

(2008) 05 CAL CK 0048
In the Calcutta High Court
Case No : C.R.M. No. 13923 of 2007

Nabanita Das (Nee Maity)

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Constitution of India, 1950 — Article 136

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 362, 367, 369, 424

Penal Code, 1860 (IPC) — Section 323, 406, 498A

Citation : (2008) 05 CAL CK 0048

Hon'ble Judges : Arunabha Basu, J

Bench : Single Bench

Advocate : Milon Mukherjee, Arindam Jana, for the Appellant; Subrata Talukdar, Kaushik Chanda, D. Basu for the opposite party No. 2 R.S. Chatterjee for the State, for the Respondent

Final Decision : Allowed

Judgement

Arunabha Basu, J.

The Judgment of the Court was delivered by:

1. The application u/s 439(2) read with section 482 of the Code of Criminal Procedure is directed against the order dated 17.10.2007 passed by learned Chief Judicial Magistrate in pursuance to the order dated 16.10.2007 passed by the learned Vacation Judge in connection with Criminal Misc. Case No. 898 of 2007 whereby and where-under the learned Vacation Judge allowed an application for anticipatory bail u/s 438 of the Code of Criminal Procedure in favour of opposite party No. 2.

2. Petitioner has filed this application for cancellation of the said bail granted in favour of opposite party No. 2. Petitioner herein is the wife of opposite party No. 2 and she filed petition of complaint before the Court of learned Chief Judicial Magistrate, Purba Midnapore on which direction was passed for investigation by

police u/s 156(3) of the Code of Criminal Procedure. The case was registered for commission of offence punishable u/s 498A/323/406 of the Indian Penal Code against three persons including the opposite party No. 2.

3. Opposite party herein along with her mother Smt. Rama Das moved an application before the learned Sessions Judge, Purba Midnapore u/s 438 of the Code of Criminal Procedure which was registered as Criminal Misc. Case No. 770 of 2007.

4. The application for anticipatory bail was finally disposed of by learned Sessions Judge by order dated 7.9.2007 whereby the learned Sessions Judge granted anticipatory bail in favour of the mother of the opposite party herein but refused the prayer for anticipatory bail so far as opposite party is concerned, after hearing the submission advanced by learned Advocates including the learned Public Prosecutor, appearing for the respective parties.

The relevant portion of the order of the learned Sessions Judge is set out below:

Considering the facts and circumstances of the case and materials on C.D. and other materials on record, the prayer for anticipatory bail of the mother-in-law of the de facto complt., Smt. Rama Das is considered such prayer for the husband of the de facto complainant, namely, Asish Das, is rejected.

5. A perusal of the said order dated 7.9.2007 will show that the application for anticipatory bail was disposed of after contested hearing and the learned Advocate appearing for the opposite party while moving the application for anticipatory bail submitted on behalf of both the petitioners who filed the application for anticipatory bail. It is also evident from the aforesaid order that learned Public Prosecutor raised objection mainly against the husband (opposite party herein) on the ground that there are sufficient materials against the husband showing his involvement with the alleged offence punishable u/s 498A/406 of the Indian Penal Code. So the rejection on the face of the aforesaid order, appears to have been passed after contesting hearing and the learned Sessions Judge on due consideration of the materials available in the C. D. and also after hearing the submission of learned Advocates for the respective parties passed the order, granting anticipatory bail to mother of the opposite party but rejected the application, so far as the opposite party herein is concerned.

6. It further appears that on 11.09.2007 that is some days after the disposal of the application u/s 438 of the Code of Criminal Procedure, an application was presented on behalf of the opposite party whereby it was submitted before the learned Court by the learned Lawyer of the opposite party that during the course of hearing in the application for anticipatory bail, he submitted before the learned Court for not pressing the prayer for bail of accused petitioner No. 1 Ashish Das but in the order dated 7.9.2007 instead of recording "rejected as not being pressed", the application was rejected. It was prayed that in the order the words "as not being pressed" be inserted otherwise the petitioner will face much inconvenience. Learned Court below accepted the said prayer and passed the

following order:

"In view of what is stated in the petition filed this day on behalf of the accused-petitioner No. 1, Ashish Das, and also in view of the submissions made by the Id. Lawyer for the said accused petitioner, let the words "as not being pressed" be incorporated after the last word "rejected" in the concerned paragraph of the impugned order so as to represent that the prayer for anticipatory bail of the accused-petitioner, Ashish Das is rejected as not being pressed."

