

(2002) 10 AP CK 0010

Andhra Pradesh High Court

Case No: Criminal Petition No. 4400 of 2002

Kum. P. Ratna Kumari

APPELLANT

Vs

M.R.L.S.S. Murthy and Another

RESPONDENT

Date of Decision: Oct. 28, 2002

Acts Referred:

- Penal Code, 1860 (IPC) - Section 109, 376
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(9)

Citation: (2002) 2 ALD(Cri) 938 : (2003) 1 ALT(Cri) 159

Hon'ble Judges: C.Y. Somayajulu, J

Bench: Single Bench

Advocate: Ghanta Rama Rao, for the Appellant; C. Padmanabha Reddy and C. Praveen Kumar for Respondent No. 1 and Addl. Public Prosecutor for R2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.

This is an application to cancel the bail granted to the 1st respondent in Criminal M.P. No. 832 of 2002 by the learned I Additional Sessions Judge, Warangal.

2. A case in Crime No. 45 of 2002 u/s 376 read with Section 109 I.P.C. and Section 3(1)(9) of S.Cs. & S.Ts. Prevention of Atrocities Act, 1989 was registered against the 1st respondent and another by the S.H.O. Kovvur Town P.S., West Godavari District. Crl. M.P. No. 832 of 2002 was filed on behalf of the 1st respondent before the Court of the Special Judge under S.C. S.T. Prevention of Atrocities Act alleging that the 1st respondent had surrendered before the II Additional Judicial First Class Magistrate, Kovvur on that day at 10.30 A.M. and was remanded to judicial custody. The learned Judge by his order dated 24-4-2002 granted bail to the 1st respondent subject to his executing a bond for Rs. 10,000/- with two sureties in a like sum each to the

satisfaction of the Judicial First Class Magistrate, Kovvur. Alleging that he obtained bail by making a false representation that he had surrendered before the II Additional Judicial First Class Magistrate, Kovvur at 10.30 A.M. though in fact he did not so surrender, petitioner filed Crl. M.P. No. 838 of 2002 seeking cancellation of the bail granted to the 1st respondent. The learned Special Judge by his order dated 16-5-2002 dismissed the said Crl. M.P. No. 838 of 2002. Questioning the said dismissal, this petition is filed.

3. The contention of Sri Ghanta Rama Rao, the learned counsel for the petitioner is that since 1st respondent did not surrender before the II Additional Judicial First Class Magistrate, Kovvur at 10.30 A.M. as alleged by him, and had in fact surrendered only after 2.30 P.M. as seen from the report of the learned Magistrate sent to the Special Court, it has to be taken that 1st respondent obtained bail on a false representation that he surrendered before the Magistrate and so it is clear that 1st respondent obtained bail by playing fraud on the Court and hence is liable to be cancelled. The contention of Sri C. Padmanabha Reddy, the learned Senior Counsel for 1st respondent, is that 1st respondent in fact surrendered before the Magistrate on 24-4-2002 at 10.30 A.M. itself by filing Crl. M.P. No. 2241 of 2002 but orders accepting the surrender were passed after lunch and on a petition filed by the Deputy Superintendent of Police, C.B.C.I.D., the learned Magistrate granted police custody of the 1st respondent for 36 hours and hence was in police custody for 36 hours though he obtained bail from the Special Court, and contended that there are no grounds to cancel the bail granted to 1st respondent.

4. It is seen from the record of the Special Court the Special Judge called for a report from the learned Magistrate as to when actually the 1st respondent surrendered and the learned Magistrate sent a report, which reads as follows:

"I further submits that the time at which the surrender petition was filed and the said accused surrender was not noted by me on the said application. I cannot say the time when the surrender petition is filed since several applications have been filed from 10.30 A.M. to 2 P.M. To my knowledge the accused surrendered between 2.30 and 2.40 P.M. on 24-4-2002 and immediately he was remanded to judicial custody."

