



CrI.R.C.(MD).No.6 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2023

Pronounced on : 12.05.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.R.C.(MD)No.6 of 2023

and

CrI.M.P.(MD)No.75 of 2023

Aengalesh

... Petitioner/Respondent/Accused No.1

Vs.

1.Harshila

... Respondent No.1/Petitioner/Defacto
Complainant

2.State represented by
The Inspector of Police,
All Women Police Station,
Uthamapalayam,
Theni District.
(Crime No.16 of 2021)

... Respondent No.2/Complainant/
Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertain to the cancellation of bail order passed in CrI.M.P.No.287 of 2022 on the file of the learned Principal Sessions Court,



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Theni dated 21.02.2022 and set aside the same as illegal and to allow this criminal revision petition.

For Petitioner : Mr.R.Karunanidhi
For R1 : Mr.C.Jeganathan
For R2 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 287 of 2022 dated 21.02.2022 on the file of the Principal Sessions Court, Theni, cancelling the bail granted to the revision petitioner, vide order, dated 05.01.2022 in Crl.M.P.No.14 of 2022.

2. The revision petitioner is the first accused in Crime No.16 of 2021 on the file of All Women Police Station, Uthamapalayam.

3. It is not in dispute that the marriage between the revision petitioner and the first respondent/defacto complainant was solemnized on 20.01.2019 and they were blessed with one female child. On the basis of the complaint lodged by the



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first respondent, FIR came to be registered in Crime No.16 of 2021 against four persons including the revision petitioner herein for the offences under Sections 406, 420, 498(A) and 506(1) IPC and Section 4 of Dowry Prohibition Act, 1961.

4. It is evident from the records that the revision petitioner has moved a bail application in Crl.M.P.No.14 of 2022 and the learned Principal Sessions Judge, Theni, vide order, dated 05.01.2022, has granted bail by imposing certain conditions. The first respondent, by alleging that the revision petitioner and the other accused have earlier filed a petition seeking anticipatory bail before the Madurai Bench of Madras High Court in Crl.O.P.(MD)No.15530 of 2021 and at that time, they have promised to return the jewels of the first respondent, but since they have failed to return back the jewels and money, their application for anticipatory bail was ordered to be dismissed on 19.11.2021 and that the revision petitioner, by suppressing the above aspects, has filed a petition seeking bail before the Sessions Court and obtained bail in Crl.M.P.No.14 of 2022 dated 05.01.2022, has filed a petition seeking cancellation of bail granted by the Sessions Court, vide order, dated 05.01.2022. The learned Sessions Judge, after hearing both the parties, has passed the impugned order dated 21.02.2022 allowing the said petition and thereby, cancelling the bail granted on 05.01.2022



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in Crl.M.P.No.14 of 2022. Aggrieved by the cancellation of bail order, the first accused has come forward with the present revision.

5. At the outset, it is very much necessary to consider the very maintainability of the revision, as the impugned order cancelling the bail can only be considered as an interlocutory order.

6. Before entering into further discussion, it is necessary to refer sub-section (2) of Section 397 of the Code of Criminal Procedure,

“The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.”

7. At this juncture, it is necessary to refer the decision of this Court in ***Spurgeon Samuel Vs. The Inspector of Police, Asaripallam Police Station, Nagercoil and others*** and the relevant passages are extracted hereunder:-

“3. The learned Counsel for the second respondent/defacto complainant has raised a preliminary objection questioning the very



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*maintainability of the revision, as the impugned order is only an interlocutory order and relied on a decision of a learned Single Judge of this Court in **Abdul Nasser Madani Vs. State of Tamil Nadu** reported in 2000 Crl.L.J.1258, wherein another judgment of this Court in **Chitra Sankaranarayanan Vs. State** reported in (1995)1 MLJ (Crl.) 216 was referred and wherein it is observed as follows:*

“When the order of bail granted by the Judicial First Class Magistrate has been cancelled by the Sessions Judge, certainly, the accused party is entitled to move again before the Sessions Judge, who cancelled the bail, to grant the "bail under Section 439(1) of the Code. Therefore, the order of cancellation of the bail will not be a final order as any number of bail applications can be filed and in view of this reason, the order passed by the Sessions Judge is only an interlocutory order.”

