

(2010) 04 CAL CK 0092
In the Calcutta High Court
Case No : C.R.R. No. 4275 of 2008

Sri Surjendu Bikash Pramanik	Vs	APPELLANT
The State of West Bengal and Another		RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 438, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 34, 498A

Citation : (2010) 04 CAL CK 0092

Hon'ble Judges : Abdul Ghani, J

Bench : Single Bench

Advocate : Achin Jana, for the Appellant; Kasem Ali Ahmed, for the Respondent

Judgement

Abdul Ghani, J.—Petitioner Sri Surjendu Bikas Pramanik by filing an application u/s 401 read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) has prayed for setting aside the order dated 8.9.2008, passed by the learned Sessions Judge-in-Charge, Paschim Medinipur in connection with Criminal Misc. Case No. 1209 of 2008.

2. Having perused the materials on record it could be detected that the learned Sessions Judge-in-Charge, Paschim Medinipur while disposing of an application u/s 438 of the Cr.P.C. was pleased to pass an order of anticipatory bail to the present petitioner on condition that the applicant should have to pay monthly maintenance of Rs. 1500/- to his wife by sending the same as per the wife's address by registered money order or to deposit the said money before the learned Court below on proper receipts with further direction to restore the relationship of husband and wife.

3. Being aggrieved by and dissatisfied with the order impugned, the present applicant has come up before this Court seeking redress as indicated above.

4. The only point for consideration is whether the order impugned would be said

to be justified or the same needs any interference by this Court.

5. Learned lawyer Mr. Achin Jana appearing for the petitioner having drawn this Court's attention to the provisions laid down in Section 438 of the Cr.P.C. and contended that the order impugned suffers from gross illegality as also impropriety inasmuch as learned Sessions Judge-in-Charge is having no jurisdiction to impose any such condition while considering and disposing of any application u/s 438 of Cr.P.C. In support of his contention he has relied upon a ruling reported in (2009) 2 SCC (Cri) 56 (Munish Bhasin and Ors. v. State (Government of NCT of Delhi) and Anr.) and submitted that the condition, other than the conditions enumerated in Section 438 of Cr.P.C. cannot be imposed by the learned Sessions Judge while disposing of the application u/s 438 of the Cr.P.C. and accordingly he argued that in a proceeding u/s 438 Cr.P.C., the Court cannot be said to be justified in awarding maintenance to the wife of the applicant who is an accused of a case u/s 498A/323/34 I.P.C. and also u/s 3 and 4 of the Dowry Prohibition Act. He further contended that the portion which relates to imposition of condition for maintenance are required to be set aside keeping the portion of grant of anticipatory bail in existence.

6. On the other hand, Mr. Kasem Ali Ahmed learned advocate appearing for the State of West Bengal submitted that the Court is required to impose condition as laid down u/s 438 Cr.P.C. while disposing of application u/s 438 Cr.P.C.

7. From the materials on record as also from the submissions made on behalf of the parties concerned it could be detected that impugned order was passed by the learned Sessions Judge-in-Charge, Paschim Medinipur in connection with an application u/s 438 of Cr.P.C. seeking an anticipatory bail. It is the admitted situation that the condition imposed by the learned Sessions Judge-in-Charge are embodied nowhere in the provisions laid down u/s 438 Cr.P.C. Accordingly, the order impugned passed by the learned Sessions Judge-in-Charge is palpably found to be the orders without any jurisdiction. In my considered view it is not sustainable and warrantable in the eye and estimation of law. The principles of the ruling referred to above, relied upon on behalf of the petitioner also do suggest that the conditions other than the conditions enumerated in Section 438 Cr.P.C. cannot be imposed in a proceeding u/s 438 Cr.P.C.

8. Therefore, having heard the learned advocates for the parties concerned and also giving due regard to the provision of law as well as the principles of the ruling referred to above I am satisfied to conclude and hold that the impugned order dated 8.9.2008 is not sustainable under the law and the same deserves to be set aside.

9. In the circumstances, the order impugned stands set aside and the learned Sessions Judge-in-Charge, Paschim Medinipur is directed to hear out and consider the application u/s 438 Cr.P.C. filed on behalf of the accused petitioner afresh at an earliest opportunity. During pendency of the hearing the petitioner shall not be arrested by the police.

10. With the above observation, the application u/s 401 read with Section 482 Cr.P.C. is disposed of without any order as to costs.

11. Urgent xerox certified copy be given to the parties expeditiously, if applied for.