5. Obviously on the basis that report, petitioner must be contending that the 1st respondent surrendered before the Magistrate after filing of the bail petition before the Special Court. Admittedly petitioner has no personal knowledge of the time of surrender of the 1st respondent before the Magistrate. The report of the Magistrate shows that several applications were filed from 10.30 A.M. to 2 P.M., and that she did not mention the time of surrender of the 1st respondent on the surrender petition. Therefore, the learned Magistrate stating the time of surrender of the 1st respondent as 2.30 P.M. must be a surmise, because it is not asserted in the report of the Magistrate that she is mentioning the time of surrender of 1st respondent from her memory. At the time of filing of the bail application on behalf of the 1st

respondent before the Special Court the Advocate for the 1st respondent swore to an affidavit that 1st respondent surrendered himself before the Magistrate and so he is moving an application for bail on his behalf.

6. 1st respondent surrendering before the Magistrate on 24-4-2002 is not in dispute, but the time of his surrender only is in dispute. The general rule is that all judicial acts must be deemed to have been done in the first hour of the Court proceedings. If there is a competition between two judicial acts only the actual time when each of such acts was can be considered and priority will have to be given to the judicial act which is earlier in point of time, see A.SUBBA RAMI REDDY vs. OFFICIAL RECEIVER (A.A.A.O. NO. 14 OF 1974, DATED 27-11-1975). At page 471 "THE LAW LEXICON" by Sri P. Ramanatha Aiyar in the meaning of the word "day" it is stated-

"Our law, said Sir W. GRANT in LESTER v. GARLAND, (1808) 15 Ves. 248 , "rejects fractions of a day more generally than the civil law does, the effect of which is to render the day a sort of indivisible point, so that any act, done in the compass of it, is no more referable to any one than to any other portion of it, but the act and the day are co-extensive, and therefore the act cannot properly be said to be passed until the day is passed." It is a well known maxim that the law takes no notice of the fractions of a day, except where there are conflicting rights between subject and subject." (TOMLINSON vs. BULLACK, (1879) 4 QBD 230, 232 and see Re Railway Sleepers Supply Co. (1885) 29 Ch D 204; Galdsmiths" Co. v. West Metrop. Rail. Co., (1904) 1 KB 1.)"

7. Since it cannot strictly be said that there is a competition between the order accepting surrender of the 1st respondent and the order granting bail to him, the presumption that both acts were done in the first hour of the Court proceedings can be drawn, and so there is no need to decide the actual time of surrender.

8. In his order dismissing the prayer of the petitioner for cancellation of the bail granted to the 1st respondent, the learned Special Judge clearly observed that on 23-4-2002 petition for anticipatory bail filed by 1st respondent was argued at length and that that petition was dismissed with a direction to the 1st respondent to surrender before the Magistrate and then move an application for bail. Therefore, in the normal course of events 1st respondent would not have moved an application for bail without actually surrendering himself before the Magistrate on 24-4-2002. It could be that the Magistrate passed the order accepting surrender of the 1st respondent between 2.30 and 4.30 P.M., though he had surrendered much earlier. Since accepting surrender is a judicial act, the presumption is that it was done in the first hour of the Courts proceedings, more so because 1st respondent would not derive any advantage by filing an application for bail without actually surrendering before the Magistrate, and so the actual time at which 1st respondent surrendered before the Magistrate is only of academic interest but is of no significance.

9. It is no doubt true that bail obtained by playing fraud can be cancelled. In this case 1st respondent cannot, by any stretch of imagination, be said to have played fraud on the Special Court at the time of seeking bail, because he, in fact, surrendered before the Magistrate 24-4-2002. Merely because a few minutes or few hours difference is there between the time of surrender and time of filing of the bail application, it cannot be said that there was fraud on the part of the accused in obtaining bail. Had 1st respondent without actually surrendering on 24-4-2002 moved an application for bail, it can be said that the bail was obtained by playing fraud. The fact that the Advocate for the 1st respondent before the Special Judge's Court swore to an affidavit that after the 1st respondent surrendered before the Magistrate only he is moving the application for bail, fortifies the view that 1st respondent moved the bail application only after surrendering before the Magistrate. So it cannot be said that 1st respondent obtained bail by playing fraud and so I find no grounds to cancel the bail granted to the 1st respondent. Hence the petition is dismissed.