

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.M-14764 of 2012

.....

Date of decision:11.2.2015

Shiv Kumar and another

...Petitioners

v.

State of Haryana

...Respondent

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Dilpreet Singh, Advocate for the petitioners.

Mr. Deepak Grewal, Deputy Advocate General, Haryana
for the respondent-State.

Mr. Rahul Deswal, Advocate for the complainant.

.....

Inderjit Singh, J.

The petitioners have filed this petition under Section 482 Cr.P.C. for quashing the impugned judgment dated 7.5.2012 (Annexure-P3) passed by learned Additional Sessions Judge, Karnal, dismissing the bail application filed under Section 167(2) Cr.P.C. by the petitioners illegally and erroneously in FIR No.38 dated 18.1.2012 registered for the offences under Sections 409, 420, 467, 468, 471 and 506 IPC at Police Station Assandh in the interest of justice.

Notice of motion has been issued in this case.

Mr. Deepak Grewal, learned Deputy Advocate General,

Haryana has put in appearance on behalf of the respondent-State and Mr. Rahul Deswal, learned Advocate has appeared for the complainant and contested this petition.

I have heard learned counsel for the petitioners and learned Deputy Advocate General, Haryana appearing for the respondent-State as well as learned counsel for the complainant and have gone through the record.

The learned Sub Divisional Judicial Magistrate, Assandh, vide order dated 24.3.2012 accepted the application filed under Section 167(2) Cr.P.C. on the ground that the report under Section 173 Cr.P.C. had not been filed within the stipulated period of 60 days.

The State filed criminal revision petition before the learned Additional Sessions Judge, Karnal. The learned Additional Sessions Judge, Karnal vide order dated 7.5.2012 while accepting the revision petition set aside the impugned order dated 24.3.2012 passed by the learned Sub Divisional Judicial Magistrate, Assandh, and ordered that the challan was to be presented within 90 days and the prosecution had filed the challan within 90 days and the bail application filed on 60th day itself was not maintainable. The learned Additional Sessions Judge, Karnal dismissed that application and direction was given to take further steps to arrest the respondents-accused (petitioners herein) and to commit them to jail and to proceed further as per law.

The order of the learned Additional Sessions Judge has been challenged on the ground that firstly, revision petition is not maintainable

before the learned Additional Sessions Judge, Karnal. Therefore, he cannot cancel the bail already granted under Section 167(2) Cr.P.C. by the learned Sub divisional Judicial Magistrate, Assandh.

At the time of arguments, it was not contested that the challan was to be filed within 90 days as the offences under Sections 467 and 409 IPC are punishable with maximum sentence of life imprisonment. The only dispute now is whether the petitioners are entitled to bail under Section 167 (2) Cr.P.C. on the basis of illegal order passed by the learned Sub Divisional Judicial Magistrate, Assandh, which was filed only on the 60th day by wrongly stating that the challan was to be filed within 60 days and whether the same can be allowed to continue. There is no doubt that the Sessions Court can cancel the bail order and has the power along with the High Court to cancel bail order under Section 439(2) Cr.P.C. Merely, the Court instead of stating that the Sessions Court is empowered to cancel the bail granted illegally by the Magistrate under Section 439(2) Cr.P.C. has stated that it has considered the revision petition of the State and set aside that order.

These are the proceedings under Section 482 Cr.P.C. and the petition is only to be taken up where some miscarriage of justice has taken place. In the present case, miscarriage has not taken place. Secondly, this Court has enough powers to pass any order to secure the ends of justice.

From the facts and circumstances, it is clear that the order of granting bail to the petitioners by the learned Sub Divisional Judicial Magistrate, Assandh under Section 167(2) Cr.P.C. is an illegal order. The learned Additional Sessions Judge should have considered and converted

[4]

that revision petition into a petition filed under Section 439(2) Cr.P.C and it is only a technical defect.

As regards the jurisdiction of the Sessions Court to cancel the bail under Section 439(2) Cr.P.C., there is no dispute. Therefore, from the above, I find that the Sessions Court is empowered to cancel the bail under Section 439(2) Cr.P.C. and it being an interlocutory order, revision petition is not maintainable and on this technical ground only, no relief can be granted to the petitioners in this petition filed under Section 482 Cr.P.C.

Therefore, in the facts and circumstances of the present case, I do not find any merit in the present petition and the same is dismissed.

February 11, 2015.

(Inderjit Singh)
Judge

hsp