

(2004) 07 CHH CK 0012

In the Chhattisgarh High Court

Case No : Misc. Cr. Case No. 1392 of 2004

Smt. Godawari Bai and Others

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(6), 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2004) 2 CGLJ 135 : (2004) 4 MPHT 5

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : Y.C. Sharma, for the Appellant; Utkarsh Verma, for the Respondent

Final Decision : Allowed

Judgement

L.C. Bhadoo, J.—The accused/applicants, who are facing trial for the commission of the offence under Sections 420, 467, 468, 471 and 120B of the IPC before the Court of Additional Chief Judicial Magistrate, Raipur, in Criminal Case No. 1086/2003, have preferred this petition u/s 482 of the Cr.PC, being aggrieved by the order dated 22-5-2004 passed by the 10th Additional Sessions Judge (F.T.C.), Raipur, in Criminal Revision No. 130/2004 whereby the learned Additional Sessions Judge dismissed the revision of the applicants filed by them against the order dated 28-4-2004 passed by the learned Additional Chief Judicial Magistrate rejecting the application of the accused/applicants filed u/s 437(6) of the Cr.PC for releasing them on bail during trial in the above criminal case on the ground that the trial of the above criminal case has not been concluded within a period of 60 days from the first date fixed for taking evidence.

2. Brief facts leading to filing of this petition are that on the complaint of one Bhagwantin Bai Sahu the Police Station, Gol Bazar, Raipur registered a Criminal Case No. 115/2003 against the accused/applicants for the commission of the offence under Sections 420, 467, 468, 471 and 120B of the IPC on the ground that one agricultural land admeasuring 51 decimal of Patwari Halka No. 92,

Khasra Nos. 171, 172, 173/04 was in the joint name of Dheluram, Kheduram, Rati Rajwanti, Jamuna and Hem Kumar. The said Dheluram after entering into an agreement to sell the said land, on 4-6-2002 executed a registered sale deed in the office of Sub-Registrar, Raipur and in the said sale deed in place of original owners Hemant Kumar and Jamuna Bai, the photographs of Shiv Kumar and Godawari Bai, accused/applicant No. 1, were affixed showing them as Hemant kumar and Jamuna Bai. They also affixed their signatures, accused/applicant No. 2 Vishnu Sen identified them as Hemant Kumar and Jamuna Bai. After investigation the police filed charge-sheet against all the accused/applicants. On 10-11-2003, charges were framed against the accused/applicants and the matter was fixed for evidence on 3rd December, 2003 for the first time. Thereafter, a compromise petition u/s 320(2) of the Cr.PC was filed. The same was rejected by the Trial Court and thereafter, an application u/s 437(6) of the Cr.PC was also filed which was rejected by the Trial Court. Then again an application u/s 437(6) of the Cr.PC was filed. The learned Trial Court vide order dated 28-4-2004 rejected the application on the ground that 3rd December, 2003 was fixed for taking evidence and on that day a compromise petition was filed which was decided on 11-2-2004 and thereafter, the matter was fixed for the evidence but the witnesses did not turn on the dates fixed for evidence. The learned Additional Chief Judicial Magistrate rejected the application of the applicants u/s 437(6) of the Cr.PC on the ground that the accused persons are facing the charge u/s 467 among other charges which is punishable with imprisonment for life, therefore, looking to the seriousness of the crime, the application was rejected. Against this order the accused/applicants preferred the revision, the learned 10th Additional Sessions Judge rejected the revision on the ground that the learned Magistrate has rejected the application showing special reasons.

3. I have heard Shri Y.C. Sharma, learned Counsel for the accused/applicants and Shri Utkarsh Verma, Panel Lawyer for the State.

4. Having heard the learned Counsel for the parties, I have perused the records and the impugned order. Section 437 of the Cr.PC envisages "that bail may be taken, in case of non- bailable offence". Apart from other grounds, Sub-section (6) of Section 437 of the Cr.PC envisages that "if, in any case triable by a Magistrate, the trial of a person accused of any non- bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs". The above provision intends to expedite the trial without unnecessarily detaining a person as an under trial prisoner. The same applies only to a case triable by a Magistrate and the underlying intention behind the above provision of Sub-section (6) is that a criminal trial should be concluded within sixty days from the first date fixed for taking evidence and if it is not possible to conclude the case within that time, the accused, if in custody, shall be released on bail unless the Magistrate for reasons to be recorded otherwise directs. Similar provision has

been made in the Code of Criminal Procedure for the investigation stage.

