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In Re: Krishna Murari Singh @ Krishan Murari Singh

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Court : Kolkata

Decided On : Jul-09-2004

Reported in : 2004(4)CHN420

Judge : Amit Talukdar and ;Pranab Kumar Deb, JJ.

Acts : Indian Penal Code (IPC), 1860 - Section 302

Appeal No. : C.R.M. No. 88 of 2004

Appellant : In Re: Krishna Murari Singh @ Krishan Murari Singh

Advocate for Def. : S.S. Roy, ;Somnath Banerjee and ;A.A. Saddique, Advs. for opposite party No. 2

Advocate for Pet/Ap. : Tapas Kumar Ghosh, Adv.;Debabrata Roy, Adv.

Judgement :

1. Feeling aggrieved by the Order passed by the learned Sub-Divisional Judicial Magistrate, Chandanagar in G.R. Case No. 13 of 2002 on 15.7.2002 whereby the interim bail granted by his Honour on 7.1.2002 was confirmed, this application has been taken out on behalf of the Complainant for setting aside the same.

2. To substantiate the said prayer learned Advocate appearing for the petitioner, who has placed before us the entire ordersheets from day one submitted that on the very first day the interim bail was granted by the learned Sub-Divisional

Judicial Magistrate without perusing the Case Diary and subsequently although there was prayer for cancellation of the same at the behest of the Investigating Agency and notwithstanding the fact on the basis of the prayer of the latter Section 302 of the Indian Penal Code was added on 26.2.2002 confirmation of the interim bail was absolutely unjustified and requires to be set aside. He further submitted that such lenient view should not have been taken by the learned Magistrate while acceding to the prayer for interim bail on the very first day of production without giving time to the Investigating Agency to collect the materials. Further much stress was made on the prayer for cancellation before the learned Sub-Divisional Judicial Magistrate which was not considered; instead the interim order was confirmed.

3. Learned Advocate for the petitioner as a part of his submission referred to a Division Bench decision of this Court in State of West Bengal vs. Noor Ahmed and Anr., 2002(1) CHN 727 to substantiate his point that when an order was passed on erroneous presumption the same can be easily cancelled even at a later stage.

4. For the State it was submitted that chargesheet has already been submitted on 31.12.2002 in respect of the offence of Section 302 of the Indian Penal Code. Learned State Lawyer was of the view that bail ought to be cancelled. He invited our attention to the various portions of the Case Diary, particularly in relation to the statement recorded under Section 164, Code of Criminal Procedure made by one Samarpita Dey and showed there were materials.

5. Learned State Lawyer further submitted that this was a case where prayer for bail should be cancelled.....

6. Per contra : On behalf of the Opposite Party No. 2 it was submitted that it was a case of mere accident and on the basis of proper consideration of the materials available interim bail was granted which was subsequently confirmed and as already chargesheet has been submitted and the case is awaiting commitment around the corner after copies are made ready at this juncture the Court should not interfere.

7. The Return was used on behalf of the Opposite Party No. 2 showing that earlier the prayer for cancellation was disposed of as not pressed by another Division Bench on 23.9.2003 in C.R.M. No. 2355 of 2003 and as such, this application, which is second in line, was not maintainable on that score alone and disputed all the allegations made by the petitioner. Attention of this Court was also drawn to Annexure-Pl of the application in page-18 to show that the self-same Order dated 15.7.2002 passed by the learned Sub-Divisional Judicial Magistrate in G. R. Case No. 13 of 2002 which is sought to be scuttled was moved before a learned Single Judge of this Court where the application was not pressed and was accordingly disposed of. As such, according to him repeated applications made by the petitioner cannot be encouraged and the same should be rejected and as already the earlier application was not pressed fresh application was not maintainable.

8. As a part of his submission the learned Advocate referred to the decision of the Supreme Court in Rajinder Prasad vs. Bashir, 2002 C Cr. LR (SC) 62 to show that an earlier Revision Petition filed under Section 397, Code of Criminal Procedure having been dismissed as not pressed it cannot be allowed to the party to invoke the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure for the same relief.

9. A counter used by the petitioner in respect of the return filed on behalf of the Opposite Party No. 2 was concentrated in respect of the aforesaid question and it was stated that as the earlier application was rejected not on merit but was not pressed, there was no legal bar in filing fresh application.

10. After having heard the submissions made at the Bar and considering the affidavits and the decisions cited we now proceed to see as to whether the prayer for cancellation can be sustained.

11. Factual matrix which gave rise to the present application relates to First Information Report lodged by the petitioner on 6.1.2002 before the Bhadhraswar Police Station inter alia on the allegation that at about 10.00 in the morning the Opposite Party No. 2 a co-tenant came to his room and was fondling his child and in spite of reluctance of his wife she took the child to the terrace for a stroll when in the process of caressing the child the said child fell and the neighbouring people

came and found the said child in an injured condition on the road before their house. After the child was removed to the Sadar Hospital, Chandanagar he expired at about 11-55 p.m. The petitioner averred in the First Information Report that due to the irresponsible act of the Opposite Party No. 2 his child died.

12. The Opposite Party No. 2 was forwarded before the learned Sub-Divisional Judicial Magistrate on 7.1.2002 and since the learned Magistrate did not find any prima facie case under Section 304, Indian Penal Code he granted interim bail to the Opposite Party No. 2. On 26.2.2002, there was a prayer for including Section 302, IPC was made. On 4.3.2002 on the prayer of the Investigating Agency, Section 302 of the Indian Penal Code was added. Subsequently, on 4.6.2002 the petitioner and the Investigating Officer also prayed for cancelling the interim bail on the ground that the Opposite Party No. 2 was continuously threatening the petitioner and other eye-witnesses. But, however, the said prayer was rejected at that stage. But, subsequently, on 15.7.2002 the interim bail was confirmed by the learned Sub-Divisional Judicial Magistrate after considering the Case Diary.

