

K. Gopala and ors. Vs. State of Karnataka by Women Police Station, Shimoga, by State Public Prosecutor

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Court : Karnataka

Decided On : Jul-03-2012

Judge : Anand Byrareddy, J.

Acts : [Indian Penal Code \(IPC\), \(IPC\) 1860](#) - Sections 498A, 304-B, 34; [Code Of Criminal Procedure \(CrPC\), 1973](#) - Sections 397, 401; [Dowry Prohibition Act, 1961](#) - Sections 3, 4

Appeal No. : Criminal Revision Petition No.478 of 2010

Appellant : K. Gopala and ors.

Respondent : State of Karnataka by Women Police Station, Shimoga, by State Public Prosecutor.

Advocate for Def. : P. Karunakara, Adv.

Judgement :

(Prayer: This Criminal Revision petition is filed under Section 397 read with 401 Criminal Procedure Code, 1973, by the advocate for the petitioners praying that this Honble Court may be pleased to set aside the order dated 19.3.2010 passed by the Principal, Sessions Judge, Shimoga in Criminal Revision Petition No.16/2010 (arising out of Crime No.125/2009 of Women Police Station, Shimoga) and further confirm the order dated 7.12.2009 passed by the Judicial magistrate

First Class-II, Shimoga, in Cr.No.1742/2009.)

1. Heard the learned Counsel for the petitioners and the learned Government Pleader.

2. The present petition is filed by the accused, who had initially obtained bail before the Court of the Magistrate when there were allegations of commission of offences punishable under Sections 498A and 304B read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the IPC, for brevity) and Sections 3 and 4 of the [Dowry Prohibition Act, 1961](#). However, the same was questioned by way a revision petition under Section 397 of the Code of Criminal procedure, 1973 (hereinafter referred to as the Cr.PC, for brevity) by the State, before the Sessions Court. The Sessions Court in turn having set aside the order granting bail in favour of the petitioners, the petitioners are before this Court.

3. Initially, a question as regards the maintainability of such a revision petition in terms of Section 397(3) of the Cr.PC was raised by the learned Government Pleader.

4. The learned counsel for the petitioners has relied on a judgment of this court in B.A.Harish Gowda vs. P.Lankesh, ILR 2000 Kar.2657, wherein an identical question was raised and a learned Single Judge of this court has opined that in terms of Section 397(3) of the Cr.PC., if the very person who has approached this court, had also approached the Sessions Court by way of a revision petition, it is then alone that a second revision petition was barred and if the petitioners before this court were not also the petitioners before the Sessions court, then there is a three-Judge bench judgment of the apex Court in the case of Krishnan and another vs. Krishnaveni, AIR 1997 Sc 987, wherein, with reference to Section 397(3), the court has held that the bar under Section 397(3) may not apply to the State while noticing that as seen from Sub-section (3) of Section 397, the revisional jurisdiction can be invoked by any person, but the Code has not defined the word person. However, under Section 11 of the IPC, Person includes any company or association or body of persons whether incorporated or not. The word person would, therefore, include not only a natural person, but also a juridical person, in whatever form designated and whether incorporated or not. By

implication, the State stands excluded from the purview of the word person for the purposes of limiting its right to avail the revisional power of the High Court under Section 397(1) of the IPC, for the reason that the State, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as it deems proper. The object behind criminal law is to maintain law, public order, stability as also peace and progress in the society. Generally, a private complaint under Section 202 of the Code is laid in respect of non-cognizable offences or when it is found that the Police had failed to perform its duty under Chapter XII of the Code or to report as mistake of fact. In view of the principle laid down in the maxim *Ex debito Justitiae* i.e., in accordance with the requirements of justice, the prohibition under Section 397(3) on revisional power given to the High Court would not apply when the State seeks revision under Section 401. So the State is not prohibited to avail the revisional power of the High Court under Section 397(1) read with Section 401 of the Code.

5. In any event, the opinion expressed by this court in *B.A. Harish Gowda*, supra, is that the revisional power exercised either by the High Court or by the Sessions Court at the instance of either the complainant or the accused would foreclose a second revision petition in respect of the very order which has been decided against the petitioner, who approaches this court. It would amount to the petitioners before this court seeking a second opinion of the action of the trial court, which was complained of before the revisional court. That on the face of it, would indicate that it does not matter whether the complainant or the accused had approached the revisional court. When concurrent jurisdiction is conferred under Section 397, it would be defeating the very object of the Section if a second revision petition was maintainable, only on the ground that the petitioner was not the person, who had approached or invoked the jurisdiction of the Sessions Court in the first instance. This is a question which, therefore, would have to be referred to a larger bench, since this bench is not inclined to accept the view taken by the learned Single Judge in *B.A. Harish Gowda's* case.

