

09.09.2021

Court No.30
rpan / **27**

C.R.M. 9168 of 2019

In Re:- An application under section 439 (2) of the Code of Criminal Procedure;

and

In Re: **Lipi Sarkar**

- Petitioner

Mr. Aslam Khan,
Mr. Musharraf Alam Sk.
... for the Petitioner.

Mr. S. S. Imam,
Mr. Subrato Roy
... for the State.

Mr. Amarendra Chakraborty
... for the Opposite Party No.2.

This is an application for cancellation of bail under Section 439(2), Code of Criminal Procedure, preferred by the petitioner, Lipi Sarkar, who is the *de facto* complainant in connection with English Bazar Police Station Case No.249 of 2018 dated 19th March, 2018 under Sections 379/406 of the Indian Penal Code, 1860.

Mr. Khan, learned advocate appearing for the petitioner submits that the O. P. no.2, Bharat Saha obtained anticipatory bail from this Court on 16th July, 2019 passed in CRM No. 6178 of 2019 suppressing the material facts. He points out that this Court granted anticipatory bail in favour of the O. P. no.2 by recording observations that the *de facto* complainant (petitioner herein) upon receipt of notice of dishonour of cheque issued by her, lodged the aforesaid complaint, which was treated as aforesaid FIR.

Mr. Khan further submits that in fact the petitioner lodged the complaint prior to issuance of the notice by the O. P. no.2. Under such circumstances, Mr. Khan seeks cancellation of bail.

Mr. Chakraborty, learned advocate appearing for the O.P. no.2 submits that after this Court granted anticipatory bail in favour of the O. P. no.2, he surrendered before the learned Chief Judicial Magistrate, Malda and obtained regular bail. He submits that the O. P. no.2 complied with all the conditions as imposed by the learned Chief Judicial Magistrate. He submits that O.P. no.2 did not misuse the liberty granted to him by the competent court of law. Thereafter, O. P. no.2 preferred an application, registered as CRAN 1 of 2019 [Old No.: CRAN 4451 of 2019] in which the conditions imposed by this Court vide order dated 16th July, 2019 stood waived by an order dated 11th March, 2021. Under such circumstances, Mr. Chakraborty submits that the application preferred by the petitioner is liable to be dismissed.

In support of his contention, Mr. Chakraborty has referred to the decision in the case of Ashok Kumar Vs. State of Uttar Pradesh and Another, reported in **(2009) 3 SCC (Cri) 1393** and the decision in the case of Md. Raju Vs. Md. Tobrej, reported in **2016(1) CHN (Cal) 474**.

Mr. Chakraborty further submits that after giving notice the O. P. no.2 filed a case under Section 138, Negotiable Instruments Act in the court of the learned Chief Judicial Magistrate, Malda on 15th May, 2018.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that a coordinate bench of this court observed that there were case and counter-case between the parties while passing the order dated 16th July, 2019 in CRM 6178 of 2019. It is also recorded in the order that after issuance of the notice upon the O. P. No.2 English Bazar Police Station Case No.249 of 2018 was lodged. But we think the order needs to be considered in totality and a sentence cannot be picked up and highlighted.

It transpires from the materials on record that the O. P. no.2 complied with all the conditions imposed by this Court as well as by the learned Chief Judicial Magistrate, Malda. After compliance of the conditions, the O. P. no.2 approached this Court for relaxation of the condition of the order dated 16th July, 2019 and this Court relaxed the condition, as imposed.

In the case of **Dolat Ram Vs. State of Haryana**, reported in (1995) 1 SCC 349 it has been held by the Hon'ble Supreme Court that where the person concerned has not misused the liberty, the court would be slow to interfere with the bail and cancel the same.

In view of the aforesaid facts and circumstances, we feel that the petitioner has not been able to establish a case that the O. P. no.2 has misused the liberty granted to him. Therefore, the application of cancellation of bail, being CRM 9168 of 2019 stands dismissed.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Rabindranath Samanta, J.)

(Tapabrata Chakraborty, J.)