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Dewan and ors. Vs. State

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Court : Rajasthan

Decided On : Apr-29-1970

Reported in : AIR1971Raj77; 1971CriLJ506; 1970(3)WLN774

Judge : Kan Singh, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 435, 438 and 497(5)

Appeal No. : Criminal Revn. No. 426 of 1969

Appellant : Dewan and ors.

Respondent : State

Advocate for Def. : A.K. Mathur, Dy. Govt. Adv.

Advocate for Pet/Ap. : J.S. Saluja, Adv.

Disposition : Revision allowed

Judgement :
ORDER

Kan Singh, J.

1. This revision application before me raises a short point about the powers of the Sessions Judge under Section 497 (5), Criminal Procedure Code to cancel bail, granted by the Magistrate, before the accused persons came to be released from

custody. A few facts may be stated:

In the course of a committal inquiry against the accused petitioners for an offence under Section 302, Indian Penal Code the First Class Magistrate Dholpur ordered the release of the accused petitioners on bail on 3-11-69. It appears that before they could be so released the Additional Public Prosecutor moved the Additional Sessions Judge, Dholpur under Section 497 (5), Criminal Procedure Code to cancel the bail. The learned Additional Sessions Judge by his order dated 14-11-1969 cancelled the bail granted by the learned Magistrate and directed that the accused petitioners shall continue to remain in custody as hithertofore. It is against this order that the accused petitioners have come to this Court in revision.

2. Sub-section (5) of Section 497, Criminal Procedure Code lays down that 'a High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.' A plain reading of this sub-section shows that where a person has been released on bail under the provisions of Section. 497, Criminal Procedure Code the High Court or the Court of Session may cause that person to be arrested and he may be committed to custody. This subjection can be invoked only when the stage is reached that the person has been released in pursuance of the bail order and is a free man. The use of the expression 'release and ordering the arrest' implies that the person is not in custody. If the bail order is considered to be wrong before it has actually been carried out, then the Sessions Judge could act only under Section 435, Criminal Procedure Code and he will have to make a reference under Section 438, Criminal Procedure Code, if he were of the opinion that the bail order is wrong. While calling for the record the Sessions Judge may in an appropriate case suspend the execution of the order, but it will not be open to the learned Sessions Judge to pass a final order in the case.

The distinction has thus to be made in the two stages. Where only a bail order has been passed and the accused had not been released, the Sessions Judge could act only under Section 435, Criminal Procedure Code and if he finds that the bail order is wrong, then he will have to make a reference to this Court under Section

438, Criminal Procedure Code. On the other hand, if in pursuance of the bail order the accused have been released then it will be open to the learned Sessions Judge to exercise his powers under Section 497 (5), Criminal P. C. Learned Sessions Judge has referred to State v. Kesari Mal, AIR 1953 Madh Bha 41. In that case the Sub-Divisional Magistrate of Antari had granted anticipatory bail to one Kesari Mal who apprehended his arrest for an offence under the Essential Supplies (Temporary Powers) Act, 1946. The Sessions Judge made a reference to the High Court and the learned Judge who heard the reference observed that the reference was unnecessary, as the Sessions Judge could act under Section 497 (5), Criminal Procedure Code in the matter of cancelling the bail. The case is clearly distinguishable because in that case the accused was not in custody and was granted anticipatory bail. It could be said in the circumstances of the case that the accused had been released on bail. In the present case there was only an order for releasing the accused on bail, but he had not been actually released and, therefore the stage was not reached when the powers under Sub-section (5) of Sec. 497. Criminal Procedure Code could be invoked. The learned Sessions Judge could have dealt with the matter only under Section 435, Criminal Procedure Code and made a reference to this Court.

3. In these circumstances I hereby allow this revision application and set aside the order of the learned Additional Sessions Judge dated 14-11-69 and restore that of the learned Magistrate dated 1-11-69. I, however, leave it open to the learned Sessions Judge to exercise his revisional jurisdiction under Section 435, Criminal Procedure Code, if he is inclined to examine the correctness, legality and propriety of the bail order before the accused are released or he may act under Section 497 (5). Criminal Procedure Code after the accused are actually released in pursuance of the order of the learned Magistrate.

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