

CASE NO.:
Appeal (crl.) 554 of 2004

PETITIONER:
Raj Kumar Jain & Anr.

RESPONDENT:
Kundan Jain & Anr.

DATE OF JUDGMENT: 29/04/2004

BENCH:
N Santosh Hegde & B P Singh.

JUDGMENT:
J U D G M E N T

(Arising out of SLP (Crl.) No. 5035/2003)

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

This appeal arises out of an order made by the High Court of Judicature at Madras whereby the High Court allowed the criminal miscellaneous petition filed by the first respondent herein and cancelled the anticipatory bail granted to the appellants herein. Brief facts necessary for disposal of this appeal are as follows :

The first appellant herein was married to the daughter of the first respondent on 17.4.2000. Second appellant is the father of the first appellant. Both are residents of Bombay. The said marriage lasted hardly for 14 days and the estranged wife Dimple Jain started living separately. While the first appellant being a doctor was stationed in Bombay, after separation his wife, came to Chennai to her parents' house and started living there.

The relationship between the two parties deteriorated with the first appellant filing a case against the first respondent alleging an offence under section 307 IPC on 22.8.2001 at Tirunelveli. Immediately thereafter on 11.9.2001 Dimple Jain left for London for further studies and started residing there.

On 13.11.2002 the first appellant filed a divorce petition which is now pending. A month later i.e. on 13.12.2002 the first respondent herein filed a complaint in Chennai alleging offences under section 498A IPC and section 4 of the Dowry Prohibition Act even though at that point of time his daughter Dimple Jain was in London. On coming to know of the said complaint the appellants moved an application for grant of anticipatory bail before the High Court of Judicature at Madras, which came to be allowed by an order made by the said court on 3.2.2003. One of the terms and conditions of the grant of said anticipatory bail was that the first appellant Raj Kumar Jain should stay at Chennai and report to the Police at C-5, All Woman Police Station, Kothawalchawady, Chennai, everyday at 10 a.m. barring Sundays for a week, and other petitioners including the second appellant herein should report to the said Police as and when required.

It is stated pursuant to the said order, the appellants herein and other persons who sought the anticipatory bail surrendered before the concerned court and obtained bail as directed by the High Court. It is also contended by the appellants that as required in the said order granting bail by the High Court, the appellants herein reported to the Police everyday between 12.2.2002 and 18.2.2002.

Since it was the direction of the High Court that the first appellant should remain in Chennai for a week, per force, he had to be at Chennai during this period, therefore, his father, the 2nd appellant also stayed in Chennai. It is further alleged that on 17.2.2003 an application for cancellation of bail was filed under section 439(2) of the Criminal Procedure Code before the High Court, alleging that the appellants herein had gone to the house of one Harish Bhuva on 15.2.2003 and abused and threatened the said person not to give evidence in the case in which he happened to be a witness. On this application for cancellation of bail, the High Court, accepting the allegations made by the first respondent, by the impugned order, cancelled the anticipatory bail granted in favour of the two appellants. As stated above, it is against the said order the appellants have preferred this appeal. The High Court in the impugned order while cancelling the anticipatory bail observed thus :

"After careful consideration of the rival submissions, this Court is of the considered view that it is a fit case, where the anticipatory bail granted in favour of respondents 1 and 2 has to be cancelled. It is contended by the learned counsel for State that a complaint was lodged by one of the witnesses stating that these respondents 1 and 2 threatened him on 17.02.2003 not to depose against them and it is also further pertinent to note that they have not cooperated with the respondent No.3/police to investigate the case properly and file a charge sheet. I am of the considered view it would be suffice to cancel the anticipatory bail granted in favour of respondents 1 and 2. Accordingly, the anticipatory bail granted in favour of respondents 1 and 2 in CrI.O.P. No.3066 of 2003 on 3.2.2003 is hereby cancelled. This petition is ordered accordingly."

It is seen as per the said observations of the High Court in the impugned order, it accepted the allegation made by Harish Bhuva that the appellants had approached him on 15.2.2003 and had administered the threat.

