
(2013) 02 BOM CK 0054

In the Bombay High Court

Case No : Criminal Writ Petition No. 974 of 2010

Banubee

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Bombay Money Lenders Act, 1946 — Section 32(B)
Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 167(3), 437(5)
Penal Code, 1860 (IPC) — Section 405, 406, 506

Citation : (2013) ALLMR(Cri) 2495

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : Sandeep S. Deshmukh, for the Appellant; D.R. Korde, APP for State and Mr. S.S. Kazi, for the Respondent

Judgement

K.U. Chandiwal, J.—Heard finally. Rule was granted on 23rd November, 2010. The learned Additional Sessions Judge-2, Aurangabad in Criminal Revision No. 284/2010 on 10th October, 2010 directed Police Custody Remand (PCR) for two days and hence, the female petitioner/(original accused) feels aggrieved thereby and has filed the present writ petition.

2. The respondent lodged FIR, giving rise to Crime No. 1-281/2010 for offences punishable under Sections 406, 405 and 506 of IPC and u/s 32(B) of Bombay Money Lenders Act, 1946, on the allegations that, the complainant/respondent had borrowed an amount of Rs. 40,000/- from the petitioner--Banubee with interest @ 5% p.m. and the respondent allegedly pawned gold ornaments, weighing 60 grams and some silver ornaments. It was also canvassed, a bond was executed between the respondent and the petitioner on 17th October, 2009. The respondent also came with a case of repayment of Rs. 42,000/- to the petitioner.

3. On 8th October, 2010, the petitioner came to be arrested at around 3.00 p.m. She was produced before the learned 6th JMFC, Aurangabad. The investigating

agency sought police custody remand (PCR). However, after hearing the Investigator and learned Advocate for the petitioner/accused, the learned JMFC, rejected the same and directed Magisterial custody remand (MCR) of the petitioner. Thereafter, an application for bail was moved before the learned Judge and he directed release of the petitioner on furnishing PR bond and surety in the sum of Rs. 15,000/- with a condition to attend the concerned police station on 9th October, 2010 from 11.00 a.m. To 2.00 p.m.

4. It is a matter of record, this order of bail is not tested by the State in any Court.

5. The investigator filed an application before the learned Judge on 11th October, 2010, urging to exercise powers u/s 437(5) of Cr.P.C. The learned JMFC on 13th October, 2010 did not yield to the requests, however, the petitioner was directed to attend the concerned police from 14th October, 2010 from 11.00 a.m. To 1.00 p.m.

6. The State had preferred Criminal Revision No. 284/2010 before the learned Additional Sessions Judge, feeling aggrieved by rejection of the PCR dated 8th October, 2010 in the said case.

7. The prominent aspects of the matter are,--when the bail entertained by the learned JMFC is not questioned by the State or the aggrieved complainant, whether law permits to urge for PCR? The precise answer would be "No", because once when the bail is entertained, without relegating the said order to original position, there could not have been an order of PCR, as has been done in the present case. The second aspect of the matter is, even if the revision is preferred on 13th October, 2010, the developments after 8th October, 2010 of the accused/petitioner making an application for bail; police making an application u/s 437(5) of Cr.P.C., the petitioner opposing the same and hearing was given by the learned Judge, were to the knowledge of the State. Without assigning reasons, the State did not advert to these developments and straightway challenged the order of refusal of PCR dated 8th October, 2010. This suppression from the State calls for condemnation, as the State has no personal role to play as it is not an adversary litigation of the State. The rights of the citizens are to be protected in the framework of the statute. The petitioner boldly, under an affidavit, has made allegations against the investigator of demanding Rs. 5,000/- for recording her attendance and her denial has made her to face the brunt and music of the events. This aspect, unfortunately, has not been travelled to its logical answer from the Investigator or the learned APP representing the State. There is no counter affidavit refuting the serious allegations.

8. Section 167(2) of Cr.P.C. deals with the situation of custody. It says, such Magistrate, as thinks fit for a term not exceeding fifteen days in whole. In this case, the Magistrate has incidentally assigned reasons as to why he was not inclined for according Police Custody Remand (PCR) to the female accused.

Though he was not expected to make such remarks, as law contemplates in terms of Section 167(3) of Cr.P.C., if a Magistrate authorizes detention/custody of the police, he has to record reasons for doing so.

The legal position is explained in *Dinesh Dalmia Vs. C.B.I.*, ; *Mithabhai Pashabhai Patel and Others Vs. State of Gujarat*, ; and *Jeewan Kumar Raut and Another Vs. Central Bureau of Investigation*, . In the fact situation, the learned Additional Sessions Judge, was not informed of the preceding events and has overlooked the legal position to pass the impugned order, which is illegal. The impugned order is set aside. Rule is made absolute as above.