

Vijay Singh Vs. State of Rajasthan

Vijay Singh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/763880

Court : Rajasthan

Decided On : Jan-17-1990

Reported in : 1990(1)WLN1

Judge : N.C. Kochhar, J.

Appeal No. : S.B. Cr. Misc. Cancellation of Bail No. 1459 of 1989

Appellant : Vijay Singh

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

N.C. Kochhar, J.

1. Petitioner Vijai Singh has filed this application for cancellation of bail granted to respondent Banwai Lal. The facts giving rise to this application are as under: A case Under Sections 147, 148, 323 and 302, IPC was registered against the respondent and some others in Police Station, Kotwali, Alwar vide FIR No. 571 of 1988. After the respondent was arrested, he moved an application Under Section 439, Cr.PC on 16-1-1989 through Shri S,R. Bajwa, Advocate. The said application was registered as SB Criminal Miscellaneous Bail Application No. 182 of 1989 and was dismissed on merit vide order dated 27-1-1989 passed by Mrs. Kapur, J. On

5-4-1989 the petitioner moved another application Under Section 439, Cr.PC through Shri S.C. Gupta, Advocate, praying that he be released on bail. The said application was registered as SB Criminal Miscellaneous Bail Application No. 964 of 1989 and allowed vide order dated 24th April, 1989, passed by me. On 4-5-1989, the petitioner moved the present application, stating that in Bail Application No. 964 of 1989, the petitioner had concealed the fact that his earlier bail application had been dismissed and the petitioner has misguided the court by stating that the said application (No. 964 of 1989) was the first bail application. The petitioner has thus, prayed that the bail granted to the respondent vide order dated 24-4-1989 be cancelled. This application came up before me on 25-5-1989 when I had directed that notice of the application be issued to the respondent for 4-7-1989. The respondent, how ever* could not be served at his residential address and ultimately, vide order dated 28-9-1989, directions were issued for issuing of bailable warrants and notice was ordered to be issued to his surety, for 6-11-1989 and in this way, the respondent put in his appearance through Shri S.C. Gupta, Advocate, in this Court. In the reply filed in this Court on 8-12-1989, the respondent had opposed this application. It has been contended that the bail once granted can be cancelled only if the accused has tampered with the prosecution evidence or if he has misused the liberty of bail by absconding or he had again committed an offence after being released on bail, but there being no such condition, the bail could not be cancelled. It was further contended that the first bail application was moved by Shri Bajwa without any authority either from the respondent or from his son or wife or any other relation and the respondent was not in know of the fact that the first application had been moved by Shri Bajwa. It has also been stated that the petitioner has a good case for grant of bail and there is no bar to moving of the subsequent bail applications after the dismissal of the first one.

2. I have heard the learned Counsel for the parties and have also perused the record of the above said two bail applications.

Sanjay Gandhi

4. It has next been contended that the petitioner had not authorised Shri S. R. Bajwa, Advocate, to file the earlier bail application and to appear on his behalf and as such, the petitioner was not knowing that the earlier bail application had been dismissed and, therefore, the petitioner cannot be said to have played any fraud on the court by not disclosing the fact in the bail application No. 964/98

5. The record of the earlier bail application (No. 182/89) shows that the certified copy as well as the typed copy of the order dt. 13-12 88 of the learned Sessions Judge, Alwar, dismissing the bail application of the petitioner were also filed on record. Ordinarily, no Advocate would appear in a case when he has not been instructed to appear and has also been paid his fee. No reason has been brought to my notice as to why Shri Bajwa would have appeared in the earlier bail application, unless he had been properly instructed and as to why he was interested in obtaining the certified copy of the order of the learned Sessions Judge, rejecting the bail application of the petitioner, and filing the same, besides appearing for the petitioner in the earlier bail application. I, therefore, hold that the earlier bail application (No. 182 of 1989) was filed and argued by Shri Bajwa, under the instructions of the petitioner. It is further not believable that the fate of the earlier bail application would not be known to the petitioner, who would have been eager to get an order of bail. In these circumstances. I am of the view that the fact that the earlier bail application had been dismissed by Mrs. Kapoor, J. was also within the knowledge of the petitioner.

6. In exercise of the powers conferred by Section 46 of the Rajasthan High Court Ordinance, 1949 read with Article 225 of the Constitution, this Court framed the Rules known as Rules of the Rajasthan High Court of Judicature for Rajasthan, 1952 (the Rules), Rule 65 of the Rules directs that all applications to the same effect or with the same object, which have been earlier dealt by a Bench would be placed before the same Bench and when ever an application is moved by a person by whom or whose behalf such previous application was moved, the applicant would give necessary particulars of such previous application, the nature and the date of order passed thereon and the name or names of the Judge or Judges by whom such order was passed. In the second bail application (No. 964 of 1989) not only the petitioner failed to mention the fact that his earlier bail

application had been dismissed by Mrs. Kapoor, J. but a note was also recorded at the foot of the application that no such bail application had been filed in the matter previously before this Court. If the fact that earlier bail application had been dismissed by Mrs. Kapoor, J. had been mentioned in the second bail application, neither the Office would have placed the second bail application before me, nor would I have dealt with it. By specifically mentioning that no earlier bail application had been moved in the matter, the petitioner had misrepresented the fact to this Court and had practised fraud.

7. In my view, no accused persons can be allowed to take benefit of an order, which he obtained by practising fraud on the Court and, consequently, I allow this application moved by petitioner Vijai Singh and cancel the bail granted to the respondent Banwarilal vide order dated 24th April, 1989. The respondent should surrender immediately. It is made clear that because of this order, the respondent is not debarred from moving fresh bail application if so advised.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com