

(1991) 04 AP CK 0025

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 682 of 1990

Rekulampati Mohan Reddy

APPELLANT

Vs

Gangavaram Thirupathi Reddy and Others

RESPONDENT

Date of Decision : 18-04-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 301, 439(2)

Citation : (1991) 2 ALT 275 : (1991) 2 APLJ 280

Hon'ble Judges : N.D. Patnaik, J

Bench : Single Bench

Advocate : Bonala Krishna Rao, for the Appellant; A.T.M. Ranga Ramanujam, for Respondent Nos. 1 to 4 and Public Prosecutor, for the Respondent

Judgement

N.D. Patnaik, J.—Respondents 1 to 4 in this case who are accused of the offence punishable u/s 302 r/w 34 of the Indian Penal Code in S.C. No. 114/89 in the Court of the Additional Sessions Judge, Mahaboobnagar were released on bail. The charge-sheet in that case was filed by the 5th respondent i.e. Inspector of Police, Wanaparthy and it was committed for trial to the Sessions Judge. The petitioner, who is the de facto complainant filed an application in CrI.M.P. No. 228/89 before the Additional Sessions Judge, Mahaboobnagar to cancel the bail granted to respondents 1 to 4 u/s 439(2) of the Code of Criminal Procedure. The learned Additional Sessions Judge dismissed that application on two grounds—that the petitioner has no locus standi to file the application and that there are no merits in that case. This revision case is filed against the said order by the de facto complainant.

2. The first and main question which arises for consideration in this case is whether the petitioner who is the de facto complainant can file an application for cancellation of bail granted to the accused. The learned counsel for the petitioner has referred to Section 439(2) of the Code of Criminal Procedure which says that the High Court or court of Session may direct that any person who has been released on bail be arrested and commit him to custody. That only deals with the

powers of the High Court or the Court of Session for cancellation of the bail. The further question is who is to file such an application--whether the Public Prosecutor representing the State or whether anybody also including the de facto complainant.

3. Section 301 of the Code of Criminal Procedure provides that the Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under enquiry, trial or appeal. Sub-section (2) of Section 301 says that if in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case. Section 24(3) of the Code of Criminal Procedure Provides that for every district the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district. The definition of Public Prosecutor in Section 2(u) of the Code of Criminal Procedure reads that the "Public Prosecutor" means any person appointed u/s 24, and includes any person acting under the directions of a Public Prosecutor.

4. Since the present case is filed by the State in the concerned Magistrate's Court and committed for trial to the Sessions Court it is the Public Prosecutor attached to that Court who is competent to conduct the prosecution of that case. If any advocate is instructed by private party i.e., de facto complainant, he shall act only under the directions of the Public Prosecutor. Therefore, if a petition has to be filed during the trial of a Sessions Case for cancellation of bail, it is only the Public Prosecutor that is entitled to file such a Petition.

5. But the learned counsel for the Petitioner has contended that any person can move the court for cancellation of bail u/s 439(2) of the Code of Criminal Procedure and if the court finds that there are sufficient grounds it may cancel the same. In support of his contention he has relied upon a decision of the Madhya Pradesh High Court in Mathura Prasad Gautam v. B. V. Karanth and Anr. (1987 (1) Reports (MP) 427) in which the learned single judge of the Madhya Pradesh High Court had held that an application by a public man seeking cancellation of bail of accused u/s 439(2) of the Code of Criminal Procedure is maintainable. In that decision the learned Judge has referred to a decision of the Supreme Court in Thakur Ram Vs. The State of Bihar, in which the Supreme Court dealing with the question of locus standi has held that :

"In a case which has proceeded on a police report, a private party has no locus standi. No doubt the terms of Section 435 are very wide and he can even take up the matter suo motu. The Criminal Law is not, however, to be used as an instrument of wreaking private vengeance by an aggrieved party against the person who according to that party has caused injury to it. Barring a few exceptions in criminal matters, the party who is treated as the aggrieved party is

the State which is the custodian of the Social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community, to book".

The learned Judge having extracted the same judgment of the Supreme Court has observed that "no doubt", the State which is the custodian of the social interests of the society, has larger responsibility to deal with the situation, but all the same individual's rights are not affected by it " The learned Judge has further referred to some other decisions of the Supreme Court in People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, ; Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, and S.P. Gupta Vs. President of India and Others, wherein it was held that any member of the society having sufficient interest in the matter can maintain action for judicial redress for public injuries arising from the breach of public duties or for violation of some provision of law and seek enforcement of such constitutional or legal provisions. All those decisions were rendered by the Supreme Court while considering the writ jurisdiction of the High Court or Supreme Court under the Constitution of India, The only decision which has considered the question of locus standi in relation to the provisions of the Code of Criminal Procedure is in Thakur Ram and Ors. v. State of Bihar (2 Supra). Therefore in view of the provisions of the Code of Criminal Procedure referred to above, according to which it is only the Public Prosecutor that can conduct the prosecution in a Sessions Court and not an advocate engaged by a private party, I am unable to agree, with great respect, with the view expressed by the learned Single Judge of the Madhya Pradesh High Court in Mathura Prasad Gautam v. B. V. Karanth and Anr. (1 supra) that any public man seeking cancellation of bail of accused can make an application u/s 439 of the Code of Criminal Procedure. I agree with the contention of the learned Public Prosecutor and also the learned counsel for the accused that the de facto complainant cannot file an application for cancellation of the bail of the accused having regard to the provisions of the Code of Criminal Procedure.

6. Therefore the Petition filed by the de facto complainant is not maintainable. The learned Counsel for the accused has also argued that the order of the lower court was passed on merits. But in view of my conclusions that the petition is not maintainable, I will not go into merits of the case.

7. The Criminal Revision Case is, therefore, dismissed.