7. Thereafter, the petitioner (opposite party herein) moved an application u/s 438 of the Code of Criminal Procedure once again before the learned Sessions Judge, Purba Midnapore which was registered as Criminal Misc. Case No. 898 of 2007. In the said application there was no mention about the earlier rejection by the Sessions Judge in connection with the earlier application filed by the opposite party. It is only stated in the said application that no other bail application is pending before the Hon"ble High Court, Calcutta.

8. The application for anticipatory bail was heard by the learned Vacation Judge, Purba Midnapore on 16.10.2007 and after hearing the submission made by the learned Advocate for the accused as well as by the learned Public Prosecutor, learned Vacation Judge granted anticipatory bail on certain terms and conditions as reflected in the said order.

9. Opposite party thereafter, that is, immediately on the next day i.e. on 17.10.2007 appeared before the learned Chief Judicial Magistrate, Purba Midnapore and the learned Chief Judicial Magistrate, Purba Midnapore granted bail to the opposite party.

10. A perusal of the order passed by the learned Chief Judicial Magistrate will show that the order was passed only on consideration that the accused obtained anticipatory bail from the learned Court of Sessions. The order of bail passed by the learned Magistrate u/s 437 of the Code of Criminal Procedure was more or less a replica of the order passed by the learned Vacation Judge.

11. Mr. Milon Mukherjee, learned Advocate for the petitioner during the course of submission pointed out that as the opposite party obtained an order of anticipatory bail by practicing fraud on the Court as he suppressed the earlier order of rejection of anticipatory bail then the opposite party cannot be permitted to enjoy the liberty of the bail. It was also submitted by the learned Advocate for the petitioner that in view of Sessions Judge after the disposal of the Criminal Misc. Case No. 770 of 2007 was functus officio and as such learned Sessions Judge committed serious illegality by accepting the prayer filed by the opposite party subsequent to the passing of the order and disposing the criminal misc. case.

12. In support of his contention learned Advocate for the petitioner has referred to the following decisions:

1. MCD vs. State of Delhi & Anr., reported in 2005 Supreme Court Cases (Cri)

1322.

2. Ganesh Raj vs. State of Rajasthan & Ors., reported in 2005 Cr. LJ 2086.

3. In re: Renu Singh, reported in 1995 C Cr. LR (Cal) 28.

4. Imratlal Vishwakarma & Ors. vs. State of M. P., reported in 1997(1) Crimes 289.

5. United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, .

13. Learned Advocate appearing for the State submitted that in view of fraud practiced upon the Court by the opposite party herein, the bail granted to him may be cancelled by this Court.

14. Mr. Subrata Talukdar, learned Advocate appearing for the opposite party No. 2, while refuting the submission made by the learned Advocate for the petitioner pointed out that in this case no fraud was practiced by the opposite party as alleged. The subsequent application for anticipatory bail was filed only when the first application was rejected as not pressed as is evident from the order dated 11.9.2007 passed by the learned Sessions Judge.

15. It is the contention of the learned Advocate for the opposite party that when the first application was not decided on merit then the opposite party, under law, could have filed the second application for anticipatory bail and not mentioning of the fact that the earlier application was rejected as not pressed, cannot operate as suppression of material fact. It is also contended by the learned Advocate appearing for the opposite party that the opposite party is enjoying of the bail granted by the learned Judge in terms of a provision u/s 438 of Code of Criminal Procedure and as there is no allegation that he has misused the bail so granted, the liberty of the opposite party may not be forfeited by directing cancellation of bail as prayed for by the petitioner herein.