6. However, having regard to the facts and circumstances of the present case and since the power of this court under Sections 401 and 482 are wide enough to take within its ken such orders, which result in a miscarriage of justice, it is yet possible

for this court to overlook the legal controversy that is sought to be raised and in exercise of power under Section 401, it is yet possible to hold that the court below has exercised its power under Section 397, to hold that the Court of the Magistrate was not empowered in granting bail, is, on the face of it, an incorrect view of the matter, having regard to the nature of offences alleged and the maximum punishment that was capable of being imposed.

7. Heard the learned counsel for the petitioners on the merits of the case. The learned counsel for the petitioners seeks to draw sustenance from the following authorities:

1. MUNISWAMY v. STATE OF KARNATAKA [1983(1) KAR.L.J. 524];
2. BHAGIRATHISINH S/O MAHIPAT SINGH JUDEJA v. STATE OF GUJARAT [1984 SCC (CRI.) 63];
3. SUBHENDU MISHRA v. SUBRAT KUMAR MISHRA AND ANOTHER [1999 CRI.L.J. 4063];
4. KALIA @ SAROJ PRAHARAJ v. STATE OF ORISSA [2000(2) CRIMES 331];
5. PARAMJEET KAUR ALIAS SEEMA v. STATE OF HARYANA [2001(2) CRIMES 190];
6. NOORJAHAN v. MOIDEEN [2001(2) CRIMES 194];
7. HAZARI LAL DAS v. STATE OF WEST BENGAL AND ANOTHER [(2010) 1 SCC (Cri.) 381];

The learned counsel would contend that the discretion of the Court of Magistrate is not taken away merely because there is an allegation of an offence punishable with death or imprisonment for life and in the instant case, the Magistrate has assigned reasons in proceeding to grant bail in favour of the petitioners. The Sessions Court, in cancelling and setting aside the bail granted, has proceed only on the footing that the Court of Magistrate did not have jurisdiction to grant such bail having regard to the nature of offence that was alleged. It is contended that this was an incorrect approach, as the Court below has not chosen to address the

circumstances of the case which has prevailed upon the Court of Magistrate in granting such bail, and therefore, even if the Sessions Court was of the opinion that the Magistrate Court had acted in excess of its jurisdiction, it was incumbent on the Sessions Court to assign reasons as to why the petitioners were disentitled to bail. Hence, he would submit that the exercise of judicial discretion on the part of the Court of magistrate was not implausible or illegal or given the state of the case law that is referred to, it is contended that the Orders of the Magistrate can yet be sustained.

8. The learned Government Pleader would, however, contend that having regard to the tenor of Section 437 Cr.PC, which indicates that the Courts other than the High Court or the Sessions Court, cannot consider the grant of bail when the offence is punishable either for death or imprisonment for life. In this instant case on hand, the offence punishable under section 304-B IPC was alleged against the petitioners and therefore the question of the Magistrate having granted bail is clearly opposed to the tenor of Section 437 Cr.PC and seeks to place reliance on the decision of the Supreme Court in the case of PRAHLAD SINGH BHATI v. NCT, DELHI AND ANOTHER [(2001) 4 SCC 280.]

9. It may be noticed that in the case of MUNISWAMY (supra), this Court has expounded on the scope of Section 437 Cr.PC and it has observed that it is incumbent on the Court to find out, in a petition for bail, as to whether there are reasonable grounds for believing that the petitioner has been guilty of an offence punishable with death or imprisonment for life, if not it has to consider whether the accused person is entitled to be released on bail. Merely because it is stated by the police that the person is accused of an offence punishable with death or imprisonment for life, it does not absolve the responsibility of the Court to examine the petition on merits and to find out whether the petitioner is or is not entitled for bail.