*4. The learned Judge of this Court in **Abdul Nasser Madani's case**, has only observed that the decision in **Chitra Sankaranarayanan's case**, can be made applicable and depend upon the facts and circumstances of each case. It is necessary to refer the decision of this Court in **Balaji Vs State, represented by the Inspector of Police, B1, North Beach Police Station, Chennai and another**, in Crl.R.C.1356 of 2016, dated 06.09.2017, wherein the learned Judge of this Court has specifically held that the order*



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cancelling bail being interlocutory order cannot be assailed by invoking revisional jurisdiction in view of the embargo as provided under Section 397(2) of the Code and the relevant portions are extracted hereunder:

“4. The learned Additional Public Prosecutor, as preliminary objection, raised an issue that the order impugned cancelling bail, granted to the petitioner, is an Interlocutory order. Therefore, by virtue of Section 397(2) of the Code of Criminal Procedure (in short, “the code”), no revision shall lie before this Court. Hence, if at all the petitioner is having grievance over the impugned order, he can work out his remedy in the manner known to law in an appropriate forum and not before this Court by filing revision case invoking revisional power of this Court under Section 397 r/w. 401 of the Code.

5. The learned Additional Public Prosecutor, in support of the said contention, has relied upon two decisions of this Court i.e. Crl.R.C.No.189 of 2015 dated 28.04.2015 and Crl.R.C.Nos.1016 to 1023 of 2007 dated 25.07.2007.

7. In fact, the said two judgments referred to by the learned Additional Public Prosecutor had been taken



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into account in an earlier judgment of this Court, where I have considered the said judgments and held that as against the order of cancellation of bail, being an Interlocutory order, no revision would lie and the same was held in the judgment made in Crl.R.C.No.967 of 2017 dated 28.07.2017. Accordingly, liberty was given to the petitioner in the said case to approach the appropriate forum.

8. Herein the case on hand, a very similar situation that are confronted as the petitioner has challenged only the order of cancellation of bail, which is impugned herein and therefore, such order being Interlocutory order cannot be assailed by invoking revisional jurisdiction of this Court in view of the embargo as provided under Section 397(2) of the Code.

9. In view of the said legal position, the preliminary objection raised by the learned Additional Public Prosecutor is sustained and accordingly, this revision is rejected as not maintainable.

5. In Maya Venkatesan Vs. State in Crl.R.C.No.1016 to 1023 of 2007, dated 25.07.2007, another learned Judge of this Court, by relying on the decision of this Court reported in 1980 MLJ 375 (Somaram vs. Jewantharaj Lunia and another), has held that the



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*order of cancellation of bail is an interlocutory order and no revision would lie against such order and that he was in entire agreement with the proposition laid down in the above **Somaram's case** and dismissed the Criminal Revision both on merits as well as on the ground of maintainability.*

6. Considering the above and also the fact that the impugned order cancelling the bail being an interlocutory order and in view of the specific bar under Section 397(2) Cr.P.C., this Court has no hesitation to hold that the Criminal Revision is legally not maintainable.”

8. The above decision and the legal position referred therein are squarely applicable to the case on hand.

9. As already pointed out, the revision petitioner has challenged the order cancelling the bail granted to him and as such, the same can only be considered as an interlocutory order.

10. Without entering into merits of the above case, considering the nature of the petition and the position of law above referred and in view of the specific bar contained in sub-section (2) of Section 397 of the Code of Criminal



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Procedure, this Court has no hesitation to say that the very filing of criminal revision is not maintainable and consequently, the criminal revision is liable to be dismissed.

11. In the result, this Criminal Revision is dismissed. Consequently, connected Miscellaneous Petition is closed. The petitioner is directed to surrender before the concerned Court within one week from today (12.05.2023), failing which, the second respondent police is directed to secure him.

12.05.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

Note : Issue order copy on 15.05.2023

To

- 1.The Inspector of Police,
All Women Police Station,
Uthamapalayam,
Theni District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in
Crl.R.C.(MD)No.6 of 2023
and
Crl.M.P.(MD)No.75 of 2023

Dated : 12.05.2023