16. In support of his contention, learned Advocate for the opposite party has referred the following decisions:

1. Naresh Kumar Yadav vs. Rabindra Kumar & Ors., reported in 2008(1) Supreme Court Cases page 632;

2. Mahant Chand Nath Yogi and Another Vs. State of Haryana, ;

3. Adri Dharan Das vs. State of W. B., reported in 2005 (4) SCC 303;

4. S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, .

17. The maintainability of second application for anticipatory bail u/s 438 of the Code of Criminal Procedure came up for consideration before the Full Bench of this Court in Maya Rani Guin and etc. Vs. State of West Bengal, .

18. The Full Bench of this Court after taking into consideration the earlier decisions of this Court as well as the decision of other High Courts held as

follows:

20We are of the view that entertaining a second application for anticipatory bail would amount to review or reconsideration of the earlier order passed by a Division Bench having co-ordinate jurisdiction, as the accusation remains unchanged. We also find merit in the submission of Mr. Moitra that the "accusation" being the sine qua non and which remains the same, there cannot be any revival of "reasons to believe" or apprehension of arrest which was considered by the Court in the earlier application for anticipatory bail.

21. Accordingly, the first question under the present reference is answered in the negative. We are of the view that the second application for anticipatory bail, even if new circumstances develop after rejection or disposal of the earlier application, is not maintainable.

19. In view of the decision of this Court about the non-maintainability of second application for anticipatory bail, I am of the view that second application for anticipatory bail will not be maintainable. The contrary decisions of other High Courts may not have any application of this point.

20. In view of the legal position as highlighted above, the opposite party was not in a position to file the second application for anticipatory bail before the same Court. It may be pointed out that first as well as the second application seeking anticipatory bail was filed before the learned Court of Sessions Judge, Purba Midnapore.

21. It is evident that while moving the second application seeking anticipatory bail, petitioner did not mention that the earlier application was rejected. There was no mention in the application filed by the opposite party in connection with the Criminal Misc. Case No. 898 of 2007 that the earlier application for anticipatory bail was rejected and the circumstances under which the same was rejected. It is evident that there was suppression of material facts by the opposite party in his second application when for reasons best known to him, the opposite party did not mention about earlier rejection of his application for anticipatory bail.

22. In view of the position of law as stated in Maya Rani Guin's case (supra) by the Full Bench of this Court, the petitioner was not in a position to file the second application for anticipatory bail and as such in my view, there was deliberate suppression of material fact while moving the second application.

23. Learned Advocate for the petitioner submitted that in MCD vs. State of Delhi & Anr. (supra), the Division Bench of Supreme Court took into consideration in connection with a case where the party did not disclose the fact in the criminal revision filed before the High Court that he has also been convicted in another criminal case by the Metropolitan Magistrate. Taking into account on the part of the party, the Supreme Court held:

In our opinion, he would be guilty of playing fraud on the Court as well as on the

opposite party. A person whose case is based on falsehood can be summarily thrown out at any stage of the litigation. We have no hesitation to say that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any state of the litigation.

24. Learned Advocate for the opposite. party, however, referred to the decision in *S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar & Ors.* (supra) where the Division Bench of the Supreme Court held that as a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view that Court may have taken. In this case Supreme Court disagreed with the decision of the High Court where during the hearing of petition it came to the notice of the Division Bench about filing of earlier suit by the writ petitioner.

25, The fact situation of the case referred to by the learned Advocate for the opposite party cannot have any application so far as the present case is concerned, as because where the suppression was not in relation to the material fact, the Supreme Court held that such suppression may not affect the decision of the Court. In the case referred to by the learned Advocate for the opposite party, Supreme Court took into consideration that at the time of hearing of writ petition, the suit was withdrawn a year earlier.

26. But so far as the present case is concerned, the suppression as alleged by the writ petitioner cannot be deemed to be not material. This suppression was effected on the question of maintainability of the application for anticipatory bail. When the second application for anticipatory bail was moved, the decision in *Maya Rani Guin and etc.* (supra) was already in force and so far as the State of West Bengal is concerned, Sessions Judge was not empowered to hear a second application for anticipatory bail as the Sessions Judge was bound by the order of the High Court passed in *Maya Rani Guin and etc.* (supra).

