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In Re: Deepika Samanta

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Court : Kolkata

Decided On : Sep-12-2003

Reported in : 2004(1)CHN58

Judge : Amit Talukdar and ;P.N. Sinha, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 109, 120B, 307, 406 and 498A; ;Code of Criminal Procedure (CrPC) , 1973 - Sections 438, 439, 439(2) and 482

Appeal No. : C.R.M. No. 3418 of 2003

Appellant : In Re: Deepika Samanta

Advocate for Def. : Arup C. Chatterjee, ;Piush Chaturbedi and ;Sujata Das, Advs.

Advocate for Pet/Ap. : Debasish Roy, ;Shyamal Roy and ;Syed Samsher Ali, Advs.;Parul Banerjee, Adv.

Disposition : Application allowed

Judgement :

1. A distraught daughter-in-law, battered and tortured in the hands of her in-laws, seeks to countermand the order No. 2 dated 24.7.2003 passed by the learned Sessions Judge, Alipore in Criminal Misc. Case No. 4728 of 2003 obtained by the respondent (Swapan Ganguly), who although fictionally was not a member of her

in-laws' family in the grammatical sense yet was the principal architect of all her miseries and reason of her jinxed matrimony by his sinister advice and role which cast a ominus influence on her in-laws' family.

2. Taking out the present application she has sought to cancel the impugned order obtained by the respondent under Section 438 of the Code of Criminal Procedure (for short, the said Code) from the learned Sessions Judge on the premises that the finding of the learned Sessions Judge that since the petitioner (Swapan Ganguly) being a family friend could not come within the provisions of Section 498A of the Indian Penal Code was wholly untenable and the averments made in the First Information Report was sufficient to constitute a case under Section 307 of the Indian Penal Code and since the same discloses sufficient materials against the respondent, it was not incumbent upon the learned Sessions Judge to have allowed the prayer of the respondent made under Section 438 of the said Code.

3. Shri Debasish Roy, learned Counsel representing her being assisted by Shri Syed Samsher Ali and Shri Shyamal Roy submitted that apart from Section 498A of the Indian Penal Code Section 406 read with Section 120B of the Indian Penal Code was incorporated in the complaint lodged by the present petitioner which was treated as the First Information Report giving rise to Beliaghata Police Station Case No. 125 dated 21.6.2003 under Sections 120B, 498A and 406 of the Indian Penal Code and although there were materials in the Case Diary the learned Public Prosecutor did not opposed the prayer of the respondent; but, the learned Sessions Judge should have consider the Case Diary properly and refused the anticipatory bail of the respondent.

4. He further submitted that even if the respondent is not a member of the in-laws' family of the petitioner he could be impleaded under Section 498A of the Indian Penal Code as an abettor. He further prayed that the order, in question, obtained by the respondent ought to be set aside since the same was granted by the learned Sessions Judge in improper exercise of its powers; and the materials and the legal position were not taken care of, the order itself became void.

5. Shri Arup C. Chatterjee, learned Counsel appearing with Shri Piush Chatrubedi and Smt. Sujata Das opposed Shri Roy's submission. Shri Chatterjee relied on a

return denying all the contentions raised by Shri Roy; counter thereof also used by Shri Roy.

6. Shri Chatterjee submitted that since the order which has been sought to be set aside, was passed by a Coordinate Jurisdiction - the learned Sessions Judge, Alipore, prayer should be made before the said Forum for cancellation, instead the petitioner has come to this Court for cancelling the said order passed by a Coordinate Jurisdiction which was not proper. He referred to the decision of Harjeet Singh @ Seeta v. State of Punjab, 2002 C Cr LR (SC) 165, in support of his aforesaid contention.

7. Next, he submitted that the respondent having obtained an order of regular bail from the Court of the learned Additional Chief Judicial Magistrate, Sealdah after the learned Sessions Judge, Alipore has granted him the anticipatory bail, the order of the learned Sessions Judge cannot be interfered with. He referred to the decision of Quality-Inn-Resort & Travels Pvt. Ltd. v. State of West Bengal and Ors., 2002(1) CLT 146 (HC), in this context.

8. He further submitted that since the respondent was an outsider and not a member of the in-laws' family of the petitioner he could not be covered by the offence of Section 498A of the Indian Penal Code. He further submitted that once the Court has either rightly or wrongly granted anticipatory bail the same cannot be cancelled very lightly, It is one thing to grant bail, according to Shri Chatterjee and it is completely a different aspect to cancel the same. Shri Chatterjee submitted that once an order was passed by the learned Sessions Judge it should not be interfered with by this Court as there is no justifying circumstance. He referred to the decision of the Supreme Court of Dolat Ram and Ors. v. State of Haryana, 1995 C Cr LR (SC) 124, in support of his contention that in the absence of any supervening circumstances once bail has been granted it should not be cancelled in a mechanical fashion.

