
(2010) 02 JH CK 0052
In the Jharkhand High Court

Janeshwar Mehta

APPELLANT

Vs

State of Jharkhand and Sageeta Kumari @ Sangeeta Devi

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2010) 02 JH CK 0052

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—By this application, the petitioner has prayed for quashing the order dated 4.8.2009 passed by Sessions Judge, Palamau in Cr. Misc. Case No. 20 of 2009, whereby the bail earlier granted to the petitioner in B.P. No. 909 of 2008 has been cancelled.

2. The facts of the case, in short, are that a criminal case was instituted against the petitioner for the offence under Sections 498A I.P.C. and 3/4 of the Dowry Prohibition Act vide Hussainabad PS Case No. 94 of 2008. The petitioner was arrested in the aforementioned case and a bail petition was moved and was finally heard by the Sessions Judge. Before the Sessions Judge, the petitioner gave a written undertaking to the effect that he would keep his wife with all love, affection, honour and dignity and thereby he entered into an amicable settlement with his informant-wife. It is stated that on the said assurance given by the petitioner, he was granted bail vide order dated 28.11.2008.

3. After some time, the informant-wife filed a petition before the Sessions Court for cancellation of bail of the petitioner on the ground that in spite of the compromise and undertaking given by the petitioner, the has resiled back from such undertaking and he is refusing to take her to his home and to keep her as his wife. The petitioner was noticed by the Sessions Judge and in response to

that, he filed a rejoinder stating that on several occasions, he went to his in-laws' house to bring her back, but he was not allowed to do so by her parents. The Sessions Judge after hearing the parties passed the impugned order allowing the petition and cancelled the bail earlier granted to the petitioner in B.P. No. 909 of 2008. The learned Sessions Judge distinguished the decision of the Apex Court cited before him 2004 S.C.C. (Cr.) 814 and held that since the bail was granted earlier on the undertaking given by the petitioner to keep the informant-wife, but he has resiled from the undertaking given by him. The learned Sessions Judge further held that power to cancel bail u/s 439(2) Cr.P.C is of much wider scope and therefore, bail can be cancelled on any of sufficient reasons.

4. I have heard the learned Counsels appearing, for the parties.

5. Admittedly, on the basis of complaint lodged by the wife, a criminal case was instituted against the petitioner for the offence u/s 498A IPC and 3/4 of the Dowry Prohibition Act. The petitioner was taken into custody and ultimately was admitted to bail by the Sessions Judge, Palamau vide order dated 28.7.2008 solely on the ground that the parties have decided to live together. For better appreciation the order dated 28.11.2008, by which the petitioner was earlier granted bail by the Sessions Judge, is reproduced herein below:

28.11.2003 The petitioner was produced from jail custody on the strength of Production Warrant issued by the Court. The informant Santiga Devi is also present in the Court and has submitted that she is ready to go back to her husband, if he undertaken that he would keep her well and would extend to her all love and affection deserved by her as a wife. The petitioner has also agreed to undertake to do so.

2- Consequently a written undertaking duly signed by the petitioner Janeshwar Mahto, countersigned by his learned Advocate, and attested by the Bench clerk of the Court, was submitted to the effect that he would keep his wife with all love, affection, dignity and honour and would never give her any occasion to complain in future. He has further reiterated the contents by making an oral submission to that effect before the Court. It was submitted by the informant Sangita Devi and her learned Advocate Sri Nandlal Singh that they have no objection, if the petitioner is now released on bail.

3- In view of the above amicable development having taken place between the parties, the petitioner is directed to be released on bail on his furnishing a bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the learned C.J.M., Palamau in connection with Hussainabad P.S. Case No. 94/08 corresponding to G.R. Case No. 1544/08, but with pre-condition that at least one of the bailors must be his close relative and he must abide with the undertaking given by him in the Court.

6. From perusal of the aforesaid bail order, it is manifestly clear that the Sessions Judge granted bail to the petitioner without entering into the correctness of the allegations made by the informant, rather on the ground of mutual settlement

and undertaking. It is the admitted case of the informant that after the petitioner was released on bail she went to her in-laws place with the petitioner. However, some disputes might have arisen, for which petition for cancellation of bail was filed solely on the ground that the petitioner failed to fulfill the promises made at the time of grant: of bail. The learned Sessions Judge cancelled the bail of the petitioner only on the ground that the petitioner failed to abide by the terms and conditions and undertaking given by him.

7. At the very outset I am of the view that which bail was granted without entering into the merit of the allegations made by the informant and solely on the ground of some settlement arrived at between the parties then bail cannot be cancelled only on the ground of breach of terms and undertaking given by the petitioner. Grant or refusal of bail cannot and shall not be dependant on the mercy of the informant. Once bail is granted, the same cannot be cancelled on extraneous consideration.

8. In the instant case, bail was granted on the basis of some settlement arrived at between the parties and undertaking given by the petitioner to abide by the terms and conditions of settlement. Hence without knowing as to which party is responsible for the breach of the undertaking and what were the circumstances for which the petitioner could not fulfill his promise and undertaking, the Court ought not to have cancelled the bail earlier granted to him. The learned Sessions Judge has not correctly appreciated the law laid down by the Supreme Court.

9. For the reasons aforesaid, this application is allowed and the impugned order cancelling the bail to the petitioner is set aside.