

CASE NO.:
Appeal (crl.) 1508 of 2007

PETITIONER:
Savitri Goenka

RESPONDENT:
Kusum Lata Damant and Ors

DATE OF JUDGMENT: 02/11/2007

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1508 OF 2007
(Arising out of SLP (Crl.) No. 3151 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Though many points were urged in respect of the appeal, we find that the impugned order of the High Court cannot be maintained on one ground. Though it had issued notice to the appellant, the matter was disposed of without hearing the appellant. It appears that respondent no.1 had filed the bail application, that is, Criminal Misc. Petition No.2945/2004 on 10.12.2004. The court directed service on the appellant. There is no dispute that there was no service of notice on the appellant. According to the appellant, on learning about the proceedings, Criminal Misc. Application No.4653/05 was filed in Criminal Miscellaneous Application No.2945/04. The High Court was pleased to issue notice on 14.7.2005 on the said application and the High Court directed the accused to implead the appellant. Learned Additional Sessions Judge dismissed the bail application of the accused, respondent No.1 on the ground that relief had already been obtained by her from the High Court. On 22.9.2005, without service on the appellant, the High Court converted the application under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'), to one under Section 438 Cr.P.C. and granted interim protection.

3. Learned counsel for the appellant submitted that several facts were suppressed. By giving wrong impression about the factual scenario, the appellant persuaded the High Court to pass the impugned order. In response, learned counsel for the respondent submitted that there is in fact no infirmity in the order. In any event, the charge sheet has been filed and respondent no.1-accused has already been granted regular bail. A copy of the order passed on the bail application has been filed for records.

4. It is to be noted that the practice of converting applications filed under Section 482 Cr.P.C. to one for bail in terms of Section 438 or 439 Cr.P.C. has not been approved by this Court. Additionally, direction was given for issuance of notice and service on the appellant which has not been done

by respondent no.1-accused. The fact that the charge-sheet has been filed or bail has been granted is really of no consequence because of the fact that relief in the regular bail application appears to have been granted to respondent no.1 in view of the interim protection given by the High Court to the accused by the impugned order.

5. In view of the aforesaid position, the impugned order is set aside and the matter is remanded for fresh consideration. We make it clear that we have not expressed any opinion on the merits of the case. To avoid unnecessary delay let the parties appear without further notice on 23rd November, 2007, before learned Single Judge. If any party does not appear on that day, needless to say learned Single Judge shall deal with the matter in accordance with law. Learned Chief Justice of the High Court is requested to direct listing of the matter before learned Single Judge according to the roaster.

6. The appeal is allowed to the aforesaid extent.