9. He also referred to a Division Bench decision of our Court in Rashbehari Karmakar v. Indrajit Mukherjee and Anr., 2003(1) CHN 200, on the self-same proposition.

10. Lastly, Shri Chatterjee referred to the decision of Puran v. Rambilas and Anr. with Sekhar and Anr. v. State of Maharashtra and Anr., 2001 SCC (Cri) 1124 to illustrate his point that the High Court can cancel a bail as a Superior Court but, could not sit in appeal or in revision over an order of the Court of Sessions.

11. Shri Chatterjee summed up his argument and justified the order which has been impugned and prayed for dismissing this application.

12. Smt. Parul Bandopadhyay the learned Counsel for the State, who we must say presented her case with great dedication and sincerity, produced the Case Diary and on the one hand, while adopting the submissions of Shri Roy for the petitioner, on the other hand also by placing the materials in the Case Diary showed how the learned Sessions Judge went entirely wrong while allowing the prayer for anticipatory bail of the respondent without whatsoever considering the overwhelming materials in the Case Diary and committing a legal error by coming to the conclusion - the respondent, not being a member of the in-laws family, could not be booked under Section 498A of the Indian Penal Code. She stressed for setting aside the order forthwith as the same was obtained improperly.

13. We have heard the submissions made at the Bar and have considered the materials and perused the decisions cited by Shri Chatterjee and traversed through the Case Diary and have taken a very close look at the same.

14. A plain reading of the impugned order in juxtaposition with the materials reflected in the Case Diary against the respondent leads us to the irresistible conclusion that the order impugned has to be set aside without a whimper.

15. We propose to do so.

16. As we have by now felt that the order, in question, cannot be sustained even for a moment we having carefully considered Shri Chatterjee's argument and find none of it is convincing enough.

17. Firstly, the submissions of Shri Chatterjee that the learned Sessions Judge, Alipore exercises Coordinate Jurisdiction with a Division Bench of the High Court is too wild a proposition for us to accept. True, under the scheme of Chapter

XXXIII of the said Code the learned Sessions Judge and this Court exercises concurrent jurisdiction in respect of Sections 439 and 438 of the said Code; but we are appalled at Shri Chatterjee's submission that the learned Sessions Judge can be deemed to be of Coordinate Jurisdiction of a Division Bench of a High Court. This is too elementary a proposition for us to accept in this late hour of the day. With due respect to Shri Chatterjee we are unable to subscribe to such view propounded by him. The decision of Harjeet Singh @ Seeta v. State of Punjab, 2002 C Cr LR (SC) 165, speaks of entertaining a prayer for cancellation of bail granted by another Bench of Coordinate Jurisdiction of the same High Court and not if the same is available for the order then another Bench should not take up the matter as judicial propriety demands that the same should be dealt with by the Court which has granted the prayer. But, here, as we have pointed out the learned Sessions Judge not being of our Co ordinate Jurisdiction we don't feel that the argument advanced by Shri Chatterjee has any basis. The said decision, in our humble view, cannot he said to have any application in the fact situation of the instant case.

18. According to Black's Law Dictionary, Sixth Edition in page-335 the Coordinate Jurisdiction denotes

'That which is possessed by Courts of equal rank, degree, or authority,.....'

Even if the learned Sessions Judge has concurrent power vested under Chapter XXXIII of the said Code by no stretch of imagination it can be said it has Coordinate Jurisdiction with the High Court which always, being a Superior Court has some exalted powers vested to it under Sub-section (2) of Section 439 of the said Code and Section 482 of the said Code. Concurrent Jurisdiction which has been explained in Black's Law Dictionary, Sixth Edition, page-291 reads as follows:

'..... .jurisdiction of several different tribunals each authorized to deal with the same subject-matter at the choice of the suitor'

There it has been illustrated some cases can be heard in a Federal or a State Court and when a case can only be tried in a Federal Court, or only in a State

Court, the jurisdiction is said to be exclusive jurisdiction.

19. In such view of the matter the position which thus becomes clear takes away the force out of Shri Chatterjee's submission.

20. The next submissions of Shri Chatterjee that after the anticipatory bail was granted the accused has appeared before the learned Additional Chief Judicial Magistrate, Sealdah and has obtained regular bail; the said order can no longer be said to existence is now taken up for consideration.

