chief Justice, therefore, Section 362 of the Cr.P.C. cannot come to the aid of the respondent. In any event of the matter, the orders made on the application for anticipatory bail or bail are neither judgment nor final order as they are merely interlocutory orders.

(9) Another leg of the argument of the learned counsel for the respondent No.2 that this Court has no jurisdiction to hear the petition under Section 482 of the Cr.P.C. as remedy lies either by invoking Section 397 or Section 401 of the Code of Criminal Procedure also lack force. Provisions of Section 397 of the Cr.P.C. deals with the revisional jurisdiction of High Court or Sessions Court and Section 401 of the Cr.P.C. deals with exclusive revisional powers of the High Court. But in the facts and circumstances of this case where an order of this Court was passed taking into consideration the factual position with regard to the passing of the bail order, execution of the bail order and revocation of the bail orders subsequently

Metropolitan Magistrate has returned a finding contrary to the High Court order without understanding its effect and true import, petitioners were fully justified in invoking the inherent power of the Code vested in this Court pursuant to Section 482 of the Cr.P.C. as well as Article 227 of the Constitution of India. Filing of any other proceedings pursuant to Sec.397 or Sec-401 Cr.P.C. would have amounted to abuse of the process of law. I recall some facts leading to filing of the present petition. The petitioners filed a petition for anticipatory bail under Section 438 of the Cr.P.C., which was listed as Criminal Miscellaneous (Main) No. 820/95 this petition was disposed of by me on 8.5.1995. Counsel for respondent No.2, Mr. Sanjay Parikh, even at that stage had argued that there was no bail order in favor of the petitioners as earlier bail orders, in view of the Division Bench order, were subsequently revoked. However, Standing Counsel for the State then argued that pursuant to the orders passed by the Division Bench of this Court, the petitioners were released on bail on 12th March, 1995. Letter from the office of Additional Commissioner of Police (Southern Range) dated 17th April, 1995 addressed to the complainant was also shown to the Court, it admitted the position that the petitioners were arrested on 12th March, 1995 and released on bail in view of the orders of the Division Bench of this Court dated 17th February, 1995 passed in Criminal Writ No-288/94. Keeping in view these circumstances, the order in Criminal Miscellaneous (Main) No.820/95 was made on 8th May, 1995, which I reproduce as under

'I have heard the arguments advanced by the learned counsel for the parties at length. It would be futile for this Court to embark upon an enquiry as to whether the order granting bail was in force at the time of the arrest of the petitioners as the petitioners have already been arrested and released on bail pursuant to the orders passed by the Division Bench of this Court. It is sufficient for the Court to observe that the petitioners were granted bail in anticipation of their arrest that fact has become a fate accompli. This Court in view of the letter of Additional Commissioner of Police, as stated above, and the statement of the Standing Counsel for the State would not go into the other questions raised by the learned counsel for the petitioners. The petitioners having availed of the benefit of anticipatory bail, cannot maintain this petition. This petition has become infructuous. Dismissed as infructuous.'

(10) I fail to understand as to how the Metropolitan Magistrate held that there was no bail order in spite of the fact that this Court had held in the order dated 8th May, 1995 to the following effect

'IT is sufficient for the Court to observe that the petitioners were granted bail in anticipation of their arrest that fact has become a fate accompli.'

(11) There is force in the arguments of the learned counsel for the petitioners that had the Court not come to this conclusion that bail order has been executed, the petitioners would have opposed the dismissal of their petition under Section 438 of the Cr.P.C. on the ground of same becoming infructuous. It is also correct that on 13th March, 1995 the Division Bench revoked its earlier orders granting anticipatory bail to the petitioners, but that revocation was not put in effect, bail was already granted to the petitioners on 12th March, 1995 pursuant to the orders passed by the Division Bench itself. Once bail was granted to the petitioners, if their bail were to be cancelled, then notice to the petitioners for cancellation of bail ought to have been issued. All formalities regarding grant of bail were completed that is how respondent no.2 was informed by the Addl.Commissioner of Police what I have already stated hereinabove. Standing Counsel for the State had taken similar stand before me. Procedure has taken its full circle, therefore, the petitioners cannot be put to a disadvantage because this Court had interpreted the order of the Division Bench as a fate accompli as the petitioners had been released on bail. Their application for anticipatory bail was dismissed being infructuous. Metropolitan Magistrate has embarked upon a domain which was considered and commented by this Court, the order made it explicit taking that as a fact that there existed bail order, the anticipatory bail application was dismissed as infructuous. That order was passed in the presence of respondent No.2. If that would not have been the position, the petitioners could have pursued their application for anticipatory bail. Order dated 8th May, 1995 was passed in the presence of the Standing Counsel for the State as well as the counsel for respondent No.2 and it was understood to be so by all the parties and that is why the Court has interpreted it that bail order was in force. Once this Court has interpreted the same in a manner, it is unfortunate that the Metropolitan Magistrate has dealt on this factual part of the order of the High Court.

(12) In the circumstances, I allow the petition. Orders dated 9.6.95 and 8.8.95 passed by Metropolitan Magistrate are hereby quashed.

(13) Petition is disposed of accordingly.

(14) Parties are directed to appear before the Metropolitan Magistrate on 12th March, 1996 and thereafter the Metropolitan Magistrate will proceed in accordance with law.

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