
Sudeshna Bhattacharjee Vs State of West Bengal and Another

C.R.R. No. 2413 of 2002

Court: Calcutta High Court

Date of Decision: April 28, 2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 439(2)#Penal Code, 1860 (IPC) " Section 120B, 406, 419, 420, 467

Citation: (2005) 1 CHN 334

Hon'ble Judges: P.N. Sinha, J; A. Talukdar, J

Bench: Division Bench

Advocate: Saswata Gopal Mukherjee and Dipankar Dandapath, for the Appellant; Learned Public Prosecutor and Learned Junior Government Advocate and Dilip Dutta, Santanu Kumar Mitra and Devipriya Mitra for Opposite Party No. 2, for the Respondent

Judgement

1. Feeling distraught with the order of the learned Additional Chief Judicial Magistrate, Sealdah of 27.08.2002 whereby the opposite party No. 2

was granted bail upon his production on the very first day the petitioner who is the de facto complainant of G. R. Case No. 1725 of 2002 and on

the basis on her complaint section ***** police station Case No, 164 dated 19.8.02 under Sections 498A, 467, 468, 471, 406, 419, 420 and

120B of the Indian Penal Code was registered for investigation seeks to cancel the same by filing this application before this Court on 25.9.02.

Pursuant to an order of a Division Bench of this Court notice was sent upon the opposite party by registered post with Acknowledgement Due

Card.

2. When the matter appeared before us on 07.4.03 from1""the affidavit-ofservice filed by Mr. Mukherjee, learned Advocate appearing on behalf of

the petitioner we found that there was intimation was sent. Inscription on the reverse of the envelope "intimation" under the dtated signature of

16.1.03 and on the address it was superscribed N. C. After having heard the learned Advocate for the petitioner on the prayer of the State we

adjourned the matter till 09.4.2003 for enabling it to produce the case diary.

3. Again on 09.4.03 when we took up, the matter in presence of the learned Advocate for the petitioner and the State Mr. Santanu Mitra appeared

on behalf of the accused opposite party and submitted that he has not received any notice. As such, the notice filed along with affidavit-of-service

along with a copy of the application was handed over to Mr. Mitra in Court by the learned Advocate for the petitioner. It is pertinent to record

here that on that date Mr. Mitra submitted that his client did not whatsoever receive any notice and to our query as to then how he could appear

along with the accused opposite party No. 2, who was personally present in Court, Mr. Mitra divulged that the Investigating Officer sent an

information to the opposite party No. 2 which was flatly denied by her; then the stand was changed and it was submitted that a constable of the

department had informed. Be that as it may we did not wish to allow washing dirty linen in Court and accordingly, directed that a copy be given as

discussed hereinabove.

4. Mr. Mukherjee the learned Advocate for the petitioner submitted that firstly, there was a jurisdictional error committed by the learned

Additional Chief Judicial Magistrate, Sealdah while she entertained the prayer for bail in respect of the opposite party in connection with an offence

which was punishable with imprisonment upto life and she was not competent in view of Section 437 of the Code of Criminal Procedure, for short

the said Code to entertain such prayer; and secondly, notwithstanding the fact that she herself found that the allegations against the

accused/opposite party No. 2 were serious, she on the very first day of the production of the accused/opposite party No. 2 enlarged him on bail;

and thirdly, the medical ground taken on behalf of the accused/ opposite party No. 2 was not at all convincing and they were devised to hoodwink

the Court.

5. Learned Public Prosecutor appearing with learned Junior Government Advocate for the State does not join issue with Mr. Mukherjee and

supports his contention. The learned Public Prosecutor who placed the case diary before us submitted that it was wholly wrong on the part of the

learned Additional Chief Judicial Magistrate to have entertained the prayer for bail in respect of the accused/opposite party No. 2 where not only

the allegations were very much serious in nature but she was far from competent to consider the prayer as Section 467 of the Indian Penal Code

was involved which was visited with a sentence upto imprisonment for life and the provisions of Section 437 of the said Code necessarily

foreclosed her from considering the said question.

