

Sunil Kumar Mahto, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Jul-08-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 498A, 120B, 406, 420, 323, 342, 304B read with 34

Appeal No. : Criminal Miscellaneous No.29865 OF 1999

Appellant : Sunil Kumar Mahto, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Smt. Indu Bala Pandey; Sri Ram Sagar Mahto, Adv.

Advocate for Pet/Ap. : S/Sri B.P.Pandey; Jagannath Singh; Praveen Kumar Sinha, Adv.

Judgement :

1. Three petitioners, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 30.9.1999 passed by the learned Sessions Judge, Samastipur, at Camp, Rosera in Cr.Misc.No.85 of 1997. By the said order, the learned Sessions Judge on the basis of petition filed by one Ram Udgar Mahto , who was father of deceased Sulekha Kumari , cancelled bail bonds of the petitioners.

2. Short fact of the case is that the three petitioners were accused in Complaint Case No.476 of 1996, which was filed by Sulekha Kumari (deceased) against her husband and other in laws' family members under Sections 498A, 120B, 406,420, 323 and 342 of the Indian Penal Code. In the said case, all the three petitioners, who are husband of Sulekha Kumari (deceased), father-in-law and mother-in-law respectively, were granted bail by the learned Sessions Judge on 14.2.1997 and 4.7.1997. The reason for granting bail was compromise in between the parties as well as assurance given by the petitioners that the complainant (Sulekha Kumari) will be given her full right and honour of the house-wife in the family by the husband and in-laws . They were further directed that she should be kept and maintained properly and these Opp.Parties (petitioners herein) will not injure her sentiments in any manner and she will not be given any torture or assaults. It was further observed that if these terms of the compromise and conditions of the bail were violated, the matter will be viewed very seriously. After the bail was granted, Sulekha Kumari (deceased) had gone along with accused persons to her in-laws' place and thereafter, as alleged, she was murdered by her husband and members of in-laws family and, accordingly a separate case vide Mansoorchak P.S. Case No.30 of 1997 was registered under Section 498A and 304 B /34 of the Indian Penal Code on 7.8.1997. In the said case, all the three accused persons were taken into custody.

3. While the cancellation of bail petition was filed, all the petitioners were inside the jail and, as such, notices were issued through Jail authority and thereafter, the petitioners sent their show cause from jail and after hearing the parties, learned Sessions Judge, Samastipur by its order dated 30.9.1999 allowed the said petition and cancelled the bail bonds of the petitioners.

4. Aggrieved with the order dated 30.9.1999, whereby their bail bonds were cancelled , the petitioners approached this Court by filing the present petition and on 20.2.2000, while issuing notice to Opp.Party no.2, this Court had directed that pending notice further proceedings in Cr.Misc.No.85 of 1997 before the Court of Sessions Judge, Samastipur at Camp Rosera shall remain stayed. Subsequently, the case was admitted for hearing and order of stay is still continuing.

5. Sri B.P.Pandey, learned Senior Counsel appearing on behalf of the petitioners, while pressing the present petition, submits that the order of cancellation of bail is liable to be set aside, mainly on the ground that the order was passed in violation of the principles of natural justice. Learned counsel for the petitioners has referred to Annexures 7 series to the petition, which are typed copies of the show cause sent by the petitioners through jail. While referring to Annexure-7 to the petition, Sri Pandey, learned Senior Counsel for the petitioners submits that since the petitioners were already in jail in connection with Mansoor Chak P.S. Case No.30 of 1997, the petitioners had prayed that their bail bonds may not be cancelled. It was emphasized that on perusal of Annexures 7 series, it is evident that from inside jail, the petitioners were not in a position to file required show cause and thereafter they requested not to cancel their bail bonds. It was further submitted that the fact was not established as to whether it was a case of murder or it was a natural death. On the aforesaid grounds, it has been prayed to quash the impugned order.

6. Sri Ram Sagar Mahto, learned counsel appearing on behalf of Opp.Party no.2 has vehemently opposed the prayer of the petitioners. It was submitted by him that in the case, bearing Mansoorchak P.S. Case No. 30 of 1997 after investigation, police had already submitted chargesheet against all the accused persons including three petitioners and after submission of the chargesheet, the case was committed to the Court of Session and trial is pending vide Sessions Trial No.112 of 1998. Accordingly, it was submitted that it was out and out violation of the condition of bail and the learned Sessions Judge, while passing the impugned order, has not committed any error.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record including the impugned order. On perusal of the record, the Court is satisfied that prima facie the petitioners have violated the terms and conditions of the bail. While granting bail, specific condition was imposed that the complainant will be treated properly and she shall not be tortured. However, subsequently, after the death of Sulekha Kumari (deceased), the case was instituted vide Mansoorchak P.S.Case No.30 of 1997 for the offences under Sections 498A and 304B/34 of the Indian Penal Code, in which the

police after investigation submitted chargesheet against these petitioners and others and subsequently it was committed to the court of Session and the case was numbered as Sessions Trial No. 112 of 1998. However, before cancelling the bail bonds, it was necessary to grant proper opportunity to the petitioners. The fact remains that on the date of hearing of the petition, which was filed by Opp.Party no.2 vide Misc. Case No.85 of 1997 the three petitioners were inside jail and they had sent their show cause with a request that since they are inside jail, their bail bonds may not be cancelled. Accordingly, it can be considered that the show cause, which was sent by the petitioners from inside jail, was not a complete show cause and in absence of granting full opportunity of hearing, it was not appropriate to pass final order in Cr.Misc.No. 85 of 1997.

8. Accordingly, in view of violation of principles of natural justice, the order dated 30.9.1999 passed in Cr.Misc.No.85 of 1997 by learned Sessions Judge, Samastipur, at Camp Rosera is not sustainable in the eye of law and same is hereby set aside so far as it relates to the petitioners passed in Cr.Misc.No.85 of 1997. However, for the ends of justice and keeping in view the peculiar facts and circumstances of the present case, it would be necessary to remit back the matter to the concerned court with a direction to pass an appropriate order in Cr.Misc.No.85 of 1997 after giving full opportunity to the petitioners for filing a detailed show cause. It has been submitted by Sri Pandey, learned Senior Counsel for the petitioners that three weeks time may be granted to the petitioners for filing an effective show cause from the date of receipt/production of a copy of this order in the court of the learned Sessions Judge, Samastipur. The learned Sessions Judge, Samastipur is directed to take a final decision in Cr.Misc.No.85 of 1997 within a period of one month after filing of the show cause by the petitioners, which is to be filed within a period of three weeks. It is made clear that if no show cause is filed by the petitioner within the time, as undertaken by Sri Pandey, learned counsel for the petitioners, the learned Sessions Judge will be at liberty to pass final order within a period of one month after expiry the prescribed period of filing of the show cause, i.e. three weeks from the date of receipt /production of a copy of this order. The learned Sessions Judge will pass appropriate order in accordance with law. With the aforesaid observation and direction, the petition stands allowed.

