(2014) 12 MAN CK 0021

In the Manipur High Court

Case No : Cril. Revn. No. 12 of 2014

Yumlembam Sorojini Devi APPELLANT

Vs

Lourembam Renu Devi RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Arms Act, 1959 — Section 25(1C), 25(1C), 27(2)
Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 438, 439(2), 439(2)
Penal Code, 1860 (IPC) — Section 34, 420, 506

Citation : (2015) 1 GLT 718

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : T. Rajendra, Advocate for the Appellant; Y. Ashang, Govt. Advocate and Th. Mahira, Advocate for the Respondent

Judgement

N. Kotiswar Singh, J.—Heard Mr. T. Rajendra, learned counsel for the petitioner. Also heard Mr. Th. Mahira, learned counsel for the private respondents and Mr. Y. Ashang, learned Government Advocate for the State respondents.

2. These two revision petitions, Cril. Revn. No. 12 of 2014 and Cril. Revn. No. 13 of 2014 have been field u/s. 397, 401 read with Section 482 of the Code of Criminal Procedure, 1973 against the common order dated 23.5.2014 passed by the learned Sessions Judge, Manipur East in Cril. Misc. (AB) Case No. 31 of 2014 and Cril. Misc. (AB) No. 32 of 2014 arising out of the same FIR Case No. 88(3)2014 IPS u/s. 420/ 506/ 34 IPC, 25(1-c) & 27(2)A. Act, 13 U.A.(P) Act by which the learned Sessions Judge, Manipur East granted anticipatory bail to the principal respondents in these two petitions u/s. 438 of the Code of Criminal Procedure. Accordingly, these two revisions petitions are heard together and disposed of by this common judgment and order.

3. It is the case of the petitioner that the petitioner had filed a criminal complaint case against the principal respondents in these two writ petitions namely, Smt. Lourembam (O) Renu Devi and Smt. Yendrembam (O) Damayenti Devi on

27.2.2014 before the learned Chief Judicial Magistrate, Imphal West which was registered as Cril. Misc. Case No. 145 of 2014 contending that the said persons who were already having business dealings with the petitioner, after collecting gold ornaments from the petitioner and executing promissory notes, neither returned the gold ornaments nor paid the amounts of the value of the gold ornaments when demanded. Even though the petitioner insisted for returning the gold ornaments or making payment of value thereof they refused to do so. It was stated that sometime, in the last week of November, 2013, the petitioner received many phone calls from a person who describing himself to be a member of a banned organisation who called from mobile No. +91 9191702904 to the petitioner''s mobile No. +91 9612437863 and +91 8413804730 and asking the petitioner to come to Moreh on 3.12.2013 stating that he would be waiting at Namphalong gate at 11.00 am failing which, the family of the petitioner including the petitioner would be killed. Being scared by such threats, the petitioner went to Moreh on 3.12.2013 as directed along with four other persons. On reaching Namphalong gate, the said unknown person took the petitioner and her company to Thoibi Pat inside Tamu, Myanmar where the petitioner found the two principal respondents along with some heavily armed youths who identified themselves to be members of a banned organisation. There the petitioner and her company were threatened by an unknown armed youth amongst them not to mention about the money anymore stating that the principal respondents are sympathizers of the said banned organisation and involved in raising funds for their organisation. Though the petitioner protested, they refused to budge their stand and directed the petitioner and her group to leave or else they would they be killed. Having no other alternative, the petitioner returned home. Subsequently, being aggrieved, the petitioner filed a complaint to the Officer-in-Charge of Imphal Police Station on 22.2.2014 against the accused persons. However, no action was taken by the police. Thereafter, again on 23.2.2014 at about 6 am, 3 unknown persons including a woman holding fire arms calling themselves to be the members of the same banned organisation came to the house of the petitioner and told her that they had received information from their source that the petitioner is visiting the police station and warned her not to pursue the matter further and not to ask the principal respondents to return the gold ornaments or demand payments of the value of the gold ornaments. Having no alternative, the petitioner filed a complaint before the Ld. Chief Judicial Magistrate, Imphal West as mentioned above. The learned Chief Judicial Magistrate, Imphal West then forwarded the said complaint to the O.C., Imphal PS for investigation, on the basis of which, an FIR being, FIR No. 88(3) 2014 IPS u/s. 420/ 506/ 34 IPC, 25(1-C) & 27(2) A. Act, 17/17 U.A.(P) Act was registered against the private respondents and others. The petitioner states that, however, she came to know that even before the registration of the said FIR, the private respondents had approached the Court of Sessions Judge, Manipur East on 24.2.2014 for grant of anticipatory bail u/s. 438 Code of Criminal Procedure by filing Cril. Misc. (AB) Case No. 31 of 2014 and Cril. Misc. (AB) Case No. 32 of 2014 and the Ld. Sessions Judge was pleased to grant ad-interim anticipatory bail to both the principal respondents.