6. Learned Public Prosecutor by referring to the materials in the case diary submitted that it was the accused/opposite party No. 2 who had issued

the advertisement in the local newspaper (The Anandabazar Patrika) knowing fully well that his son accused Debabrata Bhattacharya was not a

Chartered Accountant and allured the petitioner's father to enter into a misconceived matrimony. Referring to page 37 of the case diary consisting

the bio-data of the son of the accused/opposite party accused Debrabrata Bhattacharyya wherein he has been described as Chartered Accountant

from the Institute of Chartered Accountants of India, Calcutta Region, 1998 and on the reverse thereof the accused/opposite party No. 2 had

forwarded the said bio-data bearing his signature incorporating that if the bio-data is approved the same may be informed to the accused/opposite

party No. 2. According to the learned Public Prosecutor this was a very serious situation that knowing fully well his son was not a Chartered

Accountant which has been reflected from the certificate issued by Shri B. K. Basu, Deputy Secretary, the Institute of Chartered Accountants of

India appearing at page 86 of the case diary wherein it has been specifically informed to the Investigating Officer that the accused Debabrata

Bhattacharyya had not passed any of the Chartered Accountants' Inter and Final Examination conducted by the said institute and they are taking

legal action against the accused Debabrata Bhattacharyya. It is the accused/ opposite party No. 2 who practised fraud on the life of the petitioner

and spoiled it.

7. Learned Public Prosecutor submitted that the matter should not be viewed lightly as the career of a young girl has been ruined and the order of

bail gives a wrong signal to the society in such type of cases and we would definitely encourage similar wrong doings in the future and prayed for

cancelling the same,

8. Shri Dilip Kumar Dutta, learned Senior Advocate appearing with Shri Mitra made detailed submissions opposing the prayer for cancellation.

Shri Dutta firstly submitted that the order of grant of bail in a heinous offence is one thing and cancellation thereof is totally different and once bail

has been granted, it cannot be cancelled in the absence of any cogent or overwhelming circumstances. In this context he referred to the decision of

Subhendu Mishra v. Subrat Kumar Mishra and Anr., 1999 Cr. LJ 4063.

9. He also referred to the decision of the Supreme Court in Bhagirathsinh Judeja Vs. State of Gujarat, , also on the above principle and submitted

that the petitioner could not plead any case in that direction to warrant setting aside the order of bail validly granted by the learned Trial Court

below.

10. Shri Dutta next referring to the decision of the Supreme Court in the State (Delhi Administration) Vs. Sanjay Gandhi, and submitted that unless

there is allegation of interference with the course of justice by way of tampering with witnesses bail already granted cannot be cancelled and the

power for cancellation of bail has to be exercised with very great care and circumspection.

11. Shri Dutta also referred to the decision of Harjeet Singh @ Seeta v. State of Punjab and Anr. 2002 C Cr LR (SC) 165 and stated that from

an analogy of the said decision where it has been held that an application for bail allowed by a learned Judge of the High Court an application for

cancellation of bail by another learned Single Judge of co-ordinate jurisdiction was not proper as such since the learned Additional Chief Judicial

Magistrate had granted bail instead of rushing to this Court it was apposite that the petitioner should have approached her at first.

12. Shri Dutta has filed a return and disputed all the allegations of the petitioner and further submitted that as sufficient time has elapsed in the

meanwhile after passage of so much time it was not proper to entertain the prayer for cancellation at this stage and more so, when the condition

imposed by the learned Additional Chief Judicial Magistrate was not waived as there was no adverse report against the accused/opposite party

No. 2 which was manifested from the ordersheet of 20.12.2002 annexed with the return, Shri Dutta submitted that the order should remain

undisturbed.

13. He also referred to a supplementary return showing the state of health of the accused/opposite party No. 2.

14. Summing up his argument Shri Dutta, learned Senior Advocate submitted that this was not a fit case for cancellation of bail and the accused/

opposite party No. 2 was also unwell and prayed for dismissing the application.

15. In reply Shri Mukherjee for the petitioner disputed the illness of the accused/opposite party No. 2 and submitted that the prescriptions in, the

supplementary return was dated February 4, 2003 and the pathological report was dated April 4, 2003 which was obtained during the pendency

of the present application. He disputed the force of Shri Dutta's argument and submitted that even if there cannot be. any cogent and

overwhelming circumstances but in view of the patent jurisdictional error the order should be cancelled. He referred to the decision -Ram Govind

Upadhyay v. Sudarshan Singh and Ors. 2002 C Cr LR (SC) 533 and submitted that although an order of bail is a discretionary power yet should

be exercised with much discretion and if it is not backed up by cogent reason it cannot be sustained.

