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N. Jaya Kumar Vs Kandali Srinivasulu Reddy

Criminal Petition Nos. 7055 and 7724 of 2014

Court: Andhra Pradesh High Court

Date of Decision: Sept. 9, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 20, 20(3)#Criminal Procedure Code, 1973 (CrPC) â€" Section 102, 173, 174, 2(4), 357#Penal Code, 1860 (IPC) â€" Section 109, 306

Citation: (2014) 2 ALD(Cri) 947 : (2015) 3 ALT(Cri) 311

Hon'ble Judges: Dr. B. Siva Sankara Rao, J

Bench: Single Bench

Advocate: K. Murali Krishna, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dr. B. Siva Sankara Rao, J.
Both petitions are filed tinder Section 439(2) Cr.P.C., one by the father of deceased(Ashok Kumar) and the

other by the Public Prosecutor representing the State seeking cancellation of anticipatory bail order granted by this Court(another bench) during

vacation in Crl. P. No. 5683 of 2014 in favour of the petition respondents 1 and 2, who are no other than the in-laws of the deceased.

2. Heard the Learned Counsel for the Petitioner, the learned Additional Public Prosecutor for the Respondent-State in both petitions and perused

the material placed on record.

3. The brief facts of the case are that:

The de facto complainant by name Madisetti Lingamurthy, the owner of the premises at Madhura Nagar, Shamshabad, R.R. District reported to

the R.G.I. Airport police on 23.04.2014 at about 22.20 hours stating that one Ashok Kumar (deceased) and his friend Surya were staying in his

house on rent for the past one year and due to examinations Surya went to Malaysia and another person used to stay alone. While so, on

23.04.2014 at about 7.30 hours he was informed by his neighbour that room is not opened and there is no noise in the house for which he

informed to the police and with the help of police when the door was opened, the person by name Ashok Kumar committed suicide by hanging

with plastic thread to the ceiling fan hook. The same was registered as Crime No. 149 of 2014 under Section 174 Cr.P.C. and taken up

investigation.

4. It is practically a G.D. entry for no cognizable offence to register any crime under IPC or other penal law and registration as if a crime under

Section 174 Cr.P.C. is practically not meant for, from the very section speaks to police enquire and report on suicide and it is to say it is of making

a G.D. entry if there is any cognizable offence from the enquiry from investigation revealed, then a regular crime is supposed to be registered.

Needless to say this Court way back in a judgment reported in Kilaparthi Suri Appa Rao v. State of A.P., re. By Public Prosecutor, Hyderabad

and another 2004 (2) ALT (crl.) 333 (AP) and in another expression of a Division Bench of this Court reported in 2002(6) Alt 626 (DB)

observed that registering any crime under Section 102 Cr.P.C. of finding any unclaimed property does not arise for no cognizable offence or any

other law and similarly so far as Section 174 Cr.P.C. also as Section 2(4) Cr.P.C. defines the offence as an act or omission made punishable by

any law in force. It is from the said registering, it was called crime even for no cognizable offence or non-cognizable offence to set the law in

motion by mentioning simply under Section 174 Cr.P.C. lead to some confusion.

5. In fact the present bail cancellation application respondents 1 and 2 are no other than the in-laws of the deceased-Ashok Kumar and his wife is

one Sreethi Reddy and her brother Sreeman Reddy also appears to be one of the accused. In the crime" registered supra under Section 174

Cr.P.C., names of any specific persons as accused for any specific offence not mentioned. While so, it appears a suicide note of the deceased was

traced, which speaks that his mother-in-law provoked him to take the decision of committing suicide and she and her family are fully responsible

for the same and Sreethi Reddy (his wife), her father K.S. Reddy and pleaded police and law authorities to arrest and punish them for forcing him

to commit suicide; and that his parents, sister or other relatives are nothing to do with it and shall not be troubled in any manner and his employer

Cathay Pacific Airlines and people working with CX have no involvement to his decision and Suriya his co-tenant in the house portion much less

the house owner are nothing to do with it; and all his movable and immovables should be handed over to his parents, sister and uncle Goverdhan

Reddy; neither Sreethi Reddy (his wife) nor the newly born child have right to claim any of his assets. It is therefrom, the crime is altered to Section

