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The Public Prosecutor Vs. George Williams Alias Victor

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Court : Chennai

Decided On : Apr-26-1951

Reported in : AIR1951Mad1042; (1952)IMLJ801

Judge : Panchapakesa Ayyar, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 426, 497, 497(5) and 561A

Appeal No. : Criminal Misc. Petn. No. 878 of 1951

Appellant : The Public Prosecutor

Respondent : George Williams Alias Victor

Advocate for Def. : P. Basi Reddi, Adv.

Advocate for Pet/Ap. : Party in Person

Disposition : Petition allowed

Judgement :
ORDER

Panchapakesa Ayyar, J.

1. The learned Public Prosecutor has put in this petition under Section 497 (5) and 561-A, Cri. P. C., for cancelling the bail granted by me on 16-5-1950 to one

George Williams alias Victor, in Crl. M. P. No. 1076 of 1950 on the file of this Court, in Crl. App. No. 387 of 1950 on the ground that he has misconducted himself and rendered himself liable to rearrest and committal to custody by abusing his release on bail by indulging in the same kind of offence during the period of bail. This person had been convicted in S. C. No. 67 of 1949, by the learned Sessions Judge of Tinnevelly division under Section 120(B), Penal Code, read with Section 420, Penal Code, for having conspired with 23 other accused to cheat members of the public by promising to give them two counterfeit five rupee notes for one genuine five rupee note. Of course the genuine notes were taken and the others not given. This accused was held to be the prime mover and ringleader in this huge conspiracy and was sentenced to undergo four years rigorous imprisonment and also to pay a fine of Rs. 1500, or in default, to undergo further rigorous imprisonment for one year. He was granted bail by me, on 16-5-1950, on his bail application protesting his innocence, on his executing a bond for Rs. 1000 with two sureties for Rs. 1000 each. In the present petition, the allegation is that this accused, during the period when he was on bail, went on committing similar offences of cheating people by such promises of giving two counterfeit notes for one genuine note, as those for which he was convicted in S. C. No. 67 of 1949 and that he was arrested and remanded to custody on 24-1-1951 at Shenkottah Railway station when he was found with a suit case containing one bundle of 48 genuine five rupee currency notes, and 15 other bundles of blank white paper cut to the size of five rupee currency notes pasted over either side of the bundle, and 12 other bundles of white paper cut to the size of five rupee currency notes. In S. C. no. 67 of 1949 the modus operandi adopted for cheating was to keep one genuine note on the top and at the bottom of white papers cut to size and asking the dupes to run away with the bundles as the police were arriving and there was no time to count.

2. The application by the Public Prosecutor is opposed by Mr. Basi Reddi for the first accused, only on a legal ground, he not disputing the facts alleged by the Public Prosecutor. Mr. Basi Reddi's contention is that once this Court has granted bail to an accused in an appeal under Section 426, Cri. P. C., as was the case where bail was granted to this accused in Cri. M. P. No. 1076 of 1950, it has no power to cancel that bail, whatever the conduct of the person let on bail may be

subsequent to the granting of bail, as Section 497 (5), Cri. P. C., will apply only to accused persons who are let on bail by a High Court before conviction and will not apply to persons (who are convicted) granted bail during the pendency of the appeal, and as Section 561-A, Cri. P. C., too will not have any application to bail matters which are wholly governed by Section 497 (5) and Section 426, Cri P. C., as held by the Privy Council. I cannot agree. I am satisfied that the provisions of Section 497 (5), Cri. P. C., read with Section 561-A, Cri. P. C., saving the inherent power of the High Court to give effect to any order under Criminal Procedure Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice, will give it ample powers to deal effectively with such accused persons released on bail pending appeal who, by their continuing to commit the crimes denied in the appeal memorandum render themselves liable to re-arrest and recommittal to custody. It is obvious that provisions similar to those in Section 497 (5) will attach themselves analogously to Section 426, Cri. P. C., bail cases also, in order to prevent abuse of process to Court and to secure the ends of justice.

3. Reliance was placed by Mr. Basi Reddi on the Privy Council decision in Jairam Das v. Emperor, 1945 Mad 62. I have looked into that ruling, and I do not think that it will support the argument of Mr. Basi Reddi and take away the power of this Court to cancel the bail of a person released pending appeal and recommit the person to custody when he has rendered himself liable for that by reason of his misconduct during the period of bail. All that the Privy Council held in that case was that:

'The Criminal Procedure Code confers no power on a High Court to grant bail in the case of a convicted person and the fact that he has obtained leave from His Majesty in Council to appeal from his conviction or sentence makes no difference in this regard.'

