

**Nitin Saini Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/770514](http://sooperkanoon.com/770514)

**Court :** Rajasthan

**Decided On :** Nov-01-2007

**Reported in :** RLW2008(2)Raj936

**Judge :** K.S. Rathore, J.

**Appellant :** Nitin Saini

**Respondent :** State

**Judgement :**

**K.S. Rathore, J.**

1. The complainant-Tripti Saini moved this criminal misc. petition under Section 482 Cr.P.C. for recalling/setting aside the order dated 31.5.2007 passed by this Court in S.B. Criminal Revision Petition No. 528/2007 (Nitin Saini v. State of Rajasthan) by which the arrest warrant issued against the accused-petitioner Nitin Saini was converted into bailable warrant.

2. The brief facts of the case are that the applicant-Tripti Saini solemnized marriage with accused-petitioner on 8.12.2004 but since the date of marriage and prior to it there was constant demands of dowry on the part of the petitioner and his family members. The applicant was harassed and humiliated by the non-petitioner and his family members.

3. On 7.9.2006 the complainant lodged a FIR at Police Station - Jaipur City, Mahila Thana (South) against the petitioner and Vimla Saini, Ramesh Saini and Vinti Saini and others. On the report submitted by the applicant, the FIR No. 68/2006 has been registered under Sections 498-A and 406 IPC.

4. On behalf of accused-petitioner Nitin Saini an S.B. Criminal Revision Petition has been filed alleging therein that applicant- Tripti Saini has been wrongly made an accused in FIR No. 68/2006 under Sections 498-A and 406 of IPC.

5. In counter the allegations alleged by the applicant-Tripti Saini, it is also submitted that the parents of Tripti had been misbehaving with the parents of accused petitioner regarding which, a complaint under Sections 107 and 116 Cr.P.C. was filed against them on 2.5.2005.

6. In the revision petition the accused-petitioner is mainly claiming a relief against the order dated 6.4.2007 by which the arrest warrant has been issued pursuant to the FIR No. 68/2006 be converted into bailable warrant.

7. Having considered the limited prayer, as the petitioner only prayed that arrest warrant be converted into bailable warrant, this Court vide its order dated 31.5.2007 converted the arrest warrant into the bailable warrant.

8. Learned Counsel for the petitioner-Nitin Saini (Respondent in the Application) Mr. Hora raised a preliminary objection with regard to maintainability of this misc. application moved on behalf of complainant under Section 362 Cr.P.C. for recalling the order dated 31.5.2007 passed by this Court.

9. Mr. Hora referred Section 362 of Cr.P.C., which is reproduced as under:

362. Court not to alter judgment: Save as otherwise provided by this Code or by any other law for the time being in force, no Court when it has signed its judgment or final order disposing of a cases, shall alter or review the same except to correct a clerical or arithmetical error.

10. As per Section 362 Cr.P.C., no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a

clerical or arithmetical error.

11. Referring the Section 362 Cr.P.C, the learned Counsel for the accused-petitioner has submitted that since final order has been passed by which arrest warrant has been converted into bailable warrant, therefore, this Court is not having jurisdiction to recall or review the order as same is barred by Section 362 Cr.P.C.

12. In support of his submissions, he placed reliance on the judgment, reported in 2001 Vol-1 SCC Page 169 (Hari Singh Maan v. Harbhajan Singh Bajwa and Ors.), wherein the Hon'ble Supreme Court has observed that High Court has no jurisdiction to alter or review its own judgment or order except to the extent of correct any clerical or arithmetical error. Once a matter is finally disposed of, held, the Court, in the absence of a specific statutory provisions, becomes functus officio in respect of that matter.

13. Mr. Hora, learned Counsel for the accused-petitioner further relied on the judgment rendered by the Hon'ble Apex Court in the case of State of Kerala v. M.M. Manikantan Nair reported in 2001 Vol-1 SCC Page 752. The Hon'ble Apex Court has held that High Court cannot review its own judgment except to correct a clerical or arithmetical error. By way of clarification it cannot reverse its own judgment and order.

14. So far as factual aspect of the case after passing the order dated 31.5.2007, which is under challenge is concerned, it is submitted at bar by the learned Counsel for the accused-petitioner that pursuant to the order dated 31.5.2007 passed by this Court, the arrest warrant has been converted into bailable on 4.6.2007. The accused Nitin Saini moved a regular bail application on 28.6.2007 and appeared before the trial Court and the regular bail was granted to the petitioner. It is also stated that on 10.10.2007 charge sheet has been filed and the cognizance has been taken and now the matter is fixed for arguments on the charges framed by the trial Court. After filing the Challan, the present application for recalling the order has become infructuous.

15. Learned Counsel appearing on behalf of applicant-complainant Mr. Garg strongly controverted the facts mentioned by the learned Counsel for the petitioner and submitted that the order which has been passed by this Court, converting the arrest warrant into bailable warrant is seriously prejudiced the case of the complainant and because of this Court's order, the investigating agency is not properly investing into the matter. With regard to recovery, which is alleged to be made, has not been made properly.

16. Learned Counsel for the applicant-complainant further submitted that on the basis of order dated 31.5.2007, the trial court having influenced with the order of conversion from arrest warrant to bailable warrant and granted the regular bail to the accused petitioner.

