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NAZMA

v.

JAVED @ ANJUM

(Criminal Appeal No. 1693 of 2012)

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OCTOBER 19, 2012)

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Practice and Procedure - Miscellaneous application - Filed in a disposed of criminal writ petition - Entertained by High Court - Propriety of - Held: High Court committed error in entertaining the application - Once the writ petition is disposed of, the High Court becomes functus officio and cannot entertain review petitions or miscellaneous applications except for carrying out typographical or clerical errors.

High Court - Power of - Under Articles 226 and 227 and s. 482 Cr.P.C. - To interfere with orders granting or rejecting bail - Held: Jurisdiction of High Court under Articles 226 and 227 and u/s. 482 are exceptional in nature and to be used in most exceptional cases - Powers u/s. 439 is also discretionary and required to be exercised with great care and caution - Powers to grant or reject the bail is within the powers of regular criminal court and the High Court not justified in usurping their powers in its inherent jurisdiction - Code of Criminal Procedure, 1973 - s. 439 and 482 - Constitution of India, 1950 - Articles 226 and 227.

Brothers of the appellant lodged FIR against respondent No. 1 and his family which was registered u/ ss. 498-A, 323, 324, 504 and 506 IPC and ss. 3 and 4 of Dowry Prohibition Act.

Respondent No. 1 and his family filed separate Criminal Miscellaneous Writ Petition before High Court

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without making the appellant party to that. Writ petition was disposed of by High Court staying the arrest of the respondent No. 1 and his family members till the conclusion of investigation or submission of report u/s. 173 Cr.P.C. High Court also directed respondent No. 1 to deposit Rs. 2000/- per month to be withdrawn by the appellant.

The police submitted its report closing the investigation. The Chief Judicial Magistrate took cognizance of the offence and issued summons. Respondent No. 1 filed an application in the disposed of writ petition. The High Court allowed the application extending the stay of arrest until the conclusion of trial and continued the direction to deposit Rs. 2000/-. The appellant filed the present petition challenging the order of High Court in the application.

Allowing the appeal, the Court

HELD: 1. The High Court has committed a grave error in entertaining the criminal miscellaneous application in a disposed of criminal writ petition. Once the criminal writ petition has been disposed of, the High Court becomes functus officio and cannot entertain review petitions or miscellaneous applications except for carrying out typographical or clerical errors. In the instant case, the High Court has entertained a petition in a disposed of criminal writ petition and granted reliefs, which is impermissible in law. In spite of the clear pronouncement of law by this Court, still, the High Courts are passing similar orders, which practice has to be deprecated in the strongest terms. [Paras 11, 12 and 13]

2. The High Court has committed a grave error also by passing an order not to arrest 1st respondent till the conclusion of the trial. The High Courts are entertaining

A writ petitions under Articles 226 and 227 of the Constitution, so also under Section 482 CrPC and passing and interfering with various orders granting or rejecting request for bail, which is the function of ordinary Criminal Court. The jurisdiction vested on the High Court under Articles 226 and 227 of the Constitution as well as Section 482 CrPC are all exceptional in nature and to be used in most exceptional cases. The jurisdiction under Section 439 CrPC is also discretionary and it is required to be exercised with great care and caution. Grant of bail or not to grant, is within the powers of the regular Criminal Court and the High Court, in its inherent jurisdiction, not justified in usurping their powers. [Paras 12 and 13] [834-E-H; 835-A]

D *Hari Singh Mann v. Harbhajan Singh Bajwa and Ors.* (2001) 1 SCC169: 2000 (4) Suppl. SCR 313 - relied on.

Case Law Reference:

2000 (4) Suppl. SCR 313 Relied on Para 11

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1693 of 2012.

F From the Judgment & Order dated 26.08.2004 of the High Court of Judicature at Allahabad in Criminal Misc. Application No. 13306 of 2004 in Crl. Misc. Writ Petition No. 5877 of 2003.

Shiv Ram Kumar for the Appellant.

Arvind Kumar, Laxmi Arvind, Poonam Prasad, Pradep Kumar Mathur for the Respondent.

G The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. We are, in this appeal, concerned with the legality and

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propriety of an order passed by the High Court of Allahabad in a disposed of Criminal Miscellaneous Writ Petition.

