
(2001) 05 PAT CK 0003

In the Patna High Court

Case No : Criminal Miscellaneous No. 30306 of 2000

Anil Kumar Gupta

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-05-2001

Acts Referred:

Copyright Act, 1957 — Section 63

Penal Code, 1860 (IPC) — Section 120B, 420, 463, 467, 468

Citation : (2002) 1 PLJR 703

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Advocate : P.N. Pandey and Dwivedy Surendra, for the Appellant; Bimal Kumar, Nilesh Kumar, Sulav Kumar Singh, Kundan Bahadur Singh, Arjun Pd. Singh, Nabin Kumar, Kamal Kumar Sinha and Rakesh Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Visa, J.—This application by the Petitioner has been filed for cancellation of bail granted to Opposite party Nos. 2 to 9 by Chief Judicial Magistrate, Patna, in Kotwali P.S. case No. 337 of 2000 under Sections 467, 463, 471, 420, 120B of the Indian Penal Code (in short, IPC) and Section 63 of the Copyright Act.

2. Brief facts giving rise to this application are that Petitioner is the Circulation Officer of M/s Chronical Publications Pvt. Ltd., New Delhi and on 19.9.2000 he had come to Patna in connection with some work of the Company when he learnt that some persons after making duplicate copies and printing several hundreds of those copies of several publications having good reputation in the market published under the authority of the Company of the Petitioner were selling the same in the market. On enquiry he came to know that the books on the subject of history and general knowledge, both in question and answer forms after preparing duplicate copies were being sold by opposite party Nos. 2 to 9 in the market. The Petitioner filed a written complaint in Kotwali Police Station on 19.9.2000 and Kotwali P.S. Case No. 337 of 2000 under Sections 467, 468, 471,

420, 120B IPC and 63 of Copyright Act was registered (Annexure-1). During the course of investigation hundreds of duplicate copies of books allegedly printed and published by the Company of Petitioner were recovered from several places and from the custody of opposite party Nos. 2 to 9 who were arrested and produced before the Chief Judicial Magistrate, Patna, who granted bail to them by his orders dated 25.9.2000 and 26.9.2000. According to the Petitioner, learned Chief Judicial Magistrate, Patna granted bail to Opposite party Nos. 2 to 9 under mistaken impression that only offence u/s 63 of Copyright Act was made out which is, in his opinion, bailable, whereas the fact is that this offence is non-bailable and the learned Chief Judicial Magistrate, Patna, did not consider the fact that allegations attracted Section 468 IPC also.

3. Opposite party Nos. 2 to 9 have appeared by filing vakalatnama and two separate counter affidavits-one on behalf of Opposite party Nos. 3, 4, 5 and 8 and another on behalf of Opposite party No. 7. Opposite party Nos. 3, 4, 5 and 8 in their counter affidavit have stated that the learned Chief Judicial Magistrate, Patna after considering the allegations made in the FIR and the materials placed before him and after hearing the counsel of parties including the informant-Petitioner and after being satisfied that it was the case for grant of bail, granted bail to opposite parties. Their further case is that although case was registered under Sections 467, 468, 471, 420 and 120B IPC besides Section 63 of Copyright Act but on bare perusal of the FIR shows that allegations are mainly with regard to violation of the provisions of Copyright Act and prosecution launched against them by Petitioner is malafide, concocted and false. According to these opposite parties, the Company of Petitioner publishes magazines, journals and books for competitive examinations and in order to get a foot-hold in the State of Bihar the Company contacted opposite party No. 2 and requested him to distribute the magazines, journals and books published by the Company and it started its business transactions through opposite party No. 2 from the year 1992 and opposite party No. 2 used to send money being the sale price of books and magazines as well as advance to three firms, namely, Chronical Publication Pvt. Ltd., Chronical Publication and Delhi Book Manufacturing Company and opposite party No. 2 has advanced a sum of Rs. 3,01,000/- through bank draft to Chronical Publication in the name of Delhi Book Manufacturing Company which has not been accounted for yet and he has also advanced a sum of Rs. 4,02,100/- to Chronical Publication for supply of magazines but the magazines have not been supplied and company of Petitioner has misappropriated the money of opposite party No. 2. Besides this, opposite party No. 2 by two separate bank drafts on 5.9.2000 and 6.9.2000 has paid in advance a sum of Rs. 90,000/- to Chronical Publication for sending magazines and thereafter it raised protest for not accounting the advance to the company. According to these opposite parties, opposite party No. 2 has given a legal notice through his lawyer to the company of Petitioner for payment of excess money taken by it without supplying magazines and books. These opposite parties have refused allegations of indulging in printing or duplication of any book, magazine, journal of the

company of Petitioner. They also denied the allegations of Petitioner that they gave threatening to Petitioner or proprietor of the company of Petitioner or to any of its staff or witness. They have prayed for rejecting the prayer of Petitioner.

4. Learned Counsel appearing on behalf of the Petitioner has submitted that the learned Chief Judicial Magistrate, Patna granted bail to opposite party Nos. 2 to 9 under wrong notion that Section 63 of the Copyright Act is bailable whereas this section provides punishment up to three years of R.I. which, according to the first Schedule of Code of Criminal Procedure is non-bailable. He has further said that the court below should have observed that the allegations made in the complaint make out a case u/s 468 IPC and in this view of the matter bail should not have been granted to opposite party Nos. 2 to 9. It is true that in the impugned order learned Chief Judicial Magistrate while granting bail to opposite party Nos. 2 to 9 has observed that Section 63 of Copyright Act is bailable whereas the fact is that this section is not bailable.

5. So far about the question of application of Section 468 IPC to the present case is concerned, in the impugned order the learned Chief Judicial Magistrate has observed that the case is registered under Sections 467, 460, 471, 420 and 120 B-IPC and 63 of Copyright Act. The impugned order further shows that at the time of granting bail to opposite party Nos. 2 to 9 besides the APP the counsel on behalf of the Petitioner was also heard. It is not that in the impugned order it has been observed that Section 468 IPC is not applicable. The learned C.J.M. has simply said that from the complaint it appears that the main allegations are u/s 63 of Copyright Act. It is not a case of such nature in which learned Chief Judicial Magistrate could not have granted bail to opposite party Nos. 2 to 9. Now the question arises whether bail once granted to opposite party Nos. 2 to 9 by the learned Chief Judicial Magistrate, Patna, in the facts and circumstances of the case requires cancellation of bail or not.

6. The apex Court in the case of *Dolat Ram and Ors. v. State of Haryana* (1995 BCCR 146 (SC)) has held as follows:

Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. 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 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.

7. is true that in para 15 of the application the Petitioner has stated that opposite party Nos. 2 to 9 have given a threat to the informant and for that a petition has already been filed before the court below (Annexure-3) but then during the course of argument learned Counsel appearing on behalf of the Petitioner did not press this point. Notwithstanding this fact, I find that in the same para the Petitioner has stated that informant and most of witnesses are at present residing at New Delhi. In Mahendra Prasad Singh Vs. State of Bihar and Another learned single judge of this Court has held that lodging an information containing the allegation of giving threat on the basis of which a Sanha Entry was entered cannot be a ground to hold that threat was actually given. There is nothing on the record to show that after release on bail opposite party Nos. 2 to 9 have misused the privilege of bail by their any action or there is any possibility of their absconding. I therefore find no cogent and overwhelming circumstances requiring cancellation of bail granted to opposite party Nos. 2 to 9 by the court below.

8. In the result, I find no merit in this application which is accordingly dismissed.