4. The petitioner states that on coming to know of the said anticipatory bail applications, the petitioner filed applications before the Court for allowing her to assist the prosecution in these two cases which were allowed by learned Sessions Judge, Manipur East on 25.3.2014. The petitioner contends that the learned Sessions Judge, Manipur East also passed an order on 5.5.2014, on the submission made by the learned P.P. that the respondents accused did not appear before the I.O. which, however, was objected by the respondents stating that they had appeared before the I.O. but their statements were not recorded, directing that the I.O. may call the accused-respondents by issuing summon for recording their statement. Be that as it may, the learned Sessions Judge, Manipur East finally disposed of the said bail applications filed by the principal respondents vide common impugned order dated 23.5.2014 allowing their prayer.

5. In the impugned common order dated 23.5.2014, the learned Sessions Judge, Manipur East considered the plea of the applicants therein (who are the principal respondents in these two revision petitions). The Ld. Sessions Judge observed that it was the case of the applicants therein that on 22.2.2014 while they were staying at the residence of one Hazarimayum Bino Devi at Waheng Leikai, the petitioner along with some other persons come in a white Bolero vehicle and forcibly entered the residence of Hazarimayum Bino Devi and tried to drag the applicants inside the Bolero. Though the applicant Renu Devi (principal respondent in Cril. Revn. Petn. No. 12 of 2014) could manage to escape, the other applicant Damayanti Devi (principal respondent in Cril. Revn. No. 13 of 2014) was kidnapped by them. Thereafter, the applicant, Renu reported the matter to the Imphal P.S. following which the said Damayanti Devi was rescued and brought to Imphal P.S. along with the kidnappers, who were all detained till 11 pm of the said day but later on released. However, on the next day of 23.2.2014, the personnel of Imphal P.S. came to the residence of the applicants and attempted to arrest them in connection with a report submitted to the O.C., Imphal P.S. by Smt. Sorojini Devi, (the present petitioner) alleging that the applicants had taken a sum of Rs. 5,68,20,000/- from her with assurance of repayment with interest but failed to do so.

6. The Ld. Sessions Judge also observed that on the other hand, the learned P.P. for the State had submitted that the accused applicants in collusion with each other took gold ornaments from the complainant i.e. the petitioner herein worth more than Rs. 5 crores for disposal by selling and to get back the proceeds but instead, diverted the fund for certain terrorist organisation.

The learned Sessions Judge, Manipur East, after considering the bail objection report and case diary, observed that the applicants had come to the house of the complainant/present petitioner and took gold ornaments from the complainant valued more than Rs. 5 crores for disposal by selling with assurance to bring back the proceeds but failed to either pay up the sale proceeds or to return the ornaments. But, the two accused/applicants came to the residence of the complainant/petitioner on 25.9.2013 and executed two promissory notes for Rs. 3,09,10,000/- and Rs. 2,89,10,000/-. However, they failed to pay the money or return the gold ornaments and instead the complainant/petitioner was called by some unknown members of terrorist organisation to come to Namphalong gate and when the complainant along with four other persons went to Namphalong on 3.12.2013, they were taken to Thoibi Pat, inside Myanmar where some members of the armed organisation were also present with the complainants/principal respondents and these armed persons directed the complainant not to ask about the money or the gold in future as they were utilised for raising fund for the said organisation. The learned Sessions Judge, Manipur East also noted that the I.O. in his report mentioned that thereafter members of the said organisation came to the residence of the complainant/petitioner on 23.2.2014 armed with firearms and threatened the complainant/petitioner for reporting the matter to the police.

7. After having observed these, the learned Sessions Judge, Manipur East further noted that the accused applicants had filed documents to show that there were cross criminal complaints filed before the learned Chief Judicial Magistrate, Imphal West. One case was filed by Seram Bina Devi against the petitioner and others before the learned Chief Judicial Magistrate, Imphal West in Cril. Misc. (C) Case No. 201 of 2012 but no actions were taken. Similarly, no action was also taken in respect of direction of the learned Chief Judicial Magistrate, Imphal West in the Cril. Misc. Case No. 139 of 2014 filed by the accused/applicants. The learned Sessions Judge, Manipur East also noted that since no action was taken, the accused applicants made a report on 28.2.2014 to the Chief Secretary, Director General of Police and SPs Imphal West and East for taking up necessary action for giving police protection from the complainant and her party. Learned Sessions Judge, Manipur East also noted the counter complaint filed by the present petitioner against the respondent No. 1 in Cril. Misc. case No. 145 of 2014 for the alleged offence which occurred on 5.4.2013 as mentioned above, in connection with which the FIR No. 88(3) 2014 IPS u/s. 420/ 506/ 34 IPC, 25(1-C) & 27(2) A. Act, 17/17 U.A.(P) Act was lodged. The learned Sessions Judge, Manipur East also observed that while actions were taken in respect of the complaint filed by the petitioner, Sorojini Devi, the other complaints filed by the accused applicants/principal respondents herein were not acted upon. Thereafter, the learned Sessions Judge, Manipur East made the following observations :-