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3. Facts giving rise to this appeal are as follows: The marriage of the appellant and 1st respondent took place in the year 1997 according to the Muslim rites and customs and out of that wedlock three children were born. According to the appellant, 1st respondent married again for a third time. During the subsistence of the appellant's marriage, 1st Respondent kept on harassing the appellant demanding dowry, which resulted in the lodgment of an F.I.R. by the appellant's brother, being F.I.R. No. 72 of 2003, on 5.8.2003 and a case was registered under Sections 498-A, 323, 324, 504, 506 of the Indian Penal Code (IPC) and Sections 3 and 4 of the Dowry Prohibition Act against 1st respondent and his family members. The case was later transferred to the Ladies Police Station, Rakab Ganj, Agra vide an order dated 12.9.2003 of the S.S.P., Agra.

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4. Family members of 1st respondent then approached the High Court of Allahabad and filed a Criminal Miscellaneous Writ Petition No. 5426 of 2003 for quashing the F.I.R. In that writ petition, the appellant was not made a party, but only her brother. The family members of 1st respondent had submitted before the High Court that an amount of Rs.2,000/- per month would be deposited in the Court of the Chief Judicial Magistrate, until the conclusion of the trial and the appellant could withdraw the same. The High Court on 17.9.2003 passed the following order:

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“Heard Id. Counsel for the petitioner and Ld. A.G.A.

Learned counsel for the petitioner has agreed to deposit Rs.2,000/- (rupees two thousand only) per month on compassionate ground to be withdrawn by the wife of the petitioner Smt. Nazma. The amount shall be deposited in the court of Chief Judicial Magistrate concerned until the conclusion of trial.

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A In the above said facts and circumstances, since
 investigation is only with regard to the matter pertaining to
 the demand of dowry and some ancillary offences under
 Indian Penal Code, we are inclined to Interfere primarily
 with an intent to settle the dispute between the parties
 amicably. *The arrest of the petitioners in case crime*
 B *No.227 of 2003, under Sections 498-A, 323, 324, 504,*
506 IPC and Ss. 3 and 4 of D.P. Act, Police Station
Achhnera, District Agra, shall not be effected until the
 C *conclusion of investigation or submission of the report*
under Section 173 Cr.P.C. with this direction the petition
is finally disposed of."

(emphasis added)

D The above order is seen passed by the High Court with the
 intention that the parties would settle their disputes amicably.

E 5. 1st respondent also filed a Criminal Miscellaneous Writ
 Petition No. 5877 of 2003 before the High Court of Allahabad
 seeking identical reliefs. Writ petition was filed without making
 the appellant or his brother a party. Writ petition was disposed
 of by the High Court on 25.9.2003 stating that 1st respondent
 should not be arrested until the conclusion of the investigation
 or submission of any report under Section 173 of the Code of
 Criminal Procedure (CrPC), the operative portion of the order
 F reads as follows:

Heard Id. Counsel for the petitioner and Id. A.G.A.

G The arrest of other family members has been stayed
 in Criminal Misc. Writ Petition No. 5426/2003 (Smt.
 Amana and others Vs. State of U.P. & others). The said
 writ petition has been disposed of also with a direction to
 deposit Rs.2,000/- per month. This petition is on behalf of
 husband. The offences are under Section 498-A I.P.C. and
 some other ancillary offence under I.P.C. etc. photo copy
 H of the order passed in the above said writ petition has

been produced by learned counsel for the petitioner. It is placed on record.

In this view of the matter, the arrest of the petitioner in case Crime No. 227 of 2003, under Sections 498-A, 323, 324, 504 and 506 IPC and Sections 3 and 4 of DP Act, P.S. Achhnera, district Agra, shall not be effected until the conclusion of investigation or submission of any report under section 173 Cr.P.C.

With this direction this petition is finally disposed of.”

6. The Investigating Officer then filed the report closing the investigation. Learned Chief Judicial Magistrate, however, took cognizance of the case and issued summons vide his order dated 15.1.2004. 1st respondent challenged that order before the High Court of Allahabad in Revision Petition No. 694 of 2004 which was dismissed by the High Court on 24.2.2004 by the following order:

“Having heard the learned counsel for the parties, this revision petition is dismissed. However, in the interest of justice, I direct that if revisionist moves objections through counsel within two weeks against the impugned order, the same may be disposed of expeditiously and *till the disposal of the objection the revisionist shall not be arrested.*”

(emphasis added)

7. 1st respondent filed objections before the learned Magistrate on 5.3.2004 with a prayer for recalling the summoning order dated 15.1.2004.

8. 1st respondent then filed an application, Criminal Miscellaneous Application 133306 of 2004, in the disposed of Criminal Miscellaneous Writ Petition No. 5877 of 2003. The High Court allowed the application and passed the following order on 26.8.2004:

A “Application is allowed. The accused was directed to deposit a sum of Rs.2,000/- per month until the conclusion of trial.

B Since the payment is to be made till the end of trial. We feel it expedient to stay their arrest until the conclusion of trial.”

