

Vinod Kumar and ors. Vs. State and ors.

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Court : Delhi

Decided On : Apr-10-1997

Reported in : 1997IIIAD(Delhi)965; 1997(3)Crimes94; 67(1997)DLT105

Judge : J.K. Mehra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 340; [Indian Penal Code \(IPC\), 1860](#) - Sections 406

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 131 of 1997

Appellant : Vinod Kumar and ors.

Respondent : State and ors.

Advocate for Pet/Ap. : K.K. Sud,; Ramna Vohra,; P.K. Dey and;

Judgement :

J.K. Mehra, J.

(1) I have heard the parties. In the present case, the challenge to the impugned order is only that having once dismissed the application for cancellation of bail, the Trial Court was not left with the jurisdiction, review its order and to restore the said application. The Counsel submits, that the reasons for restoration are also erroneous. The reason given in the order mainly is that in order to adjudicate upon the application under Section 340, Criminal Procedure Code, the application for

cancellation of bail should be kept alive. This reason does not appear to be well founded in view of the law laid down by Hon'ble Supreme Court in the case of Amuanullah Quareshi v. Union of India, : 1992 CriLJ2781 , wherein the Hon'ble Supreme Court with approval has quoted its observations in the case of K. Karunakaran v. T.V. Eachara Worrier, reported as (1978) 2 Scc 18, which read as under:

'AT an enquiry held by the Court under Section 304(1), Criminal Procedure Code irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action. The two pre-conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193,IPC.'

(2) Nothing has been pointed out to me from the Code of Criminal Procedure which shows that the Criminal Court after having disposed of any particular application is still left with power to revive the petition by reviewing its earlier order of dismissal. Criminal Court unlike the Civil Court has no power of review. In the circumstances, I am of the view that the impugned order was without jurisdiction and cannot be sustained. The right of party to move a fresh application for cancellation of bail is not disputed by Counsel for petitioner. For the aforesaid reasons, the impugned order is set aside. This is without prejudice to the proceedings under Section 340, Criminal Procedure Code which can go on.

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