"On close scrutiny of the case record, it is seen that the present case is regarding recovery of Rs. 5,58,20,000/- by the complainant from the accused who executed two promissory notes. Earlier effort of recovery through Porompat PS was dropped after granting of interim bail by this Court. Thereafter, the present case has been filed in Imphal PS with aid of additional charges under Arms Act and U.A.(P) Act for an offence occurred about one year ago. It may be noted that there are counter complaints between the parties and a complaint against these parties as accused. These complaints relate to recovery of money in transaction of pledging of gold. The materials on record do not disclose any ingredients for the offences under Arms Act and U.A.(P) Act. Investigation may also look into the lending of a large amount of money. In the facts and nature of the present case being civil in nature, I am of the opinion that custodial interrogation of the accused is not warranted."

8. What can be observed from the above order passed by the learned Sessions Judge, Manipur East on 23.5.2014, is that though the learned Sessions Judge, Manipur East was aware of the various allegations made by the petitioner against the principal respondents/the bail applicants about alleged involvement of underground elements and threats issued them who were associated with the respondents/applicants as disclosed in the report furnished by the I.O. and case diary, the learned Sessions Judge, Manipur East seems to have treated the issue to be merely relating to recovery of certain amounts by the complainant/ petitioner from the accused/principal respondents who had taken some gold ornaments and executed two promissory notes and accordingly, held that the materials on record do not disclose any ingredients for the offences under the Arms Act and U.A.(P) Act. By taking the view that dispute is essentially civil in nature, the learned Sessions Judge held that custodial interrogation of the accused is not warranted and accordingly, allowed the anticipatory bail applications filed by the applicants/principal respondents.

9. This Court, however, fails to understand as to how the learned Sessions Judge, Manipur East, after having noted and observed the various allegations made by the petitioner against the principal respondents, more particularly, about the phone calls being made to the petitioner in November, 2013 regarding which the petitioner also provided a specific mobile number and mentioned about the incident at Thoibi Pat in Myanmar regarding which the petitioner has specifically alleged that the principal respondents were present along with armed members of the banned organisation who had issued threat to the petitioner in the presence of the principal respondents not to ask for gold ornaments or money and also subsequent visit of three armed personnel on 23.3.2014 holding firearms claiming to be members of a banned organisation and threatening the petitioner, could hold that there are no ingredients of offence under the Arms Act and U.A.(P) Act. It may be noted that offences under Arms Act and U.A.(P) Act have been alleged by the petitioner with specific incidents and detail particulars have been given though these are yet to be proved and were under investigation. It, therefore, cannot be said that there were no ingredients for the offences under Arms Act and U.A.(P) Act as has been held by the learned Sessions Judge.

10. A perusal of the case diary and police reports clearly indicate that specific allegations have been made by the petitioner in the complaint filed before the learned Chief Judicial Magistrate, Imphal West in Misc. Case No. 145 of 2014 on the basis of which the aforesaid FIR No. 88(3) 2014 IPS u/s. 420/ 506/ 34 IPC, 25(1-C) & 27(2) A. Act, 13/17 U.A.(P) Act was registered. In connection with the said investigation, the I.O. had seized the mobile handset in which the complainant had received phone calls from the members of the underground

organisation and also had examined the complainant/petitioner and another witnesses.

Case diary shows that the complainant and a number of witnesses were examined including those who had accompanied the complainant to Moreh and thereafter to Thoibi Pat in Myanmar. They have stated that they were taken from Namphalong Gate to Thoibi Pat where they met the principal respondents/ accused along with some armed youths who identified themselves as PLA cadres who were threatening the petitioner not to asks for gold ornaments and money from the principal respondents. Therefore, it will not be correct to say that there is no ingredients available for the offences u/s. 25(1-C) & 27(2) of Arms Act, 13/17 U.A.(P) Act for the purpose of investigation.

11. Mr. Mahira, learned counsel for the private respondent has strenuously argued that the allegations made by the petitioner are totally false. In fact, the respondents are the victims of kidnapping by the petitioner and her gang in connection with which the respondents had filed complaint cases before the learned Chief Judicial Magistrate, Imphal West being Cril. Misc. Cases No. 201 of 2014 as well as 139 of 2014. It is also contended that the principal respondents have nothing to do about the alleged threat issued by the so called armed members of a banned organisation as the respondents have no connection with the said organisation and neither of the principal respondents were charged of threatening the petitioner with arms as such, the principal respondents could not be implicated for the alleged illegal acts of the armed organisation.