(emphasis added)

C In that application, appellant was not made a party and the Court practically reviewed its earlier order dated 25.9.2003 and extended the stay of arrest until the conclusion of the trial. Earlier, by order dated 25.9.2003, the High Court had directed stay of arrest till the conclusion of the investigation or submission of any report under Section 173 CrPC and later
D vide order dated 26.8.2004, it was ordered that the 1st respondent should not be arrested until the conclusion of the trial. Against this order of the High Court, this appeal has been preferred by the appellant-wife.

E 9. Shri Shiv Ram Sharma, learned counsel appearing for the appellant, submitted that the High Court has committed a grave error in entertaining the criminal miscellaneous application in a disposed of criminal miscellaneous writ petition and granting relief to 1st respondent. Learned counsel submitted that the practice of filing miscellaneous application
F in disposed of writ petitions are on the rise, in spite of the fact that this practice has been deprecated by this Court in various judgments. Reference was made to the judgment of this Court in *Hari Singh Mann v. Harbhajan Singh Bajwa and Others* (2001) 1 SCC 169. Learned counsel further submitted that the
G High Court, by granting stay of arrest, is depriving the trial Courts of its power to issue orders under Section 439 CrPC. Learned counsel also submitted that the order of the High Court is also interfering with the powers of the Family Court in passing appropriate orders in the application filed under Section 125
H CrPC.

10. Shri Arvind Kumar, learned counsel appearing for the respondent, submitted that the High Court has only granted stay of the arrest of 1st respondent till the conclusion of the trial, consequently, no prejudice has been caused to the appellant. Further, it was also pointed out that 1st respondent is depositing the amount of Rs.2,000/- per month in the Court of Chief Judicial Magistrate, Agra, as directed by the High Court and that appellant has made an application for withdrawal of the said amount as well. Further, it was also stated that since the appellant was not a party to the Criminal Writ Petition No. 5877 of 2003 as well as in Criminal Miscellaneous Application No. 133306 of 2004, this appeal preferred by the appellant is not maintainable.

11. We are of the view that the High Court has committed a grave error in entertaining the criminal miscellaneous application No. 133306 of 2004 in a disposed of Criminal Writ Petition No. 5877 of 2003. Criminal Writ Petition No. 5877 of 2003 was disposed of on 25.9.2003 directing that the 1st respondent should not be arrested until the conclusion of the investigation or submission of any report under Section 173 CrPC. On an application filed by the 1st respondent in that writ petition, the High Court later passed an order on 26.8.2004 stating that the petitioner therein (1st respondent) be not arrested until the conclusion of the trial. The practice of entertaining miscellaneous applications in disposed of writ petitions was deprecated by this Court in *Hari Singh Mann* (supra). Reference to the following paragraph of that judgment is apposite:

“8. We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the Code of Criminal Procedure. After the disposal of the main petition on 7-1-1999, there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a

A miscellaneous petition not referable to any provision of the Code of Criminal Procedure or the rules of the court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because Respondent 1 was an Advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30-4-1999 and 21-7-1999 could not have been passed by the High Court under its inherent power under Section 482 of the Code of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the court.”

12. We are sorry to note that in spite of the clear pronouncement of law by this Court, still, the High Courts are passing the similar orders, which practice has to be deprecated in the strongest terms. Of late, we notice that the High Courts are entertaining writ petitions under Articles 226 and 227 of the Constitution, so also under Section 482 CrPC and passing and interfering with various orders granting or rejecting request for bail, which is the function of ordinary Criminal Court. The jurisdiction vested on the High Court under Articles 226 and 227 of the Constitution as well as Section 482 CrPC are all exceptional in nature and to be used in most exceptional cases. The jurisdiction under Section 439 CrPC is also discretionary and it is required to be exercised with great care and caution.

13. We are of the view that the High Court has committed a grave error in not only entertaining the criminal miscellaneous application in a disposed of writ petition, but also passing an order not to arrest the 1st respondent till the conclusion of the

trial. Grant of bail or not to grant, is within the powers of the regular Criminal Court and the High Court, in its inherent jurisdiction, not justified in usurping their powers. Once the criminal writ petition has been disposed of, the High Court becomes functus officio and cannot entertain review petitions or miscellaneous applications except for carrying out typographical or clerical errors. In the instant case, the High Court has entertained a petition in a disposed of criminal writ petition and granted reliefs, which is impermissible in law. A
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14. We are, therefore, inclined to allow this appeal and set aside the impugned order passed by the High Court, with costs of Rs.25,000/- to be paid by 1st respondent to the appellant, within a period of two months. C

K.K.T.

Appeal allowed.