

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-04-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 166 of 2015
and
M.P.No.1 of 2015

R. Gobinath

.. Petitioner

Versus

1. State represented by
Inspector of Police
District Crime Branch
Namakkal
Crime No. 45 of 2012

2. Nirmala Devi

.. Respondents

Petition filed under Section 397 and 401 of Criminal Procedure Code against the order dated 23.02.2015 passed in C.M.P. No. 1707 of 2012 on the file of the learned Principal Sessions Judge, Namakkal cancelling the bail granted to the petitioner on 09.11.2012 in CMP No. 8200 of 2012 on the file of the Judicial Magistrate No.I, Namakkal in Crime No. 45 of 2012 on the file of Inspector of Police, District Crime Branch, Namakkal.

For Petitioner : Mr. S. Ashok Kumar, Senior Advocate
for Mr. C.D. Johnson

For Respondents : Mr. D. Sivaramkumar
Government Advocate (Crl.side) for R1
Mr. Jagdish Chandra for R2

ORDER

The petitioner has come forward with this Revision questioning the correctness of the order dated 23.02.2015 passed by the learned Principal District Sessions Judge, Namakkal cancelling the bail granted to the petitioner by the learned Judicial Magistrate No.1, Namakkal.

2. The case of the second respondent/defacto complainant is that the properties owned and possessed by her father Chinnaiya and grand mother Athayee in various survey numbers remain undivided among the legal heirs. While so, Mrs. Balasuruli, wife of late Suryakumar, who is the brother of the defacto complainant, has given a power of attorney in favour of the petitioner herein. On the strength of the power of attorney deed, the petitioner executed three documents in

favour of one Ponnusamy. In this connection, the defacto complainant gave a complaint to the first respondent police, on the basis of which, the case in Crime No. 45 of 2012 came to be registered for the offences under Section 120 (B), 419, 467, 471, 420 and 506 (ii) of IPC. Upon registration of the case, the petitioner was arrested and remanded to judicial custody on 29.10.2012. The petitioner thereafter filed CMP No. 8111 of 2012 before the learned Judicial Magistrate No.I, Namakkal seeking bail. During the pendency of the said application in CMP No. 8111 of 2012 for bail, yet another application in CMP No. 8200 of 2012 was filed through another counsel for the very same relief of bail. On 09.11.2012 the petitioner was enlarged on bail as prayed for in CMP No. 8200 of 2012. The defacto complainant therefore filed a Petition in CMP No. 1707 of 2012 for cancellation of the bail on the ground that the petitioner has also filed yet another application for bail through another counsel and it was pending, while so, suppressing the same, the petitioner has filed the Petition in CMP No. 8200 of 2012 and obtained an order of bail. The said application No. 1707 of 2012 was allowed on 09.11.2012 by the learned Principal Sessions Judge, Namakkal thereby the bail granted to the petitioner was cancelled. Aggrieved by the same, the petitioner filed Crl.R.C. No. 1524 of 2012 before this Court and it was allowed on 09.01.2013 on the ground that the cancellation of bail was ordered without notice to the petitioner. Therefore, by the said order dated 09.01.2013, this Court remanded the matter back to the learned Principal Sessions Judge, Namakkal for fresh consideration. After remand, opportunity was given to the petitioner to file a counter. In the counter filed on behalf of the petitioner, it was stated that the petitioner was granted bail by the learned Judicial Magistrate No.I, Namakkal after taking note of the objections raised by the prosecution and on perusal of the materials placed on record. The learned Principal Sessions Judge, after appreciating the rival contentions and after recording the sequence of events involved, has passed the order dated 23.02.2015 thereby cancelling the order of bail granted to the petitioner on 09.11.2012 in CMP No. 8200 of 2012 by the learned Judicial Magistrate No.I, Namakkal. It is this order dated 09.11.2012 which is questioned in this Criminal Revision Case.

3. The learned senior counsel appearing for the petitioner would vehemently contend that there is no compelling necessity or reason for the learned Principal Sessions Judge, Namakkal to cancel the order granting bail in favour of the petitioner. According to the learned senior counsel for the petitioner, the petitioner has nothing to do with the filing of the second application seeking bail. It is stated that immediately after arrest of the petitioner, the anxious relatives of the petitioner, in order to ensure the release of the petitioner on bail, have approached two different counsel for filing application for bail without the knowledge of the petitioner. The learned senior counsel for the also submitted that the learned Principal Sessions Judge, Namakkal has only taken note of the fact that when an application seeking the very same relief is pending, the petitioner ought not to have filed another application. The learned Principal Sessions Judge, Namakkal has further taken into account that the petitioner had suppressed the filing of the earlier

application seeking bail. However, the learned learned Principal Sessions Judge, Namakkal did not take note of the fact that the petitioner himself was not aware of the filing of the two applications seeking the same relief, especially when the petitioner was in jail at the time of filing of the applications. The learned senior counsel further would contend that when bail is granted, it cannot be automatically cancelled unless the petitioner violates any one of the conditions of bail. The learned Judicial Magistrate had granted bail by taking note of the fact that the petitioner is under incarceration for more than 20 days. Further, after being released on bail, the petitioner has cooperated with the investigation agency, complied with the conditions imposed by the learned Judicial Magistrate No.I while granting bail and the investigation officer has also filed the charge sheet.