16. Shri Mukherjee further submitted that the question of grant of bail would depend on the textual facts of the matter which varies from case to

case and in view of the heinous allegations first of all it was not proper on the part of the learned Additional Chief Judicial Magistrate who have

allowed the accused/opposite party No. 2 to be enlarged on bail and secondly, Shri Mukherjee submitted that arbitrary or wrong exercise of

discretion by the Trial Court has to be corrected by a Superior Court and in support of his proposition he referred to the decision of Puran etc.

etc. v. Rambilas & Am: etc. etc. with Puran Vs. Rambilas and Another etc. etc., .

17. Learned Public Prosecutor in his reply also disputed the argument of Shri Dutta, learned Senior Advocate that unless there is allegation of

tampering with the witness or misusing process of the Court the order cannot be touched and he submitted that the offence committed by the

accused/opposite party was very serious and has social implication and should not be encouraged and this Court should cancel the order otherwise

there will be injustice.

18. We have heard the submissions made at the Bar and have persued the decisions thereof. From an overall assessment of the factual matrix as

transpiring from the analysis of the materials we, without a whimper, have no hesitation that the order impugned cannot stand and feel that the same

has to be set aside for reasons more than one.

19. The petitioner a young lady who has been duped into a jinxed matrimony by the evil designs of a pack of avaricious accused who had inserted

in the leading local newspaper soliciting matrimony of their son accused Debabrata Bhattacharyya describing him as a Chartered Accountant and

persuaded the petitioner to fall prey to such deceit. Unlike all young girls of her age she also dreamt a dream of roses in the bouquet of happy

matrimony; alas! the greed, physical torture and assault of the accused persons saw her roses of yesteryears fading away and the prickly thorns

bearing their ugly heads causing breach in her faith and trust. Little did she realised that she was eyed as a purchasable commodity through the

matrimony column (read the buyer"s column) who would fetch additional free gifts by way of dowry and ancillary items which her poor father of a

geriatric age having failed to comply became the cause of her tears.

20. Rest of the story is now written in the language of tears which after all were nothing else but saline water for the accused who could play with

the fate of such a defenceless young girl. Her tears dried up in due process in her arid cheeks. She has approached this Court to countenance her

fate suffered on account of the wrong in her impaired matrimony compounded by an erroneous order of the learned Additional Chief Judicial

Magistrate.

21. We, here although cannot salvage her fortune yet have to retrieve the system which has gone of the rails on account of a defective order.

22. She was battered, abused; above all, she was wronged in her castle with which she had unknowingly built with quick sand and ultimately,

happiness which she so passionately sought for turned down to be teasing mirage for her.

23. We cannot reconcile ourselves firstly notwithstanding the tenor of the allegations made in the First Information Report and the overwhelming

materials emerging from the case diary produced by the learned Public Prosecutor how could the accused/opposite party No. 2 be enlarged on

bail by the learned Additional Chief Judicial Magistrate on the very first day of his production.

24. It simply passes beyond our comprehension.

25. The learned Additional Chief Judicial Magistrate it appears totally lost sight of the forwarding report of the Investigating Officer who prayed for

jail custody till 09.9.2002 for the purpose of recovery and depicting the allegations against him. Moreover, we find that although she held ""There is

serious allegation against the father"" (accused/opposite party No. 2) yet proceeded to decide on the merit of the case and without perusing the

case diary enlarged the accused/opposite party No. 2 on bail.

26. This Court takes a very serious view of the entire matter. As we have found there are overwhelming materials in the case diary grant of bail,

that too on the very first day was not at all correct and more so without perusal of the case diary was not at all correct and the learned Additional

Chief Judicial Magistrate was very much ill-advised in proceeding in the said direction as if she was dealing with a petty offence.

27. That apart, as rightly pointed out by Mr. Mukherjee for the petitioner and the learned Public Prosecutor for the State there is a question of

jurisdiction and for a profitable discussion we refer to clause (i) of sub-section (1) of Section 437 of the said Code which reads as follows :

437. When bail may be taken in case of non-bailable offence-(1)

When any person accused of, or suspected of, the commission of any nonbailable offence is arrested or detained without warrant by an Officer-

inCharge of a police station or appears or is brought before a Court, other than the High Court or Court of Sessions, he may be released on bail,

but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death

or imprisonment for life;"".

28. It is true that the proviso in the said section speaks of sickness as a ground but, however, we are constrained to find that the medical

prescriptions filed by Shri Dutta in the supplementary return was dated February, 2003 and April, 2003 and those annexed with a return itself of

October, 2001 and June, 2002 do not inspire much confidence in the mind of the Court that it would justify the order which has been passed by

the learned Additional Chief Judicial Magistrate. The learned Additional Chief Judicial Magistrate could have very well-directed that the

accused/opposite party be referred to any Government Hospital for the purpose of his treatment if the situation so demanded. But, we fail to

understand the logic of the order impugned which does not at all make out a clear case.