21. The decision of Quality-Inn-Resort & Travels Pvt. Ltd. v. State of West Bengal and Ors., 2002 (1) CLT 146 (HC), referred to by Shri Chatterjee to which one of us was a party (Talukdar, J.). True, it has been held so under the fact situation of the said case but we now have a latter Division Bench decision of our Court operating in the field, Damayanti Majhi v. State of West Bengal, 2002 C Cr LR (Cal) 823, in which the Division Bench of Barman Roy (as His Lordship then was) and De, JJ. had held that since the parent order was not liable to be set aside and consequential order passed thereafter on the basis of the said order also has to be set aside as a necessary corollary which point was not taken into account in the decision of Quality-Inn-Resort & Travels Pvt. Ltd. v. State of West Bengal and Ors., 2002 (1) CLT 146 (HC) to which one of us was a party (Talukar, J.)

22. In view of the fact that the decision of Damayanti Majhi v. State of West Bengal, 2002 C Cr LR (Cal) 823, is latter in point of time and the point held in the said Division Bench decision was not taken into account by Quality-Inn-Resort & Travel Pvt. Ltd. v. State of West Bengal and Ors., 2002 (1) CLT 146 (HC) we feel bound by the later Division Bench decision of Damayanti Majhi v. State of West Bengal, 2002 C Cr LR (Cal) 823, and are of the view that as the parent order No. 2 dated 24.7.03 passed by the learned Sessions Judge was practically a non est order - firstly, it was acted on the concession of the learned Public Prosecutor without the learned Sessions Judge applying his independent judicial mind; secondly, the respondent, even if not a member of the in-laws family of the petitioner can very well be booked under the provisions of Section 498A of the Indian Penal Code and thirdly, there were sufficient materials in the Case Diary which was overlooked by the learned Sessions Judge--the order ipso facto being

bad in law, once we have decided to set it aside, it follows as a necessary corollary-- that all consequential orders passed thereafter, thereunder and based thereon has to be set aside, Also in this respect as we are duty-bound to follow the latter Division Bench decision of Damayanti Majhi v. State of; West Bengal, 2002 C Cr LR (Cal) 823,, we are sorry, that we cannot accept the argument of Shri Chatterjee in this respect.

23. We do not join issue with Shri Chatterjee that once an order of bail having been passed by a court of competent jurisdiction it cannot be cancelled just for mere asking and that too at the drop of the hat. We share his views fully. We also respectfully bow down to the decision of Dolat Ram and Ors. v. State of Haryana (supra), referred to by Shri Chatterjee that unless there is a supervening circumstance the order of bail should not be interfered with.

24. We also most respectfully bow down to the decision of Puran v. Rambilas and Anr. with Sekhar and Anr. v. State of Maharashtra (supra).

25. We have to see now that whether the order impugned can be sustained within the guidelines laid down by the Hon'ble Apex Court and the rival contentions made at the Bar, circumstances revealed in the backdrop of the submissions made at the Bar.

26. We are constrained to find that the learned Public Prosecutor before the learned Sessions Judge did not oppose the prayer for the anticipatory bail of the respondent; although there were very many materials starting from the recitals in the First Information Report to the Diary made by the father of the petitioner two days anterior to the order was passed and plethora of statement recorded by the Investigating Agency very brightly depicting the culpability of the respondent in the crime. Even if the learned Public Prosecutor did not opposed(sic) the prayer, for reasons best known to him, we are quite at a loss to understand what type of application of the judicial mind of the learned Sessions Judge was there before he arrived at his finding while recording the order under Section 438 of the said Code in favour of the respondent being totally oblivious of the materials which was galore in the Case Diary as revealed before us during our careful scrutiny definitely the order sought to be cancelled, was the result of complete non-

application of the judicial mind of the learned Sessions Judge and passed in oblivion of the materials on record and simply on the concession made by the learned Public Prosecutor which we are distressed to note but simply that would not be sufficient for us to rush to a conclusion.

27. But, we find there is something more in store. How could the learned Sessions Judge practically fall in line with the stand taken by the learned Public Prosecutor as also the respondent and come to the conclusion--

'..... ..considering the submissions of learned lawyers of both sides, I am inclined to grant anticipatory bail.....'