10. In the case of BHAGIRATHSINH (supra), the Supreme Court has opined that the High Court has overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. While examining the question of directing cancellation of bail by interfering with

discretionary order of the Sessions Court, the High Court had committed a wrong. The circumstance found by the High Court that the victim attacked was a social and political worker, etc. could not have been of so over-riding significance so as to permit such interference. Therefore, it was held that the relevant considerations for deciding a question were more important than extraneous reasons in cancellation of bail.

In the case of HAZARI LAL DAS (supra), the Supreme Court has held that when anticipatory bail has been granted by the Sessions Court, the cancellation of the same by the High Court could not be sustained as the propriety in doing so would depend on whether there was anything on record to show that there was interference or an attempt to interfere with the due course of administration of justice by the accused, or a concession granted to him has been abused in any manner, or of any supervening circumstances that have surfaced justifying cancellation of the anticipatory bail.

In SUBENDU MISHRA (supra), a three Judge Bench of the Supreme Court held, that where the Sessions Judge had granted bail and the same having been cancelled by the High Court on a petition filed by the brother of the deceased, has reiterated the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, wherein the Supreme Court has taken observations in an earlier decision DOLAT RAM v. STATE OF JARYANA [1995(1) SCC 349] to the following effect:

Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the

accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.

11. Hence, the learned counsel would submit that the said circumstance would apply on all fours to the present case on hand and hence seeks to sustain the bail granted by the Magistrate.

To the same effect are the decisions in the case of KALIA @ SAROJ PRAHARAJ; PARAMJEET KAUR ALIAS SEEMA and NOORJAHAN (supra).

12. On the other hand, in the decision cited by the learned Government Pleader, the facts of the case were also material in the Apex Court taking a strict view of the law. That was a case where the deceased and respondent No.2 were married in the year 1984. She is said to have been ill-treated and subjected to harassment on account of demands for dowry. Huge amounts were said to have been paid by the appellant to the accused on various occasions. Later, about fifteen years after their marriage, the respondent No.2 is alleged to have brought the deceased to his parental home and had poured kerosene and burnt her alive in the presence of his parents. As no case was registered against the accused, the appellant had approached the authorities including the Prime Minister of India, the Home Minister of India and the Commissioner of Police, Delhi resulting in the registration of a case for offences punishable under Section 306 and 498-A IPC. After registration of the case and investigation and recording of the statement of witnesses, the accused moved an application for grant of anticipatory bail in terms of Section 438 Cr PC. As the bail application was not opposed, he was granted interim bail. An application for cancellation of the anticipatory bail was dismissed. However, while dismissing such application, the Sessions Court observed that if on facts, a case under Section 302 IPC is made out, the State shall be at liberty to arrest him. On 1st July 2000, the charge sheet was filed against him under Sections 302, 406 and 498-A IPC by the investigating agency and he was directed to appear before the Court of Magistrate. As he did not appear, a non-bailable

warrant was issued. In the meanwhile, the respondent had filed a miscellaneous application under Section 482 IPC without impleading the appellant as a party. The High Court kept the order of the Magistrate in abeyance till 22nd August 2000. In his petition filed in the High Court the accused suppressed the fact that a charge sheet under Section 302 IPC had been filed as against him. Notice was issued. But in the meantime the respondent moved an application under Section 438 Cr PC for anticipatory bail on which no order was passed and a direction was issued to the accused to appear before the Magistrate and pray for bail. When he appeared before the Magistrate he was admitted on bail even in a case under Section 302 IPC. The Revision Petition filed in the High Court was dismissed in the manner as noticed above. Therefore, the Supreme Court observed that the respondent had manipulated the prevention of his arrest firstly by obtaining an order in terms of Section 438 Cr PC and subsequently by a regular bail under Section 435 Cr PC. It is in this background that the Court below had examined the relevant provisions of law and had ensured that there was no escape-hands to the said respondent in seeking to sustain the bail granted in his favour.

Therefore, having due regard to the facts and circumstances of the present case on hand, and case which the Apex Court observed by several decisions of this Court as well as the Apex Court itself, that since the Court of Magistrate had addressed the circumstances, which in its discretion entitled the petitioners for grant of bail, there was no illegality committed and the Sessions Court having set aside the bail granted by the Magistrate Court only on the ground that an offence punishable under Section 304-B IPC was alleged and therefore the Court had no jurisdiction to grant bail may not be strictly speaking the tenor of the line of cases that are sought to be pressed into service by the petitioners. Accordingly the petition is allowed and the bail granted by the Magistrate stands restored.

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