

CASE NO.:
Appeal (crl.) 1030-1031 of 2004

PETITIONER:
Jagtar Singh & Anr.

RESPONDENT:
State of Punjab & Ors.

DATE OF JUDGMENT: 17/09/2004

BENCH:
S.B.Sinha & N.Santosh Hegde

JUDGMENT:
J U D G M E N T

(Arising out of SLP(Crl.)Nos.2313-2314 of 2003)

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

These appeals are filed against the two orders made by the High Court of Punjab and Haryana at Chandigarh, one in CrI.Misc.No.52419-M of 2001 dated 29th of April, 2003 and the other in CrI.Misc.No.19431 of 2003 in CrI.Misc.No.52419-M of 2001 dated 8th of May, 2003 by which orders the High Court directed the amount deposited with the Chief Judicial Magistrate, Hoshiarpur by one Nanak Chand be paid over to the respondents-complainants herein.

Brief facts necessary for the disposal of these appeals are as follows:

A criminal complaint of cheating and conspiracy under Section 420 read with Section 120-B IPC was filed by Dharamvir Singh, Amrik Singh and Satish Kumar against the appellants herein and one Nanak Chand, the father of the first appellant herein, alleging that they received a sum of Rs.6,22,000/- as a consideration for sending the complainants abroad and by such collection of amount the above-named accused have committed the above said offence.

On coming to know of the filing of complaint, Nanak Chand apprehending his arrest filed an application for grant of anticipatory bail in the said petition to show his bona fides, the said Nanak Chand offered to deposit in the court the amount of Rs.5.82 lacs which was the amount claimed in the complaint. While doing so, he also agreed that in the event of there being a settlement between the parties, the said amount will be paid over to the complainants. Nanak Chand was granted bail in the said case. Subsequently, even the appellants herein obtained bail.

A dispute arose in regard to the payment of amount deposited by Nanak Chand in the court. Since the said dispute could not be settled between the parties, the matter was referred to Lok Adalat even then the dispute could not be settled. At this stage, the complainants made an application in the petition for bail filed by the present appellants that is CrI.Misc.No.52418-M/2001 seeking the disbursement of the amount deposited to them alleging that since Nanak Chand had admitted the receipt of complaint amount and was ready and willing to return the same, the said amount should be paid to them. They also contended that there was a panchayat in which Nanak

Chand had agreed to pay the said amount to them. This application of the complainants was resisted by the appellants on the ground that the amount in question was deposited primarily for the purpose of showing the bona fides of said Nanak Chand and there was a conditional agreement for the disbursement of the said amount to the complainants in the event of there being a settlement between the parties and since no such settlement had been arrived, the High Court in the criminal proceedings cannot direct the payment of amount to the complainants. The High Court by the impugned order allowed the application filed by the complainant and directed the amount deposited with the Chief Judicial Magistrate, Hoshiarpur be paid over to the complainants after obtaining proper receipt.

In this case, Shri Sanjay Jain, learned counsel appearing for the appellants submitted that the amount in question was deposited to show the bona fides of Nanak Chand only for the purpose of bail and not as an admission of guilt. Since there is a dispute between the parties until the same is settled, the money cannot be paid to the complainants, therefore, the High Court could not have directed the payment of the amount that was deposited by Nanak Chand to the complainants.

Shri K.T.S.Tulsi, learned senior counsel appearing for the complainants-respondents herein pointed out that there was a panchayat wherein the accused including Nanak Chand had agreed to pay the above said amount, the proceeding of which was filed in the courts below, hence, the High Court was justified in directing the payment to be made to the complainants-respondents. He also contended that the accused Nanak Chand and even the appellants herein having obtained the bail after depositing the said amount on a condition that the same could be paid over to the complainants, are now trying to over-reach the courts by frivolous objection therefore, if the amount in question is not to be disbursed to the complainants, the bail granted to these appellants and Nanak Chand should be liable to be cancelled.

We notice that the Chief Judicial Magistrate, Hoshiarpur accepted the amount from Nanak Chand on his voluntarily agreeing to deposit the same and further directed the amount to be paid to the complainants probably the bail was also granted to Nanak Chand on his showing the said bona fides. But while accepting the deposit, the Magistrate had made it clear that the amount in question would be paid to the complainants only if a settlement is arrived at. He had also directed that in the event of no settlement being arrived within the time stipulated in his order the amount in question should be kept in interest bearing deposit.

The fact that there was no settlement between the parties is not in dispute. It is seen from records that even an attempt to settle the dispute through Lok Adalat has failed, therefore, the claim of the complainants for the amount in deposit being in the nature of the civil dispute. In our opinion, the High Court ought not to have directed the payment. We are also of the opinion that the High Court in a bail application could not have adjudicated upon the rights between the parties in regard to the amount in deposit and the impugned directions might also prejudice the defence of the accused. Therefore, we think it proper to set aside the impugned orders of the High Court.

Since the amount in question was kept in deposit with the Magistrate voluntarily by Nanak Chand to show his bona fides and consequent to which he had obtained a bail the said amount will not be returned to Nanak Chand either till the order of bail continues to be in existence.

We notice by an earlier order the Chief Judicial Magistrate,

Hoshiarpur had directed the amount to be deposited in the interest bearing account in the event of there being no settlement between the parties. Therefore, in the interest of justice, we think the said direction should be given effect to and the amount in question be kept in the interest bearing deposit in a nationalised bank till such time as an appropriate orders are passed by the competent court in this regard.

With the above observations, we allow these appeals and set aside the impugned orders of the High Court.
These appeals are allowed.

JUDIS