306 IPC by alteration memo Dt. 10.05.2014.

6. It is important to note that there was already an application under Section 438 Cr.P.C. filed by the parents-in-law of the deceased (bail

cancellation petition respondents 1 and 2 herein) referring to the said crime No. 149 of 2014 under Section 174 Cr.P.C. in fact as stated supra,

there is no any offence much less cognizable offence by the time the so called application for anticipatory bail moved by them, as alteration memo

was filed only on 10.05.2014 and the said anticipatory bail application appears to have filed prior to that itself. The averments mentioned there in

for anticipatory bail in Crl. M.P. No. 1052 of 2014, although that was disposed of by dismissal on 12.05.2014 by order of the learned in charge

Metropolitan Sessions Judge, Cyberabad, speaks besides the report of the house owner/ de facto complainant supra, from facts they came to

know that their son-in-law committed suicide on 23.04.2014 while residing in a rented house of the de facto complainant for which police

registered the above crime under Section 174 Cr.P.C. and police are making hectic efforts to apprehend them though they are nothing to do with

the above crime and if they arrest them without any reason basing on the FIR, they will suffer being in highly placed position of the society, having

nothing to do with the crime. The same was dismissed saying, if the petitioners/accused are enlarged on bail they may cause inconvenience to the

investigation, which is pending in preliminary stage and thereby not entitled to the anticipatory bail.

7. There is no little whisper in that anticipatory bail application of their going to be involved in any non-bailable offence without which the very

anticipatory bail application itself is not maintainable that was in fact neither drawn attention of the Court by the learned Public Prosecutor much

less as part of the duty of learned counsel for petitioners who ought not to have been filed without any basis but the very not drawn attention by the

Court, no doubt, instead of saying not maintainable, went into the merits and dismissed, though there are no merits for accusation at all. Be the

things as it may, having been unsuccessful therein, the parents-in-law of the deceased again moved this Court (another bench) during vacation for

anticipatory bail in Crl. P. No. 5683 of 2014, which speaks that the police registered the crime under Section 174 Cr.P.C. and taken up

investigation, conducted inquest and handed over the body to the father of the deceased. Neither the father of the deceased nor any relatives

informed the petitioners or their daughter about the suicide committed by the deceased, while the wife of the deceased was staying with them at

Mumbai and that the police are making hectic efforts to apprehend them on the ground that they and their daughter are responsible for the cause of

committing suicide by the deceased and the 1st petitioner (father-in-law of deceased) is working as Scientific Officer in Bhabha Atomic Research

Centre, Mumbai and 2nd petitioner is also residing with him at Mumbai and they never visited after the marriage of their daughter with the

deceased to the house of their son-in-law but for contacts over phone and they are apprehending their arrest by police and police even failed to

implicate them by alteration of section of law as if making them responsible for the cause of suicide. The alteration memo filed by police on

10.05.2014 whereas the anticipatory bail application filed in the vacation Court is about more than a week after the said dismissal of the

anticipatory bail application they moved before the learned Sessions Judge referred supra.

8. It is important to note that Court cannot perpetrate any illegality or irregularity when necessary facts brought to its notice. Even Court can recall

its own order if obtained by fraud or even when Court is not supposed to pass and having been passed inadvertently, leave about at the instance of

a party who obtained. Apart from which, it is important to note the law laid down by the Apex Court in S.P. Chengalvaraya Naidu (dead) by

L.Rs. Vs. Jagannath (dead) by L.Rs. and others, that "fraud avoids all judicial acts, ecclesiastical or temporal as observed by the Chief Justice

Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or order or decree obtained by playing

fraud on the court is a nullity and non est in the eyes of law. J Such a judgment/decree -by the first court or by the highest court - has to be treated

as a nullity by every court, whether superior or inferior and it can be challenged in any Court even in a collateral proceedings. The Courts of law

are meant for imparting justice between the parties. One who comes to the Court must come with clean hands. We are constrained to say that

more often than not, the process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous

persons from all walks of life find the court process a convenient lever to retain the illegal-gains indefinitely". It is further observed that "we have no

hesitation to say that a person whose case is based on falsehood, has no right to approach the Court and he can be summarily thrown out at any

stage of the litigation".

9. It is apt also to refer the expression of the Supreme Court of USA in U.S.A. v. James Knocks 1965 (24) LAW 2 DT (275) : AIR 1970 V-57

C11 where that case relates to duty of tax payer to submit true return and has no right under the cause of it incriminates, to submit a false return

when faced with choice of prosecution for the failure to file return or a true return may contain incriminating statements against him; the Court

therefrom held that every one who is accused of having committed misconduct though entitled to defend himself but right to defend does not

include right to set up false defence or speak lies or withhold and to deny the truth in any manner, as for which no one has a right to defend against

the valid laws of the land or against the truth. The reason being that in a society which is covered by rule of law, laws cannot be allowed to be

eclipse the truth by setting up a false plea whether he is a plaintiff or defendant and even those who are accused of offences entitled to be

guaranteed against testimonial compulsion under Article 20(3) of the Constitution of India not being permitted to make false and untrue statements

though entitled to be remained silence if they so desire in having that privilege and once waived that privilege and want to say something the

obligation to speak truth is there even against them in particular before the public servant conducting the investigation, enquiry or trial.

