
(2003) 05 AHC CK 0150

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 10750 of 2003

Mushtaq Ahmed

APPELLANT

Vs

Molvi Hafizur Rahman & Ors.

RESPONDENT

Date of Decision : 12-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(5)

Citation : (2003) 05 AHC CK 0150

Hon'ble Judges : K.N.Sinha, J

Final Decision : Dismissed

Judgement

K.N. Sinha, J.—By means of the present application under Section 482 Cr.P.C., the applicant has prayed for quashing of order dated 29102003 passed by the Sessions Judge (Fast Track Court No. 1), Mau and also prayed for directing the Court below to cancel the bail of opposite party Nos. 1,2 and 3, which has been granted on 2712003 by the Chief Judicial Magistrate, Mau in case No. 352/1991 under Sections 406,409,467,468 and 471 IPC police station Kotwali District Mau. It was further prayed that opposite parties Nos. 1, 2 and 3 be directed to surrender before the concerned Court in compliance with the order dated 2092002 and apply for regular bail.

2. The brief facts, giving rise to the present petition, are that applicant was a teacher in Madarsa FaizAam at Mau since 1974. In the year 1985, he proceeded on leave to get higher education in Saudi Arabia and returned back in the year 1988. When he joined his duties, he learnt that in his absence, his salary and allowances for the above period had been drawn by opposite parties Nos. 1, 2 and 3 from the Government fund by forging his signature. Consequently, a complaint No. 352/1991 was filed in the Court of Chief Judicial Magistrate and the Chief Judicial Magistrate summoned opposite parties as accused by order dated 841991. The opposite parties approached this Court by way of application under Section 482 Cr.P.C., which was allowed and proceedings were quashed. The applicant then challenged the said order of this Court by filing an appeal

before Hon"ble the Supreme Court. Hon"ble the Supreme Court allowed the said appeal by order dated 3111996 and set aside the order of this Court, directing the Magistrate to proceed with the case according to law. The judgment of Hon"ble the Supreme Court is Annexure No. 2 to the affidavit. The opposite parties then filed another petition before this Court for releasing them on personal bond, which was rejected by order dated 2631996, which is Annexure No. 3 to the affidavit. After dismissal of the said writ petition, the opposite parties No. 1,2 and 3 moved their bail application before the Chief Judicial Magistrate, which was rejected by order dated 3031996, which is Annexure No. 4 to the affidavit. The opposite parties then moved their first bail application before the Sessions Judge, Mau on 241994. The bail application of Mahfuzur Rahman, Rafiullah and Abdul Hannan was dismissed being not pressed and the bail application of Habibur Rahman was pressed and the same was granted by order dated 641996, which is Annexure No. 5 to the affidavit. The opposite parties No. 1,2 and 3 moved their second bail application before the Sessions Judge, who enlarged the opposite parties on bail by order dated 1241996 under Sections 406 and 409 IPC. Later on, when charges were framed, the opposite parties were charged for the offence under Sections 406,409,420,467,468,471,201 and 204 IPC on 1852002. After framing of the charge, the Chief Judicial Magistrate directed the opposite parties to appear before the Court of Chief Judicial Magistrate to give sureties in additional sections. The copy of the order is Annexure No. 8 to the affidavit. The said order was challenged by the opposite parties by way of application under Section 482 Cr.P.C, but no interim relief has been granted by this Court. When the opposite parties failed to appear before the Court concerned, the Court issued nonbailable warrant by order dated 2592002. The accused preferred a criminal revision before the Sessions Judge, stating that the application under Section 482 Cr.P.C. is pending before this Court and until passing of the appropriate order, the operation of the order dated 2592002 be stayed for a short term. The Sessions Judge admitted the revision and recalled the order dated 2592002, by his order dated 2792002. The applicant approached this Court by filing Miscellaneous Writ Petition and this Court was pleased to stay the order of the Sessions Judge to the extent of recalling the warrant. When the order of Sessions Judge was stayed by this Court, the opposite parties surrendered and moved bail applications before the Chief Judicial Magistrate, Mau, who, without following the procedure, illegally allowed bail to opposite parties. Being aggrieved by the said order, the applicant moved bail cancellation application before the Sessions Judge, Mau, who rejected it, without considering these facts, by order dated 29102003. This is the subjectmatter of challenge in this petition besides the cancellation of bail order passed by the Chief Judicial Magistrate, Mau.

3. The opposite parties filed counteraffidavit on the ground that the present application under Section 482 Cr.P.C. is not maintainable. The applicant was in Saudi Arabia, and the answering opposite parties have not misappropriated the salary as alleged in the complaint. The matter of forging signature is subjudice

and no conclusion can be arrived at now. The applicant had no fear (sic) in the aforesaid institution after his resignation and false complaint has been initiated. This Court has rightly quashed the complaint and proceedings by order dated 15/3/1995. However, the proceedings are going on, as directed by the Hon'ble Supreme Court.

4. The rejoinder affidavit was also filed reiterating the affidavit accompanying with the application under Section 482 Cr.P.C.

5. I have heard Sri M.S. Ansari, learned Counsel for the applicant, learned A.G.A. and Sri R.P. Yadav, learned Counsel for the opposite parties.

6. The main point for consideration before this Court is that Chief Judicial Magistrate Mau had no power to grant bail in additional sections, which were added at the time of framing of the charge and the Session Court has wrongly refused the application for cancellation of bail. In the background of what has been stated above, it is pertinent to mention here that complaint was filed under Sections 406, 409, 420, 467 and 468 IPC. The bail application before the Sessions Judge was moved on 6/4/1996 (Annexure No. 5) under the aforesaid Sections but it was not pressed on behalf of opposite parties. Then opposite parties moved another application, which was decided on 12/4/1996 and bail was granted to opposite parties under Sections 406 and 409 IPC, in which they were summoned by the Chief Judicial Magistrate. After this order was passed, the case proceeded in the Court and charges were also framed under Sections 420, 467, 468, 471, 201 and 204 IPC in addition to Sections 406 and 409 IPC. Not only this, the Chief Judicial Magistrate, after framing of the charge, called upon the opposite parties to give sureties in additional sections added later on. It is Annexure No. 8 to the affidavit.

7. I have perused the order of the Chief Judicial Magistrate passed on 25/9/2002. The opposite parties did not appear and took a short time to avail the remedy before this Court and after all the remedies were exhausted, the accused appeared before the Court of Chief Judicial Magistrate and the Chief Judicial Magistrate granted bail, considering this fact that opposite parties were already on bail by the Sessions Court for the offence under Sections 406 and 409 IPC and the offence in the added sections was not serious than the offence in which bail was granted by the Sessions Court. The order of the Chief Judicial Magistrate was challenged before the Sessions Judge for cancelling the said order but it was also rejected by order dated 29/10/2003.

8. I have examined that punishment to be awarded in additional sections is neither higher nor rigorous than given in Sections 406 and 409 IPC and once the Sessions Judge has granted bail for the offence under Sections 406 and 409 IPC the Chief Judicial Magistrate has rightly passed the order granting bail in the added sections. The Sessions Judge has also rightly dismissed the bail cancellation application.

9. The application under Section 482 is devoid of any force and it is hereby

dismissed.