The Privy Council also held :

'Chapter XXXIX, Criminal P. C. with Section 426, is and was intended to contain a complete and exhaustive statement of the powers of a High Court in India to grant bail and excludes the existence of any additional inherent power in a High Court relating to the subject of bail.'

It is obvious that these observations have no application to the present question, and it is also significant that their Lordships of the Privy Council referred to Section 426, Cri. P. C. along with Chapter XXXIX thereby taking all the provisions relating to bail together, and impliedly allowing the liberty to cancel contained in Section 497 (5) to cases of bail under Section 426 also. Of course, they say nothing expressly regarding the cancelling of bail. They were concerned with High Courts granting bail to a person who had obtained special leave to appeal, to the Privy Council and the absence of any inherent power in the High Court to grant such bail (now Section 426 (2) (B), Cri. P. C. gives the High Court the power to grant bail in such cases). It is clear to me that when the High Court is given powers under Section 497 (5), Cri P. C. to cancel bail granted to persons undergoing trial, a similar power must be implied regarding the grant of bail under Section 426, Cri. P. C. also. It will be atrocious if the High Court which grants bail to an appellant, pending his appeal, on his application protesting his innocence, is not empowered to cancel his bail, and rearrest him, and commit him to custody when he is proved to have abused the process of the Court, by getting bail on false pretences, and misbehaves and proves himself unworthy of continuing on bail. Bail, or mainprize, originally meant, as Blaokstone and other eminent jurist's explain, bailment or delivery of a person to his sureties, to be in their custody (instead of being sent to a common jail), they being jailors of his own choosing who have dominion and control over him. That is why sureties are called upon to produce him, as his jailors, in Court, and punished when they fail to do so. If the sureties cannot control him and keep him in good conduct during the period of bail, naturally, the Court will intervene when he misconducts himself and re-arrest him and recommit him to jail. The Court cannot allow him to go about like an aeroplane reported recently in the daily newspapers to have run away from its pilot who had started it, and done havoc wherever it went! No system of judicial administration can function efficiently if such were the law.

4. I am of opinion that there are five cases where a person granted bail may have the bail cancelled and he recommitted to jail:--(1) Where the person on bail, during the period of bail, commits the very same offence for which he is being tried or has been convicted, and thereby proves his utter unfitness, to be on bail, as in the present case, if the facts alleged by the learned Public Prosecutor (and they are

not controverted by Mr. Basi Reddi, for accused 1) are true; (2) If he hampers the investigation as will be the case if he, when on bail, forcibly prevents the search of places under his control for the corpus delicti or other incriminating things; (3) If he tampers with the evidence, as by intimidating the prosecution witnesses interfering with the scene of offence in order to remove traces or proofs of the crime, etc. (4) If he runs away to a foreign country, or goes underground, or beyond the control of his sureties; and (5) If he commits acts of violence, in revenge, against the police and the prosecution witnesses and those who have booked him or are trying to book him.

5. As this ease falls under the first category, the bail granted in Cri. M. P. No. 1076 of 1950 to the first accused in S. C. No. 67 of 1949 of the Tirunelveli division, George Williams alias Victor (the appellant in Cri. A. P. No. 387 of 1950 on the file of this Court) is cancelled under the inherent powers of this Court under Section 561-A, Criminal P. C. similar to the powers under Section 497 (5), Criminal P. G and he is directed to be rearrested and committed to custody forthwith.

6. I may add that when such a man commits a similar non-bailable offence, as is alleged here by the learned Public Prosecutor the police can, without the permission of any Court, including the Court that granted bail, arrest him and get him remanded to jail, and drive him to apply for bail again, and can then bring to the notice of the Court how the man abused the bail previously granted to him and proved himself unworthy of being granted any more bail. To say that a Court granting bail to a convicted person pending his appeal can never cancel the bail, as Mr. Basi Reddi does, will lead to ludicrous results. His bail cannot be cancelled even if he absconds or fails to turn up at the hearing. Very few persons who are convicted of grave crimes like this, will be granted bail during the pendency of their appeals if the Court granting bail (including the High Court) were to be precluded from cancelling the bail even if the man who got the bail by protesting his innocence repeats the offences a number of times during the bail period.

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