
(1988) 02 RAJ CK 0012

In the Rajasthan High Court

Case No : Criminal Miscellaneous Application 337 and 297 of 1988

Pishori Lal Babhar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-02-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 438, 439
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (1988) 1 RLW 512 : (1988) 1 WLN 461

Hon'ble Judges : I.S. Israni, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.S. Israni, J.—This is an application for cancellation of bail u/s 439(2), Cr.PC, granted u/s 438, Cr.PC to the non-petitioners No. 2 to 5.

2. Briefly stated the facts of the case are that Smt. Manju died on December 15, 1986 on account of burns. A report of the incident was made to the Police Station, Adarsh Nagar, Jaipur where a case was registered on the same day. During the course of investigation/enquiry the statements of petitioner Pishori Lal and Smt. Sheela father and mother of the deceased were recorded on December 16, 1985 in the presence of Dy. S.P. who counter signed the said statements. In these statements, no allegation of cruelty of dispute on account of any demand of dowry, etc., was alleged and it was also stated that deceased Manju did not complain against any member of her in laws. The cremation of the deceased was made in presence of the petitioner. Thereafter about 10 days, the petitioner made a complaint in the form of a letter/application on December 26, 1985 on the basis of which investigation was made and the First Information Report No. 98/86 was registered u/s 498A and 306, IPC at Police Station, Adarsh Nagar, Jaipur. After investigation, the police found that deceased had committed suicide and no case was made out, as such the Final Report was submitted by the Police. Thereafter, a complaint was filed by the petitioner in the court of learned Judicial

Magistrate No. 1, Jaipur City on January 5, 1987, which was sent to the court of Judicial Magistrate No. 3, Jaipur City as it related to the jurisdiction of that court. Subsequently, the complaint was transferred to the court of Judicial Magistrate No. 4, Jaipur City who took cognizance on the said complaint, after recording the statements of the witnesses under Sections 200 and 202, Cr.PC and ordered to issue process against the non-petitioners No. 2 to 5 and summoned them by non-bailable warrants vide order dated December 15, 1987.

3. A bail Application No. 297/88 u/s 438, Cr.PC was filed, which was heard and decided on February 5, 1988 and the non-bailable warrants were converted into bailable warrants and the non-petitioners were directed to appear in the trial court within 15 days and to furnish bail bonds in the sum of Rs. 5000/- with one surety in the like amount to the satisfaction of the trial court.

4. The contention of Shri Sital Das, learned Counsel for the petitioner is that in case of dowry death, the bail should not be granted by the courts and reliance in this respect has been placed on the case of Samunder Singh v. State of Raj. 1987 CAR 132. This was a matter in which investigation was in progress when the application for grant of anticipatory bail was filed. In the present case, the incident occurred on December 15, 1985, the petitioner and mother of the deceased gave the statement on the next day, i.e., December 16, 1985 that they had no quarrel with the non-petitioners No. 2 to 5 and no demand of dowry was made from them nor the deceased had made any such complaint to them. There after on application was filed by the petitioner on December 26, 1985, further investigation was made and Final Report was given by the Police on January 8, 1987. Again a private complaint was filed by the complainant and the court thereafter issued non-bailable warrants to non-petitioner Nos. 2 to 5. It is, therefore, clear that the above authority is not applicable to the facts of the present matter as investigation had already been completed by the police and even Final Report had been filed.

5. The next contention of learned Counsel is that necessary documents were not filed by the non-petitioners No. 2 to 5 along with the application filed by them u/s 438, Cr.PC and thus proper representation of all the facts was not made before this court. Learned Counsel points out that all statements recorded by the trial court under Sections 200/202, Cr.PC should have been along with the application by the non-petitioners No. 2 to 5. I do not think that merely on account of non-filing of the statements recorded in the trial court can be said to be misrepresentation of facts by the non-petitioners No. 2 to 5. It is evident that the trial court had taken cognizance of the matter only after recording the statements Under Sections 200/202, Cr.PC.

6. The third contention of the learned Counsel is that while considering the application u/s 438, Cr.PC, this court should have taken into account only the statements recorded under Sections 200/202, Cr.PC and no other documents should have been considered. I am unable to agree with this argument of the learned Counsel, as while considering the application for grant of bail under any

provision, over all picture of the whole matter has to be taken. This court could not ignore the statements recorded of this petitioner and his wife on December 16, 1985 and also the fact that the petitioner filed an application on December 26, 1985 on account of which investigation was made by the police and Final Report in the matter was filed. The whole background of the dispute is necessary to be taken in account at the time when the bail application is under consideration.

7. Learned Counsel has placed reliance on *Ram Lakhan v. State of Rajasthan* 1981 RCC 212. This authority has no application to the facts and circumstances of the case.

8. It may be pointed out that the Apex Court in the case of *Gurcharan Singh v. State* AIR 1978 SC 179; has laid down certain principles regarding cancellation of bail under the provisions of Section 439, Cr.PC and two paramount considerations along with others are, the likelihood of the accused fleeing from justice and secondly his tampering with the prosecution evidence, which should be avoided to ensure fair trial of the case in the court of justice. No such allegations have been made in the application under consideration. In fact there cannot be any inexorable formula in the matter of considering the grant or rejection of the bail. The facts and circumstances of each case shall govern the discretion of the court. In the present case the law shall take its own course and the non-petitioners No 2 to 5 will face trial regarding the offence, the cognizance of which has been taken by the trial court.

9. In the result, I do not find any force in this application, which is rejected.