10. Thus, even an accused person though got a right of silence and statutory protection, under Article 20 of the Constitution of India has no right to

speak untruth or falsehood or suppress truth but for at best a right of silence and once waived that concession, he is bound to disclose the truth

within his knowledge.

11. From the above legal paradigm, coming to the facts, the crux here from the arguments advanced by the counsel for father of the deceased in

moving for cancellation of bail as well as the Public Prosecutor for moving for cancellation of bail under the two applications is as to there is any

non-disclosure of the truth within the knowledge of the accused persons in obtaining anticipatory bail and or any suppression of facts. In the bail

application filed by the in-laws of the deceased referred supra before the vacation bench of this Court, what all they mentioned on its face is, there

is nothing for this Court to hold that they suppressed any fact within their knowledge. Though the alteration memo was more than a week prior to

their filing of the anticipatory bail application, had they know which they are supposed to disclose from bail application averments, nowhere

disclosed about the alteration memo. In the arguments so far advanced in seeking for cancellation of bail by the two applicants i.e., father of the

deceased as well as the public prosecutor respectively through their counsel, they could not but for saying they are supposed to know.

12. From the above expressions, the Court cannot presume unless there is some basis to presume and there are facts in support of drawing the

presumption even under the provisions of the Indian Evidence Act. It is further to mention in this context that there are two bail applications for

anticipatory bail moved by wife and wife"s brother of the deceased in Crl. P. No. 1451 and 1452 of 2014 in the above crime before the learned

Additional Metropolitan Sessions Judge and the same were grated by order Dt. 21.06.2014. It is in fact they mentioned in their bail application

that is referred in the common order para 3 that police later on altered the crime from 174 Cr.P.C. to Section 306 IPC and addressed a memo to

the committal court from which the police stated found suicide note left by deceased in the place of death which revealed that petitioners herein and

their family members harassed the deceased as such the deceased committed suicide. The parents-in-law of the deceased obtained anticipatory

bail from this Court(another bench) in Crl. P. No. 5683 of 2014 wherein it is observed that the crime registered under Section 174 Cr.P.C. it is a

case wherein son-in-law of the de facto complainant is alleged to have committed suicide and petitioners are residents of Mumbai and there are no

allegations linking them to the suicide. However, the investigation is yet to be completed and considering the facts, inclined to grant anticipatory bail

on certain conditions. This Court(another bench) also did not advert to the factum of there is no any cognisable offence but for a stray sentence in

the bail application, particularly at para 8. Facts referred supra in this regard shows any cause of registration of crime under Section 174 Cr.P.C.

by the police without even after alteration by making any accusation against them, the police are trying to arrest them as if they are responsible for

the suicide of the deceased. That factum is also not reflected in the order of this Court (vacation Court), as rightly pointed out by the learned Public

Prosecutor and the learned counsel for the father of the deceased in seeking for cancellation of the bail. In fact had the learned Public Prosecutor

either before the Sessions Court in disposal of the anticipatory bail on 12.05.2014 as the crime already altered into a cognizable offence under

Section 306 IPC against the petitioners on 10.05.2014 or atleast before this Court (another bench) while considering for grant or refusal of the

anticipatory bail supra, order could be otherwise or not, it could have been reflected atleast in the subsequent common order for the wife and

brother-in-law of the deceased covered by Crl. P. No. 1451 and 1452 of 2014 Dt. 21.06.2014 of the learned sessions judge. As the parents in

law of the deceased were already granted anticipatory bail by the vacation Judge of this Court observing the position of the petitioners is similarly

situated, subject to execution of self bond for a sum of Rs. 10,000/- with two sureties to the satisfaction of the learned Magistrate concerned by

surrender.

