

(2014) 09 KAR CK 0055

In the Karnataka High Court

Case No : Criminal Petition No. 101274 of 2014

Annappa Siddappa Karigar

APPELLANT

Vs

Vithal

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Penal Code, 1860 (IPC) — Section 376

Citation : (2014) 09 KAR CK 0055

Hon'ble Judges : L. Narayana Swamy, J

Bench : Single Bench

Advocate : M.B. Gundawade for K. Anandkumar, Advocate for the Appellant; Murugendra Tubake for Jagadish Patil, Advocates and Vijayakumar Majage, HCGP, Advocate for the Respondent

Judgement

L. Narayana Swamy, J.—This petition is filed under Section 439(2) of the Code of Criminal Procedure with a prayer to cancel the bail granted to the petitioner in Criminal Petition No. 100921 on 12th June 2014. The case was registered against the petitioner on the complaint made by the victim on 18th March 2014 alleging that the petitioner has committed an offence under Section 376 of the Indian Penal Code. The petitioner was arrested and was in judicial custody till granting of bail by this Court on 12th June 2014. In the said case, the prosecution has filed charge sheet.

2. It is the case of the petitioner herein that after the release of the accused on 16th June 2014 by virtue of the bail granted by this Court the accused came to the place of the petitioner herein at 8.30 p.m. and started quarreling with the petitioner for making complaint to the police and it is also alleged that the petitioner herein has been threatened by the accused with dire consequences, in case, if he adduce evidence against the accused. It is further stated in the complaint that on 26th June 2014 at 8.30 a.m. when the petitioner was proceeding to Raibag, the accused along with other accused, took up the quarrel and again threatened the petitioner with dire consequences. Hence, the learned

counsel submits that the conditions put by this Court while granting bail has been violated and accordingly order dated 12th June 2014 passed in Criminal Petition No. 100921 is to be recalled. In this regard he referred the judgment of the Hon"ble Supreme Court in the case of Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu and Another, wherein it has been held that "liberty is not in realm of absolutism, but it is a restricted one. Liberty of the accused by virtue of bail is a regulated freedom, when the same is violated it is to be recalled." The learned counsel also referred another judgment of Hon"ble Supreme Court in the case of Prakash Kadam and Vs. Ramprasad Vishwanath Gupta and Another, and submitted to allow the petition and to recall the order dated 12th June 2014 passed by this Court.

3. The learned counsel appearing for the respondent files statement of objections and additional objections and submitted to dismiss the petition. He submits that there is delay of seven days in giving the complaint. He further submits that the accused and victim were having affair for the past two years and on many occasions they had physical intercourse and only when the marriage was fixed with petitioner, in order to prevent the said marriage, this complaint was made. In respect of the second complaint given by the father of the victim, the learned counsel submits that though as per the complaint, the accused visited the house of the petitioner on 16th June 2014 and threatened the petitioner of dire consequences in case of adducing evidence against him, however, the complaint was made on 26th June 2014. This delay has not been explained. He further submits that in case if this Court is intended to allow this petition, it is requested to put any stringent condition and that would be obeyed by the accused.

4. Heard both. The complaints made by the victim as well as the father of the victim on two occasions have been examined. The second complaint made on 26th June 2014 by the father of the victim is with regard to threat stated to have been given by the accused to withdraw the case. From the complaint given by the victim, it is seen that the victim herself has stated that she was having affair with the accused since 2012 and on many occasions he used to visit her for having physical intercourse. This complaint was made when the accused was prepared to marry another girl and also in order to prevent the said marriage. The contents demonstrate that the complaint was made not for having physical intercourse but for having cheated the victim in not marrying her. The second complaint is made by the father of the victim on 26th June 2014 for the incident that took place on 16th June 2014 at 8.30 p.m., i.e. after about ten days from the date of incident. Complaint made by the victim on the ground that the accused used to visit the house of the victim and was having physical intercourse for the past two years, itself shows and proves that there was physical relationship between the accused and the victim and when the accused made an attempt to marry another girl by breaching the promise made to the victim, a complaint was made in order to prevent the marriage.

5. Investigation is over and the charge sheet is filed. Under the circumstance,

once the petitioner is set free, though he has violated the conditions granted, in the best interest of both the parties, I am not inclined to restrain his liberty. In the result, I pass the following:

ORDER

- (i) Accused is directed not to visit the village/house of the victim till the completion of the Sessions case.
- (ii) He shall mark his attendance in the jurisdictional Police Station once in a week, i.e. on all Saturdays, between 10.00 and 5.00 p.m.

In terms of the above, the petition stands disposed of.