

(2004) 02 SC CK 0095

In the Supreme Court Of India

Case No : Criminal Appeal No. 193 of 2004 (Arising out of SLP (Criminal) No. 4348 of 2003)

Biman Chatterjee

APPELLANT

Vs

Sanchita Chatterjee and Another

RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437

Citation : (2004) 3 ACR 2614 : AIR 2004 SC 1699 : (2004) AIRSCW 1137 : (2004) 3 ALT 27 : (2004) CriLJ 1451 : (2004) 3 CTC 676 : (2004) 2 JT 233 : (2004) 2 PLJR 201 : (2004) 2 SCALE 374 : (2004) 3 SCC 388 : (2004) 2 Supreme 160

Hon'ble Judges : N. Santosh Hedge, J;B. P. Singh, J

Bench : Division Bench

Advocate : Ajit Kumar Sinha, for the Appellant; S.B. Upadhyay, Kumud Lata Das and Anil Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

Santosh Hegde, J.—Heard learned counsel for the parties.

2. Leave granted.

3. Pursuant to a criminal complaint filed by the respondent-wife herein alleging offence punishable u/s 498A IPC against the appellant-husband herein being registered and cognizance taken, the said appellant on 6th October, 1999 surrendered before the Judicial Magistrate, Ranchi in Complaint Case No. 78 of 1999 and sought for grant of bail. On hearing both the sides and noticing the fact that there was a possibility of compromise between the parties, the appellant herein was released on bail by the said Magistrate on his furnishing a bail bond for a sum of Rs. 5,000/- with two sureties of the like amount each. On 13.1.2000, on an application made by the respondent herein alleging that the appellant is not cooperating in the compromise talk, the learned Magistrate cancelled the bail. On a revision filed against the said cancellation of bail by the

appellant herein, the High Court of Judicature at Patna, Ranchi Bench on 18.4.2000 allowed the revision. While doing so it held that the court below was not justified in rejecting in cancelling the bail on the ground that the revision petitioner has adopted an indifferent attitude and was not taking any steps for normalising the relationship as contended by the respondent herein. In the said process, the High Court remanded the matter to the trial court to re-hear the matter on merit.

4. After remand, on 30th July, 2001, the said Judicial Magistrate, Ranchi rejected the petition filed by the respondent for cancellation of bail holding that "therefore, it does not appear legally just to cancel the bail of the accused on the ground that the accused is not compromising". Being aggrieved by the said order the respondent preferred a Criminal Misc. Petition before the High Court of Jharkhand at Ranchi contending that the very basis of granting of bail to the appellant was the compromise petition filed by him to keep the respondent herein as his legally wedded wife at her matrimonial home and since the appellant has failed to adhere to this term of the compromise, the appellant has lost his right to continue (sic) on bail. Thus, the High Court by the impugned order has allowed the said petition of the respondent-wife holding, inter alia, that the appellant herein had also not appeared before the High Court inspite of the service of notice which showed that he is not willing to keep his wife in violation of the terms and conditions of the compromise petition which, according to the High Court, was the basis for the grant of bail by the trial court. In the said process, it set aside the order of the Judicial Magistrate Ranchi made on 30th of July, 2001 rejecting the prayer of the respondent for cancellation of bail.

5. Learned counsel appearing for the appellant herein contended that the impugned order is based on factual inaccuracies as also contrary to law. He submitted that the observation of the High Court that there was a compromise between the parties which was reduced to writing and under the terms and conditions of the said compromise the appellant had agreed to keep his wife is wholly incorrect. He pointed out from the records to the contrary and that there was no such compromise arrived at between the parties. He pointed out that what was submitted to the court was only that there were negotiations going on for finalisation of the compromise. Therefore, the question of the appellant contravening the terms of the compromise did not arise at all. He also contended that assuming that there was any such violation of the terms of the compromise that cannot be a ground for cancelling the bail. He also submitted that the appellant was never served any court notice of the petition filed by the respondent in the High Court and the impugned order has wrongly noted that the appellant had been served and he remained absent.

6. The learned counsel appearing for the respondent however, contended that the very basis of the grant of bail originally was on an assurance given by the appellant that he would compromise and would keep his wife with him and he having failed to fulfil the said promise made to the court, the High Court was

justified in cancelling the bail because the foundation for the grant of bail was the promise made by the appellant.

7. Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise. Though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise through the media of well wishers, there is no submission made to the court that there will be a compromise or that the appellant would take back his wife. Be that as it may, in our opinion, the courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the court. Here we hasten to observe first of all from the material on record, we do not find that there was any compromise arrived at between the parties at all, hence, question of fulfilling the terms of such compromise does not arise. That apart non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law.

8. Therefore, in our opinion, the High Court has erred in passing the impugned order.

9. For the reasons stated above, this appeal succeeds. The impugned order of the High Court is set aside.

10. The appeal is allowed.