

(1996) 09 MAD CK 0053

In the Madras High Court

Case No : Criminal Revision Case No. 200 of 1996

D. Chandran and others

APPELLANT

Vs

State Assistant Commissioner of Police (L and O) T. Nagar
Range, Madras

RESPONDENT

Date of Decision : 18-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 438
Penal Code, 1860 (IPC) — Section 304B

Citation : (1996) 1 ALT(Cri) 422 : (1997) CriLJ 1945

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Advocate : M. Venkataraman, for the Appellant; P. Kumaresan, Government Advocate, for the Respondent

Judgement

N. Arumugham, J.—The order passed by the learned II Additional Sessions Judge, Madras while he was incharge of the Principal Sessions

Judge, Madras, in Cri. M.P. No. 1332 of 1996 in Cri. M.Ps. 870 and 925 of 1996 dated 12-3-1996 is being challenged in this revision by the

petitioners who are the accused, for its want of legality and propriety.

2. The first petitioner is the son and the fourth petitioner is the daughter of petitioners 2 and 3. The first petitioner was employed as Assistant in

Revenue Department at Ezhilegem in Madras. The first petitioner is alleged to have got married on Meenstchi, the deceased as his second wife and

she was found dead in suspicious circumstances on 2-1-1996. A complaint u/s 174 of the Code of Criminal Procedure was registered and

subsequently, after the inquest, the case was altered into Section 304(B) of Indian Penal Code by the respondent herein. On filing a petition u/s

438 of the Code of Criminal Procedure praying for anticipatory bail, on 12-2-1996 the first petitioner was released by the learned Principal

Sessions Judge, Madras and the petitioners 2 to 4 were also enlarged on anticipatory bail on 16-2-1996 in Cr. M.P. 925 of 1996, however with

certain conditions imposed. Accordingly, the first petitioner should appear daily at 10:00 a.m. before the Inspector of Police, Kodambakkam until

further orders and the other petitioners should also appear before the Inspector of Police, Kodambakkam as and when required. The petitioners 2

to 4 were not required to appear daily. But, the first petitioner had not complied with the condition, particularly on 27-2-1996, 28-2-1996 and 1-

3-1996. For the reason of non-compliance of the condition, the Assistant Commissioner of Police approached the learned Sessions Judge for the

cancellation of the bail. It was resisted by and on behalf of the petitioners. The extract of the operative portion of the order passed by the learned

Sessions Judge is as follows :-

But the fact remains that the first respondent had to appear daily on 10:00 a.m. and the other respondents as and when required. In the affidavit, it

was specifically mentioned that ever since the date of release on anticipatory bail, none of the respondents appeared before the petitioner or the

Inspector of Police. In paragraph 16 of the counter, the respondents have contended that the F.I.R. reached the learned XVII Metropolitan

Magistrate on 22-2-1996 and they executed a bond with sureties on 26-2-1996. Further, it is alleged that the first respondent sustained minor

injuries on 28-2-1996 and on 2-3-1996 onwards he is appearing daily. As already stated the first respondent has implicitly admitted that he did

not appear before the Inspector of Police or the petitioner till 2-3-1996. This only goes to show that the other respondents also did not appear. If

the first respondent or owner respondents had any difficulty in appearing as per the direction, they should have either moved the Court for

appropriate direction or should have represented the matter before the petitioner. Non-appearance till 2-3-1996 is clear from the counter itself.

Under the above circumstances, I find this point in favour of the petitioner.

In the result, the petition is allowed and the anticipatory bail granted to 1 to 4 respondents in Cri. M.P. Nos. 870 of 1996 and 925 of 1996 is

cancelled.

3. I have heard Mr. Venkataraman learned counsel for and on behalf of the petitioners and Mr. Kumaresan, learned Government Advocate, against and for the impugned order in this revision.

4. Learned counsel for the petitioners would fairly admit that due to inability of the first petitioner, on 28-2-1996, 29-2-1996 and 1-3-1996 i.e. for

a period of three days only he could not appear before the Kodambakkam police station in compliance with the direction given by the Court

below and but for his inability, he would have been very regular. As regards the petitioners 2 to 4, it is not either the case of the respondent or the

observation of the Court below that the petitioners 2 to 4 had not appeared before the police and thereby voluntarily violated the condition

imposed upon them and therefore, the anticipatory bail granted against them could not be cancelled. The condition imposed against the granting of

anticipatory bail for the respondents 2 to 4 is only that they should appear as and when required. It is not the case of the prosecution that any point

of time, they were required to appear and they had not appeared before the respondent and thus, they violated the conditions imposed against

them. In the absence of such plea and finding thereon, cancellation of a bail against the respondents 2 to 4 is not proper and not correct and not

valid in the eye of law. The learned Sessions Judge has not adverted his mind to the abovesaid aspects. It is therefore, under the circumstances, I

am not in a position to sustain the impugned order in so far as the petitioners 2 to 4 are concerned.

5. Coming to the case of the first petitioner, it has been brought to my notice that immediately after passing the impugned order on 12-3-1996, this

revision case was moved and consequent to the stay order granted by this Court, the first petitioner was regularly complying with the conditions by

appearing before the respondent-police daily for the last several months. The offence charged against the first petitioner and others is u/s 304-B of

Indian Penal Code and for the said reasoning, it is stated, the first petitioner was placed under suspension and he is now without any job. It is

contended that having married the deceased as his second wife, the first petitioner was put in much mental agony and sufferings and in the context

that the first petitioner had all along been complying with the conditions regularly, whether his absence only for the period of 3 days viz., 28-2-

1996, 29-2-1996 and 1-3-1996 was deliberate or wanton is the question to be seen in this revision.

6. It was contended that because of the ailment for the above said three days, he could not comply with the conditions, in support of which a copy of the prescription chit given by the doctor for the first petitioner was relied on. It is not known what was the exact ailment that was diagnosed by the doctor for the first petitioner during the relevant dates. However, it is seen that the medicine prescribed to the first petitioner would go to show that there was some ailment for the first petitioner and probably that would have caused him not to comply with the conditions on the above said three days.

7. The ailment which had immobilised the first petitioner from complying with the conditions would have lodged him into the trouble, resulting in the cancellation of the bail, and consequently filing of this revision. The subsequent conduct of the first petitioner in complying with the conditions continuously and regularly since the date of granting of the stay in the revision would clearly be a positive circumstance to be taken note of and this shows that the first petitioner has fully complied with the conditions and he is a law abiding citizen. It is, therefore, under the circumstances, I am fully constrained to say that the impugned order of cancellation of bail by the learned Sessions Judge cannot be sustained any more for all the reasonings given above. Keeping the directions still to continue for the first petitioner, I am inclined to say that the impugned order is liable to be set aside under the circumstances referred to above.

8. In the result, the revision succeeds and stands allowed and accordingly, the impugned order passed by the learned II Additional Sessions Judge, Madras in Cri. M.P. No. 1332 of 1996 in Cri. M.P. Nos. 870 and 925 of 1996 dated 12-3-1996 is hereby set aside and the first petitioner is directed to adhere to the conditions regularly.

9. Petition allowed.