13. This has prompted the petitioner to move this Court.

14. We have carefully perused the Case Diary.

15. Grant or refusal of bail by a Court is entirely a matter of discretion. Simply on the first day the bail was granted or on a grave offence the prayer of bail was entertained cannot form the subject-matter for cancellation simpliciter. However, a Superior Court reviewing the same can see to the limited extent whether the order was passed without jurisdiction; whether it was illegally done or the discretion cast upon the Court was not exercised judicially.

16. Upon a very close scrutiny of the records and the materials in the Case Diary we, although may not have a very charitable view of the learned Magistrate granting bail on the very first blush but yet we do not feel that subsequently when the order was confirmed the learned Magistrate has either exercised the discretion in an arbitrary manner or the order passed was an illegal order. As we have found that grant or refusal of bail by any Court is a matter of wide discretion although it has to be exercised with utmost circumspection the impugned order complained of

cannot be termed as illegal. As such, the Division Bench decision referred to by the learned Advocate for the petitioner, in our view, is of no assistance to the petitioner in this case.

17. On an appraisal of the entire order we cannot come to the definite conclusion that the discretion was exercised by the learned Sub-Divisional Judicial Magistrate in either indiscreet manner or injudicious manner. The decision of the Supreme Court in Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Anr., 2004 SAR (Criminal) 502, is required to be noted while dealing with the said question. Their Lordships of the Supreme Court in the said decision held :

'The law in regard to grant or refusal of bail is very well-settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.'

18. Their Lordships further held in the said decision that :

'We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the Appellate Court has every right to know the basis for granting the bail.'

19. We are of the view that the order of the learned Magistrate does not suffer from any of the vices as pointed out by the Summit Court.

20. That apart, we find the initial interim bail was granted way-back on 7.1.2002 and subsequently confirmed on 15.7.2002 and although even there is no bar in interfering with an order passed in an improper manner even there has been a long lapse of time between the said order and the prayer for cancellation of the same but in the fact situation of the instant case we feel that although even if we

take into account the said consideration that simply time lapse in cancelling an order cannot stand in the way but in the present case, the same is not called for in view of the materials and the circumstances emerging from the records.

21. Now, to the subsidiary point, which we are afraid, also forms the core area of our decision that earlier the petitioner had approached a learned Single Judge in CRR No. 1895 of 2002 and His Lordship passed the following order dated 17.3.2002 :

'Parties are present before me through their learned Advocates.

The application being not pressed, is disposed of with liberty to take appropriate steps'.

22. It is thereafter we find the petitioner further moved the Principal Senior Criminal Division Bench and on 23.9.2003. Their Lordships in C.R.M. No. 2355 of 2003 passed the following order :

'At the time of hearing, Mr. Ghosh, the learned Advocate appearing for the petitioner submits that he is not pressing this application on behalf of his client and as such the application for cancellation of bail is disposed of as 'not pressed'.'

23. A plain reading of the said two situations which have been very rightly pointed out by the learned Advocate for the Opposite Party No. 2 clearly manifests that the petitioner hereinabove is guilty of Forum Shopping and he chose to his convenience not to press the application before another sister Division Bench of co-ordinate jurisdiction as also before the learned Single Judge for reasons best known to him and thereafter he took out this application again on 4.2.2004 impugning the self-same order which forms the basis of C.R.M. No, 2355 of 2003 before a sister Division Bench and C.R.R. No. 1895 of 2002 before a learned Single Judge of this Court. This act by itself, in our view, is not a very happy phenomena.

24. An enterprising litigant should not be allowed to hold the judicial process in sway and try his luck in different Forums. This by itself, in our humble view, is a grave affront to the entire system which if encouraged would send down wrong

signals and we should sternly stop this practice while deprecating the same on the one hand.

25. We do not find any substance in the submission of the learned Advocate for the petitioner that since the earlier applications were not pressed it has no bar in taking out the fresh application. We fail to persuade ourselves to the said logic in view of our aforesaid finding.

26. That apart, as referred to by the learned Advocate for the Opposite Party No. 2 the decision of the Supreme Court in Rajinder Prasad vs. Bashir (supra) while dealing with a revisional application holding that when the same is dismissed as not pressed it cannot be allowed to invoke inherent powers of the High Court under Section 482 of the Code of Criminal Procedure for grant of the same relief; although the decision of the Supreme Court was in connection with a revisional application we feel that the ratio of the same can be applied with wholesome impact in the present case.

27. We have remained ourselves with regard to the hallowed principles laid down by the Apex Court in laying guidelines for the purpose of cancellation that unless there is cogent and overwhelming circumstances justifying the cancellation of bail the same should not be allowed. We are also aware of the fact that while grant of bail even in a serious case cannot by itself form the basis of cancellation of the same since granting of bail and cancellation of the same stand on different footings. We are very much emboldened by the very latest decision of the Supreme Court in this regard in Mehboob Dawood Shaikh vs. State of Maharashtra, 2004 SAR (Criminal) 194, wherein Arijit Pasyat, J. speaking for the Bench held :

'Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.'

28. Upon a close analysis we do not feel inclined to interfere with the order complained of for reasons more than one indicated hereinabove beefed up with the posterior position of submission of chargesheet and date being fixed just a few

days ahead (21.7.2004) for the purpose of commitment.

29. We, accordingly, reject the present application.

30. No order as to costs.

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