17. Learned Counsel for the applicant-complainant Mr. Garg submits that this Court is fully empowered to recall the order and in support of his submission he placed reliance on the judgment rendered by this Full Bench of this Court in the case of Habu v. State of Raj. reported in . In this judgment, the Full Bench having considered the Scope of Section 482 and 362 of Cr.P.C. has observed that review and recall are distinct powers and while exercising inherent powers, it is not barred by Section 362 Cr.P.C. in absence of genuine and not for any extraneous reasons. The case can be recalled for giving hearing to accused and Section 362 Cr.P.C. in such matters not attracted.

18. The power of recall is different than the power of altering or reviewing the judgment. And power under Section 482 Cr.P.C. can be and should be exercised by the High Court for recalling the judgment in case the hearing is not given to the accused and the case falls within one of the three conditions laid down under Section 482 Cr.P.C.

19. In reply to the submission made on behalf of learned Counsel for the applicant, learned Counsel for the accused-petitioner Mr. Hora referred the judgment rendered by the Hon'ble Supreme Court in the case of Hindustan Construction Co. Ltd. and Anr. v. Gopal Krishan Sen Gupta and Ors. reported in : AIR 2003 SC3536 . More particularly, referred the paras Nos. 18, 19, 20, 24 and 25.

20. In para No. 19 of the Hon'ble Supreme Court has observed as under:

19. The appellants then moved an application being Criminal Application No. 3643 of 2000 for recalling the order dated 19.10.2000. That application stood disposed of by an order dated 13.12.2000/ 22.12.2000 (which is also one of the impugned orders). In this order it has been observed that during the hearing of the revision application no objection had been raised as to maintainability on the ground of limitation. The Court holds that Section 362 of the Criminal Procedure Code did not permit the Court to alter or review its earlier order which was a final order. In our view this finding is absolutely correct. It must be mentioned that the Court was convinced that the 1st respondent had played a fraud upon it and therefore issued a show cause notice to him to show case why action should not be taken against him for having played such a fraud.

21. Similarly, the Hon'ble Court in the case of R. Rannapura v. Ramadugu Anantha Krishan Sastry and Ors. reported in : (2002)10SCC401 in para No. 5 has held that when the appellant came to know of the said order, she moved the High Court with a prayer to recall the said order, but that was dismissed on the premise that the High Court has no power to recall or review its own order. To that extent, the High Court was correct. Hence, the special leave filed by the appellant challenging the order passed on the recall petition has been dismissed as the High Court has no power to recall or review its own order under Section 362 Cr.P.C.

22. In response to the particular query made to the learned Counsel for the respondent in the application Mr. Hora submits that Court is fully empowered to convert the arrest warrant into bailable warrant as held by this Court in the case of Ganpat Lal v. State of Rajasthan reported in 2000(1) RCD (Raj.) Page 561. Mr. Hora further placed reliance on the judgments reported in 2000(2), RCD (Raj.) Page 883, (2002) 2 Cri. L.J. Page 924 and (2002) 3 RCC Page 1511.

23. In reply to the submissions made on behalf of applicant that the trial court was influenced by the order passed by this Court by which the arrest warrant has been converted into bailable warrant and while granting the regular bail, Mr. Hora referred the case of State through CB1 v. Dawood Ibrahim Kaskar and Ors. reported in : 1997 CriLJ2989 , wherein the Hon'ble Supreme Court in para No. 24

has held as under:

24. Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorize his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167 (3) of the Code. Since, warrant is and can be issued for appearance before the Court only and not before the police and since authorization for detention in police custody is neither to be given as a matter of course, nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the courts solely for the production of the accused before the police in aid of investigation.

24. Having considered the rival submissions made on behalf of respective parties and upon perusal of order passed by this Court on 31.5.2007, Section 362 and 482 of Cr.P.C. as well as judgments referred by the respective parties. It is no doubt that this Court is empowered to convert the arrest warrant into the bailable warrant as held by this Court and in the constant views taken by the other High Court, reported in 2000(1) RCD (Raj.) Page 561, 2000 (2) RCD (Raj.) Page 883, (2002) 2 CrL. L.J. Page 924 and (2002) 3 RCC Page 1511 (Supra)

25. But now in the facts and circumstances, the application recalling is to be considered to secure the right of the complaint-applicant as to whether by converting the arrest warrant into bailable warrant any injustice is made to the complaint-applicant. It is not disputed that the arrest warrant is converted on 4.6.2007 pursuant to the order dated 31.1.2007 the accused- Nitin Saini moved regular bail application on 28.6.2007 and the same was granted by the trial Court, the copy whereof has been placed along with the reply to the application as Annex-Pi for the perusal of this Court.

26. Upon careful perusal of the bail order dated 28.6.2007 it appears that while granting regular bail, the trial court has considered this aspect that the accused has produced himself for investigation and recovery of ornaments has been made during the investigation. The prosecution also supported the factum of recovery and, therefore, considering each and every aspect the regular bail has been granted to the accused-Nitin Saini.

27. Since, the charge sheet has been filed on 10.10.2007 and cognizance has already been taken by the trial court. The trial court has granted the bail on certain conditions that if the complainant found that the accused is influencing the witnesses and misusing the liberty of bail, the applicant-complainant has remedy to seek cancellation of the bail order. Even if this recalling application is allowed and the order dated 31.5.2007 is recalled, then also recalling the order will not help the petitioner in any manner, as the regular bail has been granted to the accused-Nitin Saini.

28. The best course available to the complainant-applicant to seek cancellation of bail order if accused misused the same in accordance with provisions of law, but in any case, I find no merit in the recalling application, consequently, the recalling application is hereby rejected being devoid of merit