4. The learned senior counsel for the petitioner would contend that the petitioner should not be made to suffer for the mistake committed by his anxious relatives to ensure his release on bail by engaging two different counsel. In such circumstances, the learned senior counsel would pray for setting aside the order which is impugned in this Criminal Revision Case.

5. Per contra, the learned Government Advocate appearing for the first respondent would contend that before passing the impugned order, the learned Principal Sessions Judge has taken into account each and every one of the grounds raised by the petitioner and passed a detailed order cancelling the bail granted to the petitioner. According to the learned Government Advocate, as the petitioner had wantonly suppressed the filing of the earlier application for bail, the court below is right in cancelling the bail order granted to him. The learned Principal Sessions Judge, Namakkal has also pointed out that the petitioner has admitted that earlier he filed an application for bail in which an intervening petition was also filed by the defacto complainant and during the pendency of the same, the petitioner filed was granted bail in another application. While so, it cannot be said that the petitioner cannot be held liable for the mistake committed by others and he prayed for dismissal of the Criminal Revision Case.

6. On the above contentions of the learned senior counsel for the petitioner and the learned Government Advocate (Crl.side) for the first respondent, I heard the learned counsel for the defacto complainant/second respondent and perused the records.

7. It is not in dispute that soon after the arrest of the petitioner in Crime No. 45 of 2012, the petitioner was arrested and he was remanded to judicial custody by the learned Judicial Magistrate No.I, Namakkal on 29.10.2012. Upon his arrest, two applications seeking the very same relief of bail have been filed in CMP No. 8111 of 2012 and 8220 of 2012 before the learned Judicial Magistrate No.I, Namakkal. In fact, in CMP No. 8111 of 2012, being the first application filed for bail, the defacto complainant filed an intervening petition and it was pending. It is also admitted that in the application in CMP No. 8220 of 2012, the petitioner did not

disclose the filing of the earlier application in CMP No. 8111 of 2012. When the second application in CMP No. 8220 of 2012 came up for hearing, the learned Judicial Magistrate granted bail to the petitioner on 06.11.2012. The defacto complainant, on coming to know about the two petitions filed by the petitioner for same relief, filed CMP No. 1707 of 2012 for cancelling the bail granted to the petitioner and it was allowed by the learned Principal Sessions Judge, Namakkal. Challenging the same, the petitioner filed CrI.R.C. No. 1524 of 2012 and it was allowed by this Court on 09.01.2013 holding that before cancelling the order granting bail in favour of the petitioner, he was not given a notice. Accordingly, this Court remanded the matter for fresh consideration. After remand, the learned Principal Sessions Judge, Namakkal, after elaborate discussion cancelled the bail granted to the petitioner on 23.02.2015.

8. It is evident that there were two applications filed by the petitioner for the very same relief of bail in which he could obtain an order of bail in the second application. This is more so that in the first application, the intervener has filed a petition opposing grant of bail and therefore, the petitioner has conveniently filed the second application for bail. In such circumstances, it cannot be said that the petitioner could not be held responsible for filing of two applications seeking bail by two different counsel. The learned Principal Sessions Judge, Namakkal has appreciated all the above factual contentions raised on behalf of the petitioner and came to a correct conclusion that for having suppressed the filing of the earlier bail application, the bail granted to the petitioner has to be cancelled. I do not find any reasons to interfere with such well considered order passed by the court below.

9. At this stage, the learned senior counsel for the petitioner argued that the petitioner was in jail for more than 20 days. The order granting bail in favour of the petitioner on 09.11.2012 in CMP No. 8200 of 2012 on the file of the Judicial Magistrate No.I, Namakkal was cancelled by the impugned order dated 23.02.2015. In the meantime, the investigation officer has filed charge sheet. It is also not the case of the respondents that the petitioner had violated any of the conditions granting bail in his favour. While so, the learned senior counsel for the petitioner seeks for showing some indulgence in favour of the petitioner giving liberty to him to move a fresh application for bail before the learned Judicial Magistrate No.I, Namakkal.

10. This Court can only sympathise with the petitioner as he had invited the order cancelling the bail granted in his favour. However, considering the over all facts and circumstances of the case, this Court directs that the petitioner shall surrender before the learned Judicial Magistrate No.I, Namakkal and then it is open to him to file a fresh application seeking bail. Such application, if any filed by the petitioner, shall be considered by the learned Judicial Magistrate No.I, afresh independently without taking into account any of the observations made either by the learned Principal Sessions Judge, Namakkal in the order dated 23.02.2015 or by this Court in this Criminal Revision Case.

11. In the result, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition in MP No. 1 of 2015 is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Principal Sessions Judge
District Court, Namakkal
2. The Judicial Magistrate No.I
Namakkal
3. do thro the Chief Judicial Magistrate
Namakkal
4. The Inspector of Police
District Crime Branch
Namakkal
5. The Public Prosecutor,
High Court, Madras

1 cc to Mr.C.D. Johnson, Advocate, Sr. 21608

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KK (CO)
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