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B.Anbalagan Vs. State

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Court : Chennai

Decided On : Jan-02-2012

Judge : P.R.Shivakumar, J.

Acts : Indian Penal Code (IPC) - Sections 120-B, 406, 420; Code of Criminal Procedure (CrPC) - Sections 439, 397(1), 440, 482

Appeal No. : Crl.R.C.(MD) No.962 of 2011

Appellant : B.Anbalagan

Respondent : State

Advocate for Def. : Mrs.S.Prabha, Adv.

Advocate for Pet/Ap. : Mr.K.Jeyaseelan, Adv.

Judgement :

Heard the submissions of Mr.K.Jeyaseelan, learned counsel for the petitioner and also that of Mrs.S.Prabha, learned Government Advocate (Criminal side), representing the respondent.

2. The petitioner figures as an accused in the case which is under investigation in Crime No.48 of 2011 for alleged offences punishable under Sections 120-B, 406 and 420 I.P.C., registered on the file of the District Crime Branch, Madurai. Pending investigation, the petitioner was arrested by the police and produced

before the Judicial Magistrate for remand and accordingly a remand order was passed. Pursuant to the remand, the petitioner filed miscellaneous petition in Cr.M.P.No.7084 of 2011 for his release on bail in the above said case in which he was arrested and remanded. The learned Judicial Magistrate No.1, Madurai by the impugned order dated 05.09.2011, allowed the said petition and directed the release of the petitioner subject to the conditions that the petitioner should produce any deed to the value of Rs.10,00,000/- (Rupees Ten Lakhs only) and execute a bond for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) along with two sureties for a sum of Rs.5,00,000/- (Rupees Five Lakhs only). A further condition was also imposed to the effect that after release the petitioner should appear before the respondent police daily at 10.00 a.m. and 5.00 p.m. until further orders. The said order is now sought to be challenged in the present Criminal Revision Case.

3. This Court on entertaining a doubt as to how a revision will lie against the order either granting or refusing bail, wanted the learned counsel for the petitioner to address the Court on the said issue.

4. The learned counsel for the petitioner taking the Court through Section 397(1) of Cr.P.C., contended that the legality, correctness or otherwise of any order passed by a criminal Court subordinate to the High Court can be tested by the High Court by calling for the records relating to the proceedings in which such an order has been passed. The Learned counsel also pointed out the fact that a similar power is conferred on the Sessions Judge also.

5. Of course the language used in sub clause (1) of Section 397 Cr.P.C. is capable of being interpreted in line with the contentions raised by the learned counsel for the petitioner. But sub-clause (1) of Section 397 Cr.P.C. cannot be read in isolation. The powers conferred on the High Court and the Sessions Court is abridged by the qualification mentioned in sub-clause (2) of Section 397 Cr.P.C. Sub-clause (2) of Section 397 Cr.P.C. says that the power referred in sub-clause (1) of 397 Cr.P.C. shall not be exercised in respect of any interlocutory order. Then, the necessary question that arises for consideration is whether the order refusing bail or granting bail with condition is an interlocutory order. This Court is of the considered view that such an order is of the nature of an interlocutory order.

6. The said view is strengthened by the admission made, fairly, by the learned counsel for the petitioner that as against the dismissal of bail application the accused shall be having an opportunity to file a further bail application under Section 439 Cr.P.C. before Sessions Court or High Court as the case may be and not a revision against the same. Similarly specific provision is found in Section 439 Cr.P.C. as to the powers of the High Court or the Sessions Court to set aside or modify any condition imposed by a Magistrate, when releasing any person on bail. Section 440 Cr.P.C. also contains a similar provision spelling out the powers of the High Court or the Court of Session for reducing the amount fixed by a Police Officer or a Magistrate for grant of bail. Therefore, the appropriate course to be adopted in such a case is to approach the Court of Sessions or the High Court under Section 439(1)(b) Cr.P.C., except in rare cases of flagrant violation, wherein the inherent powers of the Court under Section 482 of Cr.P.C. can be invoked. This case is not such a rare and exceptional one to use the inherent powers to check the illegality of the order complaint of. For the above said reasons, this Court comes to the conclusion that the revision is not competent and the same deserves to be dismissed.

7. Accordingly, the Criminal Revision Case is dismissed. It is made clear that this order, dismissing the Criminal revision Case shall not come in the way of the petitioner seeking appropriate relief under the appropriate provision before the appropriate Court.

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