5. As per the provision of Section 167(2) of the Cr.PC proviso sub (a) if the investigation is not concluded within ninety days or sixty days, "as the case may be, from the date of the arrest of the accused, then he is entitled for release on bail. Therefore, these provisions are mandatory and incorporated in the Code of Criminal Procedure in order to ensure the speedy trial so that the accused persons should not languish in jail or police custody for indefinite period without any fault on their part. Similarly, Sub-section (7) of Section 437 envisages that if after conclusion of the trial of a person accused of non-bailable offence and the judgment is not delivered and the Court is of the opinion that there are reasonable grounds for believing that the accused is not guilty of an offence, it shall release the accused, if he is in custody. Therefore, further provision has also been made to ensure that on conclusion of the trial and before judgment is delivered, if the Magistrate is of the opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, in that case also the accused should be released on bail. Therefore, the above provisions are incorporated by the Legislature to ensure that the accused persons are not kept in jail for indefinite period and these provisions are mandatory in nature. The Court is obliged to release the accused on bail if the conditions mentioned in the above sections are otherwise satisfied.

6. In the present case, of course, there are charges against the accused/applicants for the commission of the offence under Sections 420, 467, 468, 471 and 120B of the IPC, but it is admitted position that on 10-11-2003 charges were framed against the accused/applicants and the first date for recording the evidence was fixed 3rd December, 2003, on that day the accused/applicants moved an application for compromise of the matter and the same was decided by the learned Trial Court on 11-2-2004. Even thereafter on the next dates of hearing, i.e., 25th February, 2004, 10th March, 2004, 17th March, 2004 and 12th May, 2004 the evidence could not be concluded and even till today the matter is pending for the evidence of the prosecution. The learned Magistrate has mentioned that since offence u/s 467 of the IPC is punishable with life imprisonment, therefore, the accused can not be enlarged on bail. In the first instance Sub-section (6) of Section 437 prescribes that for any non-bailable offence triable by a Magistrate if the evidence is not concluded within a period of sixty days, then accused becomes entitled for bail. In the present case, the accused/applicants are in custody since 29-7-2003 and thereby they are in custody around about for one year and even then the evidence has not been concluded. Sub-section (6) of Section 437 applies to all non-bailable offences triable by a Magistrate irrespective of the fact that whatever sentence is prescribed under that offence. Of course, the Magistrate is entitled to reject the application for reasons to be mentioned by him for example if accused persons are responsible for delay. In this case, reason mentioned by the Magistrate was not valid because the Magistrate can pass maximum three years' sentence and accused persons are in jail for last one year, as such I am of the opinion that

looking to the facts and circumstances of the case, the reason assigned by the Trial Court and the Revisional Court in refusing to release the accused/applicants on bail is not justified. The accused/applicants are entitled for the benefit of Sub-section (6) of Section 437 of the Cr.PC.

7. In the circumstances, if this order is allowed to exist, then same will be failure of justice, therefore, in order to secure ends of justice and looking to the provision of Section 437(6) of the Cr.PC, I am of the considered opinion that inherent powers as envisaged u/s 482 of the Cr.PC needs to be exercised. It is true that inherent powers are exercised in rare cases and very sparingly, but where the Court reaches to the conclusion that if the power is not exercised then that will amount to abuse of the process of the Court and failure of the justice, therefore, Court should exercise this power.

8. Moreover, the accused/applicants are in jail since last around about one year and there are no chances that the trial will be concluded in the near future, I am of the considered view that it is a fit case in which power u/s 482 of the Cr.PC should be exercised.

9. In the result, the petition is allowed. The Trial Court is directed to release each of the accused/applicants on bail on being furnished a bail bond to the tune of Rs. 10,000/- and a surety in the likewise amount to the satisfaction of the Trial Court. However, the accused/applicants should undertake that they will appear before the Trial Court on each and every date given by the said Court.