27. I have already pointed out that in the second application for anticipatory bail registered as Criminal Misc. Case No. 898 of 2007, opposite party never mentioned that his earlier application was rejected. The contention of the learned Advocate for the opposite party is that in view of order dated 11.9.2007, the application was deemed to be rejected as not pressed as per the order by the Sessions Judge, then the petitioner was under no obligation to disclose in his petition for anticipatory bail filed subsequently and as such the petitioner neither suppressed any materials fact nor committed any fraud in the Court as alleged.

28. I am not in agreement with the submission by the learned Advocate for the opposite party. Even if, his earlier application by subsequent order dated 11.9.2007 was rejected as not pressed as directed by the learned Court of

Sessions then also in my view, he was bound to disclose about his earlier rejection while moving the second application for anticipatory bail. Without doing so it was not open to the opposite party to move the application once again before the learned Court of Sessions. It is immaterial whether the opposite party was under any impression that he was not required to disclose the rejection of his earlier application.

29. So far as the Court is concerned, such non-disclosure about rejection of earlier application for anticipatory bail will amount to suppression of material fact as well as fraud on the Court. Unless the Court is aware about the rejection of the earlier prayer for anticipatory bail and unless the same is brought to the notice of the Court, it cannot be accepted that no suppression of material fact was committed by the opposite party.

30. In *Hamza Haji Vs. State of Kerala and Another*, , the Division Bench of Supreme Court took into consideration the fraud practiced on Court where a party suppressed the material fact and obtained a beneficial order from the Forest Tribunal. In this case neither the Tribunal nor the High Court intervened when the fraud was brought to its notice. Supreme Court declined to exercise its jurisdiction under Article 136 of the Constitution to come to the aid of the appellant to secure to him the fruits of the fraud practised by him on the Forest Tribunal and the High Court.

31. The Supreme Court held,

The basic principle obviously is that a party who had secured a judgment by fraud should not be enabled to enjoy the fruits thereof.

32. In this decision Supreme Court recorded the earlier Full Bench decision of the Bombay High Court in *Guddappa Chikkappa Kurbar Vs. Balaji Ramji Dange*, , wherein it has been held:

No Court will allow itself to be used as an instrument of fraud, and no Court, by the application of rules of evidence or procedure, can allow its eyes to be closed to the fact that it is being used as an instrument of fraud.

33. This being the position, I am not in agreement with the submission made by learned Advocate for the opposite party that no fraud was practiced upon Court by the opposite party while suppressing the earlier rejection of his prayer for anticipatory bail by the learned Sessions Judge. Incidentally he moved the same Court, but the application was heard during the vacation by the Vacation Judge and it is evident immediately thereafter that is on the next day after obtaining the order for anticipatory bail, he appeared before the Court of learned Chief Judicial Magistrate and obtained bail.

34. In the order dated 16.10.2007 the learned Sessions Judge directed that he shall surrender before the learned ACJM, Tamluk by 28.11.2007 but it is evident that he immediately on the next day i.e. on 17.10.2007 appeared before the learned Chief Judicial Magistrate and obtained bail.

35. Coming to the question about the subsequent order dated 11.9.2007 passed by the learned Sessions Judge, I am of the view that the learned Sessions Judge misdirected himself about the scope of section 362 of the Code of Criminal Procedure. It is the rule of law that after passing the final order deciding the lis, the Court which has passed the order becomes functus officio and cannot entertain any application for review or even to modify its earlier order, save and except, to correct the arithmetical or typographical mistake.

36. The aforesaid rule of law is codified u/s 362 of the Code of Criminal Procedure, which is set out below:

362. Court not to alter judgment.-Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

37. Whenever a Court has disposed of a case by signing its judgment or final order, it cannot alter or review the said order except to correct a clerical or arithmetical error. A clerical or an arithmetical error is an error occasioned by an accidental slip or omission of the Court. Save and except, rectifying clerical or an arithmetical error if the Court modifies or alter or review its earlier order after it has passed final order or judgment then the same will be against the clear language of section 362 of the Code of Criminal Procedure and will be passed under illegal exercise of jurisdiction and power of the Court.