Notwithstanding the fact that there was extenuating materials against the respondent and even if he was not in the strict sense of the term not a member of the in-laws family of the petitioner; but, the provisions of Section 120B of the Indian Penal Code was very much inscribed in the F. I. R.; role played by the respondent could be taken good care of within the ambit of Sections 109 and 34 of the Indian Penal Code; mere lack of blood relationship with the members of the in-laws family cannot delink an accused, who has played a great role in the crime in respect of Section 498A of the Indian Penal Code. It is a total misreading of the newly inserted Chapter XXA of the Indian Penal Code. It is also strange to note that the learned Sessions Judge lost sight of the offence in respect of Section 406 of the Indian Penal Code and 344 of the D. P. Act - the allegations of which offence in respect of the respondent was there from the very first day when the petitioner entered into her matrimony with Sanjeev Samanta.

28. We are shocked to find that the learned Sessions Judge was of the view that at best the accused could be a witness. Perhaps our reading of the Case Diary shows otherwise and it would be a sacrilege if we do not set aside the illegal order.

29. Lest it may prejudice the accused persons in the trial, we refrain from outlining the materials which we have come across in the Case Diary, suffice it to say that not only there were glaring materials which did not justify the grant of anticipatory bail to the respondent; but, he, who was the root cause of all the miseries of the petitioner, should not have been favoured with a discretionary power by the Court

which would render the people's faith in the administration of justice on a declining level.

30. The learned Sessions Judge should have been alive to the situation that like the respondent Swapan Ganguly the petitioner-- a defenceless woman, having been wronged in the hands of her in-laws, is also a consumer of justice before it. When such a consumer leaves a Court with tears in her eyes having a feeling that she has not been done justice - after all it is not justice; and we at least can set right the clock of justice by putting its long hands in the right direction by way of interfering with the order.

31. The threat perception, overwhelming materials and the fact that the sinister role of the respondent acted as an omiuns factor in the matrimonial life of the petitioner which suffered a roller coaster ride that too with the contribution of the respondent, in our view, is sufficient, is supervening and cogent circumstance to cancel the order, as the same, in our view, was totally unjustified and fully erroneous.

32. The decision of Puran v. Rambilas and Anr. with Sekhar and Anr. v. State of Maharashtra (supra), in our view, does not come to rescue of the respondent and cannot be applied in the facts of the present case on the contrary it emboldens our stand.

33. We are further told at the Bar that a Division Bench of this Court just the other day on 10.9.2003 had refused the prayer of the mother-in-law of the petitioner (Smt. Rekha Samanta) under Section 438 of the said Code.

34. Having come to the conclusion that it was inappropriate on the part of the learned Sessions Judge to have acceded to the prayer of the respondent under Section 438 of the said Code. There were cogent and sufficient materials to justify cancellation of the same. We have no hesitation to set aside the order No. 2 dated: 24.7.03 passed by the learned Sessions Judge, Alipore in Criminal Misc. Case No. 4728 of 2003. By necessary implication it follows that all consequential orders passed by the learned Additional Chief Judicial Magistrate, Sealdah; or for that matter any other Magistrate under the judgeship of the learned Sessions

Judge, Alipore having granted regular bail to the respondent in pursuance of the order of anticipatory bail obtained by him from the learned Sessions Judge has to be also cancelled, which we do so.

35. The hallowed observations of the Supreme Court in State of Karnataka v. Krishnappa, AIR 2000 SC 1470: --

'15. A socially sensitized Judge, in our opinion, is a better statutory armour in cases of crime against women that long clauses of penal provisions, containing complex exceptions and provisos.'

rings in our judicial mind while we ring down the curtain on the wrong suffered by a weeping woman (the petitioner), who having been wronged in her matrimonial home; was also equally wronged in the judicial process. At least this order, even if it cannot wipe out the tears from her cheek, but would not erode her faith in the Majesty of Justice and she would leave the courtroom with a sense of contentment that justice is truth and truth triumphs over all.

36. The application filed by the petitioner, Smt. Deepika Samanta is thus allowed.

37. The order dated, 24.7.03 passed by the learned Sessions Judge, Alipore in Criminal Misc. Case No. 4728 of 2003 is forthwith set aside and the order of bail obtained thereafter before the learned Magistrate is also set aside and the bail bond furnished on 30.7.03 is cancelled. Office to communicate this order to the Id. Sessions Judge, Alipore and Id. A. C. J. M., Sealdah at once.

38. After this order was dictated and pronounced in open Court in the presence of the learned Counsels of all the parties Shri Chatterjee prays for suspension of this order for a period of fortnight, which we upon consideration refused.

39. Let urgent xerox certified copy of this order be given to the parties as prayed for.

Amit Talukdar & P.N. Sinha, JJ.

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