29. We have given our very anxious consideration to the submission of Shri Dutta, the learned Senior Advocate and are of the opinion

notwithstanding the fact that although this application was filed way back of September, 2002 and is being disposed of after some time but simply

this passage of time would not entail the accused/opposite party to enjoy an order which he has wrongly enured to his benefit as we have

discussed hereinaabove.

30. The decisions of Shubhendu Mishra v. Subrat Kumar Mishra (supra), Bagirathsinh Judeja v. State of Gujarat (supra) and State through the

Delhi Administration v. Sanjay Gandhi (supra) are absolutely trite position and we most reverentially bow down to the ratio of the same and there

can be no dispute with regard to the point canvassed by Shri Dutta in this regard in the line of the said two decisions that there has to be cogent

and overwhelming circumstances justifying the order of cancellation of bail and unless there is allegation of tampering of the witness an order of bail

which has been once granted cannot be lightly cancelled. But, here it is an entirely different situation. An order of bail has been granted by the

learned Additional Chief Judicial Magistrate without consulting the case diary although there were sufficient materials therein and even though she

was not within her jurisdiction in view of the bar of clause (i) of sub-section (1) of Section 437 of the said Code, cast upon her, she enlarged the

accused/opposite party on bail. It is a case of wrong exercise of jurisdiction garnished by the patent illegality apart from jurisdictional error and it

cannot be set to rest with the principles as relied upon by Shri Dutta, learned Senior Advocate.

31. The decision relied upon by Shri Mukherjee in Ram Govind Upadhyay v. Sudarshan Singh and Ors. (supra) is quite apposite and as the nature

of the offence should have been the basic consideration for the grant of bail, wrong exercise of such discretion certainly cannot escape the scrutiny

of a Superior Court. Similarly, the decision of Puran etc. etc. v. Rambilas and Anr. with Sakhar and Anr. v. State of Maharashtra (supra) also, in

our humble view, comes to the rescue of the petitioner as there has been an arbitrary and wrong exercise of discretion by the learned Additional

Chief Judicial Magistrate and since apart from there being patent illegality a jurisdictional error committed by the learned Court below definitely

empowers this Court to interfere and act accordingly.

32. The profile of crime has been changed; so has been the modus operandi. In the event we concur with the absolutely illegal order passed by the

learned Additional Chief Judicial Magistrate it would send a wrong signal to society and people will tend to lose their confidence in the justice

delivery system; after all the victim who is also a consumer of justice must feel that she has not been wronged in the majestic portals of the Court.

33. Such type of orders as has been passed by the learned Additional Chief Judicial Magistrate would tend to erode the confidence of the society

in the rule of law and give a patent fancy to prospective wrong doers like the accused/ opposite party No. 2. What impression it carries that a

person like the accused/ opposite party No. 2 who had spoiled the life of a young girl by alluring her into a false hope of a cherished matrimony

walking out with impunity with an order of bail on the very first day of his production in his credit? As a Superior Court definitely it is our duty to

rectify the error committed by the learned Court below and we are sorry that we are unable to apply the principles of Harjeet Singh alias Seeta us.

State of Punjab (supra) as the ratio of the said decision has whatsoever no manner of application in the present case.

34. In the light of the discussion held hereinabove we accordingly set aside the order dated 27.8.02 passed by the learned Additional Chief Judicial

Magistrate, Sealdah in O. R. Case No. 1725 of 2002 and direct her to cancel the bail of the accused/opposite party No. 2 and take him back into

custody forthwith.

35. The bail bond furnished, pursuant to her directions, by the accused/ opposite party No. 2 is cancelled.

36. Application for cancellation of bail is allowed.

37. After this order was dictated and pronounced in open Court in the presence of the learned Senior Advocate for the accused/opposite party

No. 2, the learned Advocate for the petitioner and also in the presence of the learned Public Prosecutor and the Investigating Officer, the learned

Advocate for the accused/opposite party No. 2 prays for leave to appeal against this order. We have considered the same independently and are

of the view that the above order is passed on the basis of the well-settled principles of law laid down by the Hon"ble Apex Court. We are not

inclined to grant leave and accordingly the prayer is refused.

38. After we passed the order, learned Advocate for the accused/opposite party No. 2 has prayed for certified copy of the order free of cost in

terms of the rules which may be granted, if permissible.