12. In this regard, it has to be noted that this Court while considering the bail application or anticipatory bail application, normally would not go to the admissibility, credibility or trustworthiness of the evidence as the same is to be examined in course of the trial and during investigation, evidences are being collected, examined, corroborated, leads are pursued. What the Court has to examine is whether any such material evidence had emerged in course of the investigation which would link the accused with the crime alleged. In the present case, the complainant had specifically stated in her complaint as well as in her statement made before the I.O. that the petitioner had been called to Moreh by some unknown persons claiming to be members of a banned organisation and thereafter, the petitioner along with her party, were taken to Thoibi Pat where they met the principal respondents along with armed members of the banned organisation who threatened them not to pursue the matter. The petitioner also had specifically made a complaint before the Court as well as before the I.O. that on 23.2.2014, three unknown persons including a woman holding firearms claiming themselves to be members of the PLA came in two vehicles and told the petitioner not to ask about returning of gold ornaments or money from the principal respondents and not to make any report to the police station as otherwise the petitioner and her family members will be killed. Accordingly, this Court is of the view that in view of the specific allegations made against the principal respondents and the involvement of armed members of a banned

organisation in support of principal respondents, it cannot be said that there is no ingredient available for the offences u/s. 25(1-C) and 27(2) of Arms Act and 13/17 U.A.(P) Act. The fact that principal the respondents themselves may not be carrying any arm or may not be issuing threat themselves to the petitioner, would not be material to investigate the allegation that other persons in support of and in presence of the respondents had issued such threat by holding arms, which certainly would constitute the ingredients of the offences as alleged. Therefore, merely because there was a dispute which initially arose out of business transactions between the petitioner and principal respondents and it was initially a civil dispute would not make it a case of dispute of civil nature as held by the learned Sessions Judge, Manipur East if subsequent involvement of armed and banned organisations and armed supportive intervention in support of and in association with the principal respondents are alleged. The matter was also at the investigation stage and the case diary reveals that some investigation have been made and witnesses who were examined had corroborated the statement of the petitioner and thus it was premature to observe that there were no ingredients as has been done by the learned Sessions Judge. This Court is of the view that when the investigation was in full swing, it was premature on the part of the learned Sessions Judge to have given a finding that there are no ingredients of the offences alleged and the dispute is of civil nature. Such an approach would mean total negation of the allegations made by the petitioner without proper investigation, which in the opinion of the Court is not proper.

13. By giving a finding that the dispute is of civil nature, the learned Sessions Judge seems to have prejudged the case, even before completion of the investigation, which in the opinion of this Court is unwarranted. Further merely because some allegations were made by the respondents against the petitioner and that no actions were taken on the complaints filed against the petitioner could not be the basis of disbelieving or ignoring the serious allegations made by the petitioner against the principal respondents.

14. The Court is of the view that the learned Sessions Judge while granting relief under section 438 Cr.P.C. to the principal respondents has ignored the material evidences, misdirected itself in arriving at a premature finding foreclosing any criminal investigation by holding that the dispute is of civil nature. In other words, the finding and conclusion arrived at by the learned Sessions Judge is wholly unjustified vitiated by series of infirmity and irregularity and liable to be interfered with.

15. It may be noted that the Hon''ble Supreme Court had observed in Puran Vs. Rambilas and Another etc. etc., that

"11) Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court; In Gurcharan Singh and Others Vs. State (Delhi

Administration), In that case the Court observed as under:-

"If, however, a Court of Session had admitted an accused person to bail, the, State has two options. It may move the, Sessions Judge if certain new circumstances have arisen which were not ear lier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-?-vis the High Court."

This Court is of the view that though the above observation was made in the context of cancellation of bail granted under section 439 (2), Cr.P.C. the aforesaid principle would be equally applicable while considering cancellation of anticipatory bail granted by the Court of Sessions under section 438 Cr.P.C.

16. Accordingly, for the reasons discussed above, this Court is of the view that order dated 23.5.2014 passed by the learned Sessions Judge, Manipur East in Cril. Misc. (AB) case No. 32 of 2014 is not sustainable and accordingly is set aside. The anticipatory bail granted to the respondents namely (1) Smt. Lourembam Renu Devi, w/o L. Biramangol Singh of Luangshangbam Liberal Colege Gate, P.S. Heingang, Imphal East District and (2) Smt. Yumlembam Sorojini Devi, w/o Y. Munaltombi Singh of Thangmeiband Hijam Likai, PO & PS Imphal, Imphal West District, Manipur, under Section 438 Cr.P.C. in connection with FIR No. 88(3)2014 IPS u/s. 420/ 506/ 34 IPC, 25 (1-C) & 27(2) A. Act, 13/17 U.A.(P) Act stands cancelled.

The petition is allowed.