Mr. Sanjay Parikh, learned counsel for the appellants, contended the relationship between the parties having been strained so much and the appellants having obtained anticipatory bail on the condition that they would remain in Chennai for a week and during that period report to the concerned Police Station everyday, would never have dared to violate the conditions of bail. He contended that it was with the sole intention of seeing that the appellants were arrested and kept in jail at least for a few days, the application for cancellation of bail was filed within 6 days of the grant of anticipatory bail. He submitted a careful perusal of the sequence of allegations made against the appellants would show that the said complaint of administering threat to said Harish Bhuva is wholly false. He submitted the court while making the impugned order did not bear in mind the legal principles applicable for cancellation of bail and blindly accepted the allegations made by the respondent relying on the affidavits filed by said Harish Bhuva and the investigating officer though in the counter affidavit filed by the appellants they had clearly established that these allegations cannot be true. Mr. Sidharth Dave, learned counsel appearing for the respondents-complainant, contended that it is clear from the fact that Mr. Harish Bhuva with the first respondent had lodged an oral complaint on 16.2.2003 itself which was followed by a written complaint sent through post on 17.2.2003 that such a threat was administered. He also pointed out from the affidavit filed by the investigating Police Inspector that a complaint as

alleged by the first respondent herein was made to her and she had administered a strong warning to the appellants.

Having heard learned counsel for the parties and perused the records, we are convinced that the impugned order of the High Court cancelling the anticipatory bail granted to the appellants cannot be sustained in law. It is an admitted fact that within 14 days of the marriage of the first appellant to Dimple Jain daughter of the first respondent herein, disputes had arisen between them and they had started living separately. There were complaints and counter-complaints between the parties which had compelled the appellants herein and 2 others to obtain anticipatory bail from the High Court. It is also an admitted fact that pursuant to the directions issued by the High Court in the said bail order, the persons who sought bail from the High Court including these 2 appellants, had surrendered before the court and offered bailbonds which was accepted by the court concerned and in furtherance of the directions issued by the High Court though appellant No.2 was not required to attend the Police Station without being summoned, he along with appellant No.1, was attending the Police Station everyday. In this background, if really a threat as alleged by Harish Bhuva was administered to him on 15.2.2003 a complaint in this regard would have certainly been lodged either on that day itself or on the next day. On the contrary, as could be seen from the records, a complaint was posted only on 17.2.2003 at about 1956 hours through speed post. Of course, there is an allegation that on 16th evening, an oral complaint was lodged but there is no record substantiating the same, except the ipse dixit of Harish Bhuva. Then again, if we read the affidavit filed by the Inspector of Police, which was 8 months after the alleged threat, it is seen that this Officer makes a complaint for the first time that the second appellant has not complied with the conditions imposed by the High Court while granting bail of appearing before the Police. This is a fact, in our opinion, far from truth. As a matter of fact, as per the order granting anticipatory bail to the appellants and two others, there was a direction only with regard to the first appellant herein to stay in Chennai for a week, others were not even required to be in Chennai but they had to report to the Police as and when required by the Police. If really the second appellant had disobeyed this direction, we would not have expected the Police Officer to condone this default and wait for nearly 10 months before making an issue of it in an application filed for cancellation of bail by the first respondent. It is further seen from the said affidavit of the Police Inspector that Harish Bhuva lodged the complaint as to the threat administered to him only on 17.2.2003. She has not stated anything about the oral complaint that is allegedly lodged by said Harish Bhuva on 16.2.2003. If we notice the allegation made in the affidavit filed by Harish Bhuva in this regard, it could be seen that he informed the first respondent about the visit of the appellant to his house and the first respondent promised him that his interest would be protected in a manner known to law but he does not state in that affidavit that he tried to lodge an oral complaint on 16.2.2003. As notice above, in the background of the facts of this case, we find it difficult to believe that this witness would have failed to inform the first respondent of the visit of the appellants on 15.2.2003 itself and first respondent or said Harish Bhuva would have failed to lodge a complaint with the concerned Police immediately thereafter either on 15.2.2003 or 16.2.2003. The actual complaint lodged as stated above, was only on 17.2.2003 and that too was only posted at 1956 hours. This delay in lodging a complaint itself creates a doubt in our mind as to the authenticity of this complaint. In this factual background, we are of the opinion that the High Court was not justified in cancelling the bail granted.

We make it clear that any expression of opinion made in this order is for the limited purpose of the disposal of this appeal only and shall not be considered as an expression of final opinion on the questions involved in the main petition.

For the reasons stated above, this appeal is allowed. The

impugned order of the High Court is set aside.

JUDIS