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DINBANDHU

v.

STATE OF BIHAR & ANR.

(Criminal Appeal No. 1903 of 2011)

SEPTEMBER 23, 2011

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[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

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Bail – Conditional anticipatory bail – Propriety of – Appellant and respondent No. 2 are brothers – In a partition suit between the parties pending in the civil court, it was case of respondent No. 2 that deed of partition produced by the appellant was subjected to alterations and interpolations – Criminal complaint u/ss. 192, 193, 196, 200, 420, 406, 467, 468 and 471 IPC against appellant by respondent No. 2 – Application by the appellant praying for anticipatory bail – Grant of, by the High Court subject to the condition that in the partition suit pending between the parties, neither of the parties would use the family arrangement-cum-partition deed as evidence – Petition by the appellant for relieving him from the said condition – Rejected by the High Court – On appeal, held: It is for the civil court dealing with the partition suit between the parties to examine and test the genuineness of the deed of partition produced by the appellant in support of his case – If the civil court found it to be actually fraudulent or subjected to interpolation or forgery, it would be open to it to institute proper proceedings against the appellant in terms of s. 340 Cr.P.C. – Genuineness and validity of the document can hardly be tested in the complaint case and certainly not at the stage of grant of bail to the accused – The condition put by the High Court amounts to pre-judging the issue – Thus, the condition attached by the High Court to the anticipatory bail granted to the appellant is quite bad and illegal and cannot be sustained – Appellant and the complainant not bound by that condition.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 1903 of 2011.

From the Judgment and Order dated 21.07.2010 of the
High Court of Patna in Criminal Misc. No. 24472 of 2010.

M.A. Chinnasamy (NP) for the appellant. B

Chandan Kumar (for Gopal Singh) and Jay Kishore Singh
for the respondents.

The following order of the Court was delivered C

O R D E R

Leave granted.

Heard counsel for the parties. D

The appellant, who is an accused in a complaint case
under sections 192, 193, 196, 200, 420, 406, 467, 468 and
471 of the Penal Code, was granted anticipatory bail by the
High Court by order dated May 06, 2010 in CrI.M.C. No. 12306
of 2010. The bail order was, however, subject to a rather E
curious condition. The order stipulated that in a partition suit
that was pending between the parties, neither the accused nor
the informant would use a certain document (a family
arrangement-cum-partition deed) as evidence. The relevant
portion of the High Court order reads as follows: F

"...It is made clear that for deciding the partition suit the
alleged document, which is subject matter of dispute in the
present case, shall not be used by the either party in
support of their claim for partition" G

The complainant-respondent No.2 and the appellant-the
accused happen to be brothers. It appears that a partition suit,
registered as Partition Suit No. 24 of 2004 is pending in the
Court of Sub-Judge I, Lakhisarai in which both the complainant
and the accused appellant are on rival sides. In that suit the H

- A appellant apparently relied upon a "Shartnama" (deed of partition). According to the complainant, the "Shartnama" produced by the appellant was subjected to alterations and interpolations. He, therefore filed the complaint even before the civil court had an occasion to examine the piece of evidence—
- B and comment upon its correctness and genuineness or otherwise.

In the complaint it is stated (in paragraph 7):

- C "That accused Dinbandhu has committed an offence of filing a false document on the record of Partition Suit No.24 of 2004 in the Court of Sub-Judge Ist, Lakhisarai, with the knowledge that the document filed by him is false, containing deletions and additions and therefore it is a sham document which has been filed to mislead the Court
- D purporting it to be a genuine document and has, thereby, affected the suit."

- E It was in the case arising from the complaint that the High Court allowed the appellant's prayer for anticipatory bail but subject to the condition as seen above.

- F The appellant later on moved the High Court for relieving him from the condition but the High Court rejected the petition by order dated July 21, 2010 observing that it was on the basis of the order dated May 6, 2010 that on surrendering before
- F Magistrate the appellant was able to get himself enlarged on bail and only after being released on bail the prayer was made to do away with the condition of the bail.

- G It is quite true that propriety demanded that the appellant should have moved the High Court for dispensing with the condition or should have moved this Court against the condition imposed by the High Court before obtaining bail on the basis of that order. But, here we are concerned more with the correctness and validity of the order passed by the High Court
- H than the conduct of the appellant.

We are clearly of the view that the condition attached by the High Court to the anticipatory bail granted to the appellant is quite bad and illegal and cannot be sustained. It is basic and elementary that the final judge of the genuineness, correctness and validity of a document used as evidence in a suit is the Civil Court. Hence, it is for the court dealing with the partition suit between the parties to examine and test the genuineness of the "Shartnama" produced by the appellant in support of his case. If the Civil Court found it to be actually fraudulent or subjected to interpolation or forgery, it would be open to it to institute proper proceedings against the appellant in terms of Section 340 of the Code of Criminal Procedure. The genuineness and validity of the document can hardly be tested in the complaint case and certainly not at the stage of grant of bail to the accused. Clearly thus, it was not open to the High Court to impose the condition that in the civil suit the parties would not rely upon the document and the condition put by the High Court amounts to pre-judging the issue.

In light of the discussion made above, we are satisfied that the condition imposed by the High Court for grant of anticipatory bail to the appellant is quite untenable and we direct that the appellant or for that matter the complainant shall not be bound by that condition.

In the result, the criminal appeal is allowed.

N.J.

Appeal allowed.