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SAVITRI GOENKA

v.

KUSUM LATA DAMANI AND ORS.

NOVEMBER 2, 2007

B

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

C

Judicial propriety—High Court converting application u/s 482 Cr.P.C to one u/s 438 Cr.P.C without service on the complainant and granting interim protection—Propriety for grant of relief in favour of accused—Held: Not proper—Filing of charge sheet or grant of bail of no consequence—Matter remitted back to High Court for fresh consideration—Code of Criminal Procedure, 1973—ss 482 and 438.

D

Respondent filed Criminal Misc. Petition. High Court directed the respondent to serve the appellant but the directions were not complied with. Thereafter, High Court directed the respondent to implead the appellant. Meanwhile, Additional Sessions Judge dismissed the bail application on the ground that the relief had already been obtained by her from High Court. Subsequently, without service on the appellant, the High Court converted the application under s. 482 Cr.P.C to one for bail in terms of s. 438 Cr.P.C and granted interim protection. Hence the present appeal.

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Partly allowing the appeal, the Court

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HELD: 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 High Court to the accused by the

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[PASAYAT, J.]

impugned order. The impugned order is set aside and the matter is remanded for fresh consideration. [Paras 4 and 5] [920-B-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1508 of 2007.

From the Judgment and final Order dated 22.09.2005 of the High Court of Delhi at New Delhi in Criminal Misc. Petition No. 2945 of 2004.

Jayant K. Mehta, Vasudha J. Mehta and Himinder Lal for the Appellant.

Siddharth Luthra, Rajnish Chopra, Dhruv Kapur, Anurag, Anil Katiyar, Abha R. Sharma and Subramonium Prasad for the Respondents.

The Judgment of the Court was delivered by

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

- A 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.

N.J.

Appeal partly allowed.