38. A perusal of the order of the Sessions Judge dated 7.9.2007 will show that the Sessions Judge disposed of the Criminal Misc. Case No. 770 of 2007 finally. The words "Criminal Misc. Case is thus disposed of" indicated about the final order passed by the Court in disposing of the Criminal Misc. Case No. 770 of 2007.

39. A perusal of the said order will show that elaborate submission was made by the learned Advocates for the opposite party while moving application for anticipatory bail for both the petitioners. It is recorded in the order, which runs as follows:

It is further submitted on production of the copy of the petition of Mat. Suit No. 182/07 filed by the de facto-complt. Against her husband on 19.6.07 that there is no such allegation in the plaint that the mother-in-law used to inflict physical and mental torture upon the de facto complainant whereas in the FIR a concocted story has been made out. The Id. P. P. raised objection mainly against the husband as there are sufficient materials against the husband showing involvement with the alleged offence punishable u/s 498A/406 IPC.

40. The aforesaid observation as recorded in the body of the order clearly shows that the application for anticipatory bail was pressed for both the petitioners otherwise the question of submission in connection with Matrimonial Suit No. 182/07 which was pending between the petitioner herein and opposite party as

well as the submission that FIR was a concocted story would not have arisen. FIR was lodged by the petitioner herein. In the order dated 7.9.2007 there is nothing to show that the application on behalf of the opposite party was not pressed.

41. It is evident that the learned Public Prosecutor also recorded his objection and specifically submitted against the husband (opposite party herein) showing his involvement in the alleged offence punishable u/s 498A/406 of the Indian Penal Code. The detailed order passed by the learned Sessions Judge dated 7.9.2007 clearly indicates that after contested hearing where the learned Advocates for respective parties advanced elaborate argument, the application for anticipatory bail was disposed of finally by the learned Sessions Judge by order dated 7.9.2007.

42. In view of final disposal of the application, the learned Sessions Judge was not in a position either to alter or to review the order in view of bar as prescribed u/s 362 of the Code of Criminal Procedure.

43. It is interesting to note that the miscellaneous petition by way of put up petition was filed on 11.9.2007. In the said petition, the plea that the earlier application was not pressed was taken for the first time before the learned Sessions Judge and the learned Sessions Judge accepted the said prayer.

44. The order dated 11.9.2007 as passed by the learned Sessions Judge in my view is in clear violation of section 362 of the Code of Criminal Procedure.

45. The practice which was adopted by the opposite party by filing up petition is not in accordance with law as because after disposal of the application for anticipatory bail by passing a final order, the option open to the opposite party was to move High Court seeking anticipatory bail u/s 438 of the Code of Criminal Procedure. He was not in a position under law to move a second application for anticipatory bail before the same Court in view of the decision of this Court in Maya Rani Guin's case (supra).

46. Learned Sessions Judge completely ignored the provision u/s 362 of the Code of Criminal Procedure and passed the order dated 11.9.2007 recording that the earlier application which was decided on merit on 7.9.2007 was in fact not pressed appears to have been passed without taking into consideration the submissions recorded in the body of the order, the objection raised by the learned Public Prosecutor and the reasons assigned by the learned Court below while rejecting the prayer for anticipatory bail. The practice adopted by the learned Sessions Judge does not have any sanction of law and I am of the view that the said order being illegal does not create any benefit in favour of the opposite party.

47. Supreme Court in Hari Singh Mann vs. Harbhajan Singh Bajwa & Ors., reported in AIR 2001 SC 43, strongly deprecated the practice about review of judgment by High Court in exercise of power u/s 482 of the Code of Criminal Procedure.

48. In this decision Supreme Court at paras 8 and 9 held as follows:

8. We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the Code of Criminal Procedure. After the disposal of the main petition on 7.1.1999, there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of miscellaneous petition not referable to any provision of Code of Criminal Procedure or the rules of the Court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because the respondent No. 1 was an Advocate, did not, justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30th April, 1999 and 21st July, 1999 could not have been passed by the High Court under its inherent power u/s 482 of the Code of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the Court.

9. There is no provision in the Code of Criminal Procedure authorising the High Court to review the judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of section 482 of the Code. This Court in *State of Orissa Vs. Ram Chander Agarwala and Others*, , held (Para 20 of AIR Cr. LJ).

