

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

CRL.RC.NO.967 of 2017
in CrI.M.P.No.9045 of 2017

Danial

.. Petitioner

Vs.

State represented by,
The Station House Officer,
Lawspet Police Station,
Puducherry.
(Crime No.39/2017)

.. Respondent

PRAYER : Criminal Revision Petition filed under Section 397 & 401 of Cr.P.C., to call for the records in Cr.M.P.No.1195/2017 on the file of the Principal Sessions Judge, Puducherry, examine the correctness, legality or propriety of the findings passed against the petitioner and to set aside the same.

For Petitioner : Mr.Sankarasubbu
for Mr.G.Pavendhan

For Respondent : Mr.M.R.Thangavelu
(Addl.Public Prosecutor,Pondicherry)

O R D E R

This Revision has been filed against the order passed by the Principal Sessions Judge, Puducherry, in Cr.M.P.No.1195 of 2017 in Cr.M.P.Nos.2149 of 2017 and 2151 of 2017 dated 12.07.2017 (on the file of the Judicial Magistrate-I, Puducherry).

2.In the said impugned order, the learned Sessions Judge has cancelled the bail granted to the petitioner by order dated 16.05.2017. In fact, the petitioner was granted bail by order dated 16.05.2017, subsequently, the respondent police had filed the petition under Section 439(2) of Cr.P.C., to cancel the bail. For the reasons adduced in the said order itself the learned Sessions Judge has cancelled the said bail as against which the present revision has been filed.

3. Today, on notice the learned Public Prosecutor appearing for the respondent raised preliminary objection as to the maintainability of this revision case. He would submit that the order cancelling the bail is an Interlocutory order against which no revision would lie.

4. In this regard, the learned Public Prosecutor has relied upon the following two Judgments:

i) CDJ 2007 MHC 3447 in the matter of Maya Venkatesan Vs. State by Deputy Superintendent of Police, Crime Branch CID, Chennai, dated 25.07.2007. In the said judgement the learned Public Prosecutor has relied upon the following paragraph which is reproduced hereunder:

'8-A. Coming to the Revision Cases, with regard to the statement made by the learned Senior Counsel for the petitioner that the accused has settled Rs.2,48,55,636/-, it has to be pointed out that no plausible material has been produced to substantiate such payment to the contractors. Further, in respect of the submission made by the learned Senior Counsel that in the Revision Cases filed against the order of the Magistrate, cancelling the bail already granted, this Court, by invoking its inherent powers under Section 482 of the Code of Criminal Procedure, can very well grant the relief sought for by the petitioner, the objection/contention raised by the learned Government Advocate Viz., these Revisions filed against the order passed by the Magistrate, which is interlocutory in nature, are not maintainable, cannot be simply brushed aside. Learned Government Advocate, in support of his contention, has relied on a decision of this Court reported in 1980 The Madras Law Journal Reports 375 (Somaram Vs. Jewantharaj Lunia and another), wherein, it has been categorically held that an order of cancellation of bail is an interlocutory order and no revision would lie against such order. I am in entire agreement with the proposition laid down in the above case law of this Court. Both on merits as well as on the ground of maintainability, the Criminal Revision Cases have to be dismissed.'

ii) The second judgment cited by the learned Public Prosecutor is in CrI.R.C.(MD).No.189 of 2015 in the matter of Ponraj Vs. The Sub Inspector of Police, Malapalayam Police Station, Tirunelveli District. In this Judgment the learned Public Prosecutor has relied upon the following paragraph which reads as under:

'2. This revision came up today for admission. At the outset, this Court raised a

question as to how this revision is maintainable as the impugned order is only an interlocutory order. The learned counsel submitted that the petitioner originally filed a petition under Section 439 of Cr.P.C., before the Registry and since the Registry returned the same, he has filed this revision. This submission cannot be appreciated. The learned counsel is not able to show as to how this revision is maintainable, inasmuch as the impugned order is pure and simple an interlocutory order. In *Madhu Limaye Vs. State of Maharashtra* reported in 1977 (4) SCC 551, the Hon'ble Supreme Court has held that even an intermediate order is revisable. The impugned order herein is not even an intermediate order so as to entertain this revision. Thus, this revision is not at all maintainable and hence, the same is dismissed, however, with liberty to the petitioner to work out his remedy in the manner known to law. Consequently, connected Miscellaneous Petition is Closed."

5. By citing these decisions, the learned Public Prosecutor has raised the objection that since the impugned order in this revision case is only an interim order as by the said order, the Court below has cancelled the bail already granted to the petitioner, and once it is an interim order, as per the principle laid down in the said Judgment there would be no revision lie against the said order and the remedy available to the petitioner is elsewhere.

6. In this regard, I have heard Mr. Sankarasubbu, learned counsel appearing for the petitioner, he would submit that this Court has got wide power under its revisional jurisdiction under Section 401 of the Code. In this regard, the learned counsel for the petitioner would draw the attention of this Court in sub-section 5 of section 401 which reads thus:

"(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

7. On the plain reading of the said section 401 (5) of the Code, it could be easily said that this Court has got power under revisional jurisdiction to entertain and treat the

revision case as an appeal, if it is erroneously filed, where appeal alone will lie. The said power conferred on the Court under Section 401 (5) of the Cr.P.C., cannot be stretched upon to the case of this nature in hand, as against the present impugned order there would be no appeal.

8. Therefore, the said arguments advanced on behalf of the petitioner, by the learned counsel, is liable to be rejected.

9. In the result this Criminal Revision Case is dismissed with liberty to the petitioner, to approach the appropriate forum in the manner known to law, to seek the redressal of his grievance against the impugned order. For the said purpose, time is given to the petitioner till 10th August 2017. Till such time the respondent police shall not apprehend the petitioner, pursuant to the impugned order.

10. The Registry is directed to return the original documents of this case to the learned counsel for the petitioner forthwith. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Principal Sessions Judge,
Puducherry.
2. The Station House Officer,
Lawspet Police Station,
Puducherry.
(Crime No.39/2017)
3. The Public Prosecutor,
High Court, Madras.
4. The Judicial Magistrate No.I,
Puducherry.

+1cc to Mr.G.Pavendhan, Advocate in sr.no.53828
+1cc to Government Pleader, in sr.no.53960

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NR 31/07/2017