
(2008) 05 DEL CK 0178

In the Delhi High Court

Case No : Writ Petition (Criminal) 134 of 2008

Vinod Kapoor and Others

APPELLANT

Vs

State (NCT) of Delhi

RESPONDENT

Date of Decision : 28-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 437, 482
Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2008) 05 DEL CK 0178

Hon'ble Judges : S.L. Bhayana, J

Bench : Single Bench

Advocate : B.S. Chowdhary, S.K. Gulati, for the Appellant; Saleem Ahmed, for the Respondent

Final Decision : Allowed

Judgement

S.L. Bhayana, J.—This is a writ petition filed under Articles 226 and 227 of the Constitution of India read with Section 482 Cr.P.C. for setting aside the impugned order dated 8th January, 2008 passed by the learned ASJ.

2. Briefly stated the facts of the case are that petitioner Nos. 1 and 2 are the parents of petitioner No. 3 Mr. Kunal Kapoor who got married with the complainant Smt. Hardeep Kaur @ Shilpa on 30th January, 2006. After about nine months of the marriage, the complainant made a complaint before the CAW Cell, Delhi against the petitioners and consequently, FIR No. 240/2007 was registered under Sections 498A/406/34 IPC at PS Punjabi Bagh. Thereafter, the petitioners moved an application for grant of anticipatory bail before the learned ASJ, Delhi. On 15.05.2007, learned ASJ recorded that both the parties have settled the matter and the applicants are ready to pay Rs. 4,00,000/- to the complainant in lieu of dowry articles, alimony, maintenance and all other compensation etc. The statements of the parties were also recorded by learned ASJ wherein it was mentioned that Rs. 1 lac would be paid on 21.05.2007, Rs.

1.5 lacs would be paid at the time of divorce by mutual consent and the remaining amount of Rs. 1.5 lacs would be paid at the time of quashing of the FIR. On these terms and conditions, the petitioners were granted anticipatory bail.

3. It is the admitted case of both the parties that the petitioners have only paid Rs. 1 lac to the complainant by way of a bank draft. The complainant moved an application for cancellation of bail as the petitioners had failed to pay the remaining amount of Rs. 3 lacs to the complainant. The said application was heard and decided by the learned ASJ on 08.01.2008 and the anticipatory bail granted to the petitioners was cancelled by learned ASJ on the ground that the accused persons have not made any payment nor they have filed the petition for divorce by mutual consent.

4. Now the petitioners have moved the present petition for setting aside the impugned order dated 8.1.2008. Admittedly, the petitioners have paid a sum of Rs. 1 lac to the complainant. It is mentioned in the order dated 15.5.2007 that the petitioners would pay Rs. 1.5 lacs at the time of divorce by mutual consent and would pay the balance amount of Rs. 1.5 lacs at the time of quashing of the FIR. The petitioners have not filed the divorce petition by mutual consent nor they have moved the petition for quashing of the FIR. So the question of payment of remaining amount does not arise. Simply because they have not made the payment of Rs. 3 lacs to the complainant, the anticipatory bail granted to the petitioners cannot be cancelled. The order dated 8.1.2008 cancelling the anticipatory bail granted to the petitioners is incorrect and the learned ASJ could not have passed such an order.

5. This Court places reliance on the judgment of the Supreme Court in the case of Biman Chatterjee Vs. Sanchita Chatterjee and Another, , wherein it was held as under:

That apart, non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial Court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law.

6. Keeping in view the Supreme Court judgment in Biman Chatterjee's case (supra) the writ petition is allowed and the impugned order dated 8.1.2008 is set aside.

7. Writ petition stands disposed of.

8. No costs.