

(2003) 07 CAL CK 0039

Calcutta High Court

Case No: C.R.M. No. 2936 of 2003

In Re: Sanjay Kumar Singhania
and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: July 11, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438

Citation: (2003) CriLJ 4789 : (2004) 1 RCR(Criminal) 685

Hon'ble Judges: Pradip Kumar Biswas, J; G.C. De, J

Bench: Division Bench

Advocate: Bhaskar Sen, J.M. Bagchi, Tirthankar Ghosh and P. Banerjee, for the Appellant; Kazi Safiullah, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Heard Id. counsel of both sides.
2. Perused the application and filed u/s 438 of the Code of Criminal Procedure the documents annexed.
3. The Id. P.P. appearing on behalf of the State submits that though a complaint, registered as Complt. Case C-129/99, under Sections 467/468/471/474/420/120-B of IPC was filed by one Gouri Sankar Jain before the Id. CJM, Alipore for sending it to the Behala P.S. for action u/s 156(3) of the Code of Criminal Procedure and an order was passed by the Id. Magistrate to that effect, no case could be registered at the concerned P.S. due to stay order passed by Courts at different stages. It is also pointed out that the order of vacating the Stay Order was communicated very recently to the Police Station as a result of which Police has not started any case as yet. So, it is submitted that as no case has yet been started the application u/s 438 of the Code of Criminal Procedure is not maintainable.

4. On the other hand, it is argued on behalf of the present petitioner that when the Id. Chief Judicial Magistrate, Alipore has sent the petition of complaint to the Police with the direction to start action u/s 156(3), Cr. P.C., the apprehension of arrest of the present petitioner within the meaning of Section 438 of the Code of Criminal Procedure very much exists.

5. It is contended that for the purpose of such apprehension starting of a regular case is not necessary. To substantiate the contention the Id. Counsel placed reliance on a decision of the Apex Court in [Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab](#), in which it was held --

"filing of first FIR is not condition precedent to the exercise of power u/s 438 Cr. P.C. The imminence of likely arrest founded on reasonable belief can be shown to exist even if the FIR has not yet been filed."

(Paragraph 35)

6. The same view was followed by a Division Bench of this Court in Sandip Bhandari v. State of West Bengal reported in 1998 Cal Cr LR 7 where it was viewed that even on the basis of G. D. Entry a person can approach the Court u/s 438 of the Code of Criminal Procedure under a given situation.

7. Keeping in view that a complaint was filed before the Id. Magistrate and it was sent to the P.S. with a direction to start a regular case, we are of the view that it was sufficient for the petitioners to have a reasonable belief that he may be arrested in connection with a non-bailable offence as made out in the petition of complaint.

8. So, after a due consideration of the nature of the allegations made in the complaint, we are of the view that the present application u/s 438 of the Cr. P.C. is quite maintainable, even if no case has been started by the Police on receipt of an order of a competent Magistrate u/s 156(3) of the Code.

9. After a due consideration of the facts and circumstances of the case and on perusal of the materials on record and having heard the Id. Advocates for the petitioners as well as the Id. Advocate for the State, the prayer on behalf of the following petitioners is allowed :

1) Sanjay Kumar Singhania

2) Krishna Kumar Singhania

10. In the event of the said petitioners being arrested in connection with the aforesaid case each of them shall be released on a bail of Rs. 10,000/- with two sureties of Rs. 5000/- each subject to the following conditions :

i) that the petitioners shall make themselves available for interrogation by a Police Officer as and when required;

ii) that the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer.

11. The application for anticipatory bail is thus disposed of.