"Before concluding we will very briefly refer to cases of this Court cited by Counsel on both sides, *Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another*, relates to the power of the High Court to cancel bail. The High Court took the view the u/s 561A of the Code, it had inherent power to cancel the bail, and finding that on the material produced before the Court it would not be safe to permit the appellant to be at large cancelled the bail, distinguishing the decision in AIR 1945 94 (Privy Council) and stated that the Privy Council was not called upon to consider the question about the inherent power of the High Court to cancel bail u/s 561A. In *Sankatha Singh Vs. State of U.P.*, this Court held that section 369 read with section 424 of the Code of Criminal Procedure specifically prohibits the altering or reviewing of its order by a Court. The accused applied before a succeeding Sessions Judge for a re-hearing of an appeal. The learned Judge was of the view that the Appellate Court had no power to review or restore an appeal which has been disposed of. The Supreme Court agreed with the view that the Appellate Court had no power to review or restore an appeal. This Court, expressing its opinion that the Sessions Court had no power to review or restore an appeal observed that a judgement, which does not comply with the requirements of section 367 of the Code, may be liable to be set aside by a superior Court but will not give the Appellate Court any power to set it aside

itself and rehear the appeal observing that "section 369 read with section 424 of the Code makes it clear that the Appellate Court is not to alter or review the judgment once signed except for the purpose of correcting a clerical error. Reliance was placed on a decision of this Court in Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, , by Mr. Patel, learned Counsel for the respondent wherein it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the respondent clearly lays down, following U.J.S. Chopra Vs. State of Bombay, that once a judgment has been pronounced by a High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of section 561A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code.

49. It is also useful to refer to a portion of para 10 of the judgment which is also set out below:

10. section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error

50. In this case Supreme Court deprecated the practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh direction in such miscellaneous petitions. Unfortunately the learned Sessions Judge in violation of the direction of the Supreme Court entertained a miscellaneous petition and modified his earlier order dated 7.9.2007 in the matter which is not permissible under law.

51. In this view of the matter, I am of the view that petitioner cannot take any advantage of the subsequent order dated 11.9.2007 passed by the learned Sessions Judge.

52. The contention that the opposite party is now enjoying bail granted by the learned Chief Judicial Magistrate in terms of section 437 of the Code of Criminal Procedure and the same may not be disturbed to affect the liberty of the opposite party cannot be accepted. I have already pointed out that learned Chief Judicial Magistrate granted bail only considering the order passed by the learned Vacation Judge granting anticipatory bail to the opposite party.

53. The grant of such anticipatory bail by the learned Vacation Judge must be taken as non est in the eye of law. In view of the fact that after rejection of the earlier application for anticipatory bail, no second application could have been legally filed before the Court of Sessions. The Court of Sessions entertained the application when the opposite party by practicing fraud on the Court did not disclose the fate of his earlier application for anticipatory bail.

54. It may be pointed out that when the opposite party obtained the benefit by practicing fraud on the Court then he cannot be permitted to enjoy the benefit only on the ground that he is now enjoying bail u/s 437 of the Code of Criminal Procedure. A party who has obtained the benefit by practicing fraud on the Court cannot be permitted to enjoy the same as because a wrongdoer, when he has obtained benefit by his wrong and illegal act cannot seek any protection from the Court.

55. In view of my above discussion, the application u/s 439(2) read with section 482 of the Code of Criminal Procedure is allowed. The order dated 17.10.2007 passed by the learned Chief Judicial Magistrate granting bail to the opposite party u/s 437 of the Code of Criminal Procedure and the order dated 16.10.2007 passed by the learned Vacation Judge are hereby set aside.

56. In the result the bail granted in favour of the opposite party stands cancelled.

57. Criminal Section is directed to forward a copy of the order to learned Chief Judicial Magistrate, Purba Midnapore who is directed to take appropriate action against the opposite party consequent to the cancellation of bail as directed by this Court.

58. Criminal Section is also directed to supply urgent certified copy of the order to the parties as and when applied for.