

(2013) 06 KAR CK 0052
In the Karnataka High Court
Case No : Criminal Petition No. 2749 of 2013

Gangaraju

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-06-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(5), 439(2)
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2013) 06 KAR CK 0052

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : A.N. Radha Krishna, for the Appellant; Satish R. Girji, Government Pleader, for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioner and the learned Government Pleader. The petitioner is Accused No. 1. He along with one Lokesha are said to have attacked Gangamma and her husband and they were grievously injured on account of the attack. The injured were admitted to Hospital and though the complaint was lodged belatedly, after a lapse of six days, the case was registered against the petitioners and they were arrested and enlarged on bail by an order dated 30.08.2012. Thereafter, it transpires that Gangamma succumbed to injuries and died. The police had immediately supplemented the charge-sheet for an offence punishable u/s 302 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC", for brevity. The court promptly directed the petitioners to be arrested. They were taken into custody and a bail petition having been filed, the same has been rejected.

2. The learned counsel for the petitioner would now contend that as the earlier bail granted by the court below was never cancelled, it is wholly illegal to have directed their re-arrest without cancellation of the bail granted. This, it is asserted, is the law of the land. In this regard, he would place reliance on a decision of this court in Ataula and another Vs. State of Karnataka, which has in

similar circumstances held that any such re-arrest without cancellation of the earlier bail is wholly illegal. In this respect, the learned Single Judge has relied upon the judgment of the Apex Court in Raghbir Singh and Others Vs. State of Bihar, In that case, bail had been granted in favour of the accused under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation and filing the charge sheet within 60 days, observing that after the defect was cured by filing of a charge-sheet, the prosecution could seek for cancellation of bail on the ground that there was reasonable grounds to believe that the accused had committed a non-bailable offence and that it was necessary to arrest and take him to custody. However, the charge was altered and Section 307 IPC was included which was non-bailable and exclusively triable by the court of Sessions. The police did not move the court to cancel the bail making out a case that the accused were required for an offence punishable u/s 307 IPC. In that background, the Apex Court had held that it was absolutely necessary that before the accused was re-arrested in the same crime number, if he had already been released on bail, the prosecution should seek cancellation of bail making out a prima facie case for the non-bailable offence that was subsequently alleged in view of the serious nature of the offence, etc. It was held that in the event the bail was cancelled either u/s 437(5) or Section 439(2) Cr.P.C., the accused could be arrested. In the event the accused was re-arrested and produced before the Magistrate, it was incumbent on the Magistrate to look into all the material particulars and after being satisfied, to pass orders.

3. Therefore, in the present case on hand, the court below having failed to cancel the earlier bail, is apparently not in accordance with law. Hence, the court below is directed to retrace its steps insofar as it has directed the arrest of the petitioners without cancellation of the earlier bail, which ought to have been done in the first instance and thereafter, could proceed in accordance with law insofar as the additional charge sought to be brought against the accused and also consider the bail petition thereafterwards. In view of the said infirmity which goes to the root of the matter, though a curable defect, the court below would necessarily have to take these steps.

4. The learned counsel for the petitioner would however submit that in view of this circumstance, the petitioner ought to be enlarged on bail forthwith. Having regard to the serious allegations and the incident having been witnessed by the husband of the deceased and who was himself an injured witness, it is appropriate that the petitioner is not immediately set at liberty but the infirmity in law requires to be cured. It would be in the discretion of the Lower Court to ensure that this is supplied. It would also be in its discretion to reconsider the bail petition afresh. The petition is accordingly, disposed of.