13. It is from this, from any of the orders, nothing could be visualised to any nondisclosure of the fact within the knowledge of the accused persons

four in number, particularly the parents-in-law of the deceased and this Court there from cannot hold that they suppressed any material fact and

failed to disclose any material fact within their knowledge about the alteration of crime. These are one of the circumstances mainly in seeking for

cancellation of anticipatory bail. No doubt grant of bail or cancellation of bail are within the judicial exercise of discretion referring to the factual

matrix in each case. Though granting and refusal are at one paradigm and cancellation is at a different paradigm for the reason that it is taking away

the personal liberty already conferred by virtue of cancellation, no doubt after giving the opportunity of hearing. As laid down by the Apex Court in

Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, , following the same in Siddharam Satlingappa Mhetre Vs. State of Maharashtra and

Others, Supreme Court Cases 694 and also the expression of another bench of this Court in Suryadevara Sasikala v. Vasiredy Sivalinga Prasad

and others 2008(1) ALT (crl.) 183 (AP) referring to some of the apex Court expressions particularly Aslam Babalal Desai Vs. State of

Maharashtra, ; Dolat Ram and Others Vs. State of Haryana, ; Puran Vs. Rambilas and Another etc. etc., wherein the said Aslam Babalal Desai"s

case even referred and observed that order granting bail passed by ignoring the material and evidence on record and without giving reasons would

be contrary to the principles of law that itself provide a ground for seeking cancellation of bail. However, the same is different from the ground that

accused after concession of bail misconducted himself or some new facts for cancellation emerged and or there is arbitrary and wrong exercise of

discretion of the trial Court that required to be corrected. Thus, there cannot be any dispute that bail granted can be cancelled without there being

circumstances that warrant cancellation of bail.

14. The other expression in CBI, Hyderabad Vs. Subramani Gopalakrishnan and Another, it was observed that there is difference between

yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an

order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail 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 concessions

granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed

on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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.

15. Even from the above expression, the cancellation of bail is not confined to just grant of concession from conduct of accused but also from

perusal of the circumstances, facts referred in the bail order, wherein it is found even necessary facts not brought to its notice either by suppression

or by non-disclosure inadvertently or intentionally or even not reflecting the necessary facts in the order granting bail, though even born by record.

16. From the above propositions and referring to the facts, it is now to consider whether the present matrix justify cancellation of bail or imposition

of any necessary and reasonable conditions to the existing order by its modification. In this regard nothing could be brought to the notice of the

Court in the elaborate arguments of both sides heard at length of intentional suppression or nondisclosure of the known facts in getting the

concession of granting bail.

17. Therefore, though there is a cause in cancellation of bail, Court is not entitled generally to go into the in-depth merits of the factual matrix. The

basis in this case is the suicidal note and whether it attracts Section 306 IPC read with 109 IPC or not is to be dealt with only after completion of

trial and hearing arguments advanced by both sides.

18. From the above, even it disclosed that otherwise the petitioners are entitled to regular bail, even the bail order can be cancelled as per the

expression in Siddharam Satlingappa Mhetre"s case, it is clearly observed that it makes no difference between anticipatory bail or regular bail

which are once granted, as the liberty shall continue till cancellation and the parameters laid down under Section 437 Cr.P.C. equally applies to, as

per the provisions of Section 438 Cr.P.C. besides the requirements which satisfy Section 438(1) four clauses and the conditions to be imposed

covered by Section 438(2) Cr.P.C.

19. Having regard to the above, instead of cancelling the anticipatory bail, in the factual matrix, ends of justice sub serves to impose conditions in

addition to the conditions imposed in the anticipatory bail order, out of the power of the Court.

20. Accordingly, both the applications are disposed of subject to the following conditions:

[1] Petition/s respondents 1 and 2(parents in law of the deceased) shall report before the investigating officer as and when required for the

purpose of investigation during investigation besides reports before the investigating officer on every month''s first Sunday for not only the purpose

of investigation pending investigation and in the event of filing charge sheet under Section 173 Cr.P.C., till end of trial for assurance of their

availability and non-interference in any manner with the witnesses.

[2] Petition/s respondents 1 and 2 shall attend before the Court of law regularly in enquiry and trial without fail, if not their bail shall be cancelled

forthwith, without any further order so that, the Judge can also issue NBW by cancelling the bail from the power under section 439[2] Cr.P.C..

delegated by this order during pendency of proceedings before the Judge.

[3] Petition/s respondents 1 and 2 shall furnish their full address with property and Bank Account particulars and submit their passport/s if any,

after enlargement of bail on the next hearing date before the Magistrate Court concerned (for collecting by police as part of their duty to

investigate-also the means of accused and to furnish the same in the final report of investigation to enable the trial court in the event of considering

the need of awarding compensation under section 357 Cr.P.C.. So to award from such material and evidence, apart from securing presence and

obtaining of bond with sureties under section 437A Cr.P.C.. etc.), failing which it is open to the learned Magistrate concerned by virtue of the

power conferred by this order to cancel the bail.