

Hamida vs Rashid @ Rasheed & Ors on 27 April, 2007

Equivalent citations: 2007 AIR SCW 3123, 2008 (1) SCC 474, 2007 (4) ALL LJ 206, AIR 2007 SC (SUPP) 361, 2008 (1) SCC (CRI) 234, (2008) 105 CUT LT 410, 2007 CRILR(SC&MP) 616, (2007) 2 CRILR(RAJ) 616, 2007 CRILR(SC MAH GUJ) 616, (2007) 54 ALLINDCAS 19 (SC), 2007 (3) ALLCRILR 424, 2007 (3) CHANDCRIC 300, 2007 (4) EASTCRIC 43, 2007 (3) CURCRIR 34, 2007 (37) OCR 581, 2007 (6) SCALE 517, 2007 (4) SUPREME 113, 2007 (3) CRIMES 138, 2007 (2) RECCRIR 917, 2007 (54) ALLINDCAS 19, 2007 (58) ALLCRIC 577, 2007 (2) ALLCRIR 1864, 2007 (2) RAJCRIC 763, 2008 (1) CALCRILR 377, 2007 (2) MADLJ(CRI) 1792, 2007 (3) ANDHLT(CRI) 395 SC

Author: G. P. Mathur

Bench: G.P. Mathur, A.K. Mathur

CASE NO.:

Appeal (crl.) 632 of 2007

PETITIONER:

Hamida

RESPONDENT:

Rashid @ Rasheed & Ors

DATE OF JUDGMENT: 27/04/2007

BENCH:

G.P. Mathur & A.K. Mathur

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NO. 632 OF 2007 (@ Special Leave Petition (Crl.) No.4891of 2005) G. P. MATHUR, J.

1. Leave granted.

2. This appeal, by special leave, has been filed by the complainant Hamida widow of Balla against the judgment and order dated 1.7.2005 of Allahabad High Court, by which the petition under Section 482 Cr.P.C. filed by the accused respondents herein was disposed of with certain directions. By the impugned order it was directed that the accused respondents, who had been initially granted bail in offences under Sections 324, 352 and 506 IPC by the Chief Judicial Magistrate, Muzaffarnagar, would continue to remain on bail even after the offence had been converted to one under Section 304 IPC, if they furnished the requisite personal bonds and sureties before the

concerned Court.

3. The appellant Hamida lodged an FIR at P.S. Kotwali, Muzaffarnagar at 00.10 hours on 13.6.2005 alleging that when her husband Balla was participating in a Panchayat of the Biradari (community) the four accused respondents lodged an attack upon him with licensed and illegal arms, exhorting that they would kill him. Naushad accused assaulted him with a 'chhuri' (long knife) due to which Balla received serious injuries. The other accused fired from their respective weapons and thereafter ran away from the scene of occurrence. On the basis of the FIR lodged by the appellant, a case was registered as Crime No. 792 of 2005 under Sections 324, 352 and 506 IPC at P.S. Kotwali, Muzaffarnagar. The injured Balla was rushed to the District Hospital, where he was medically examined at 11.10 p.m. on 12.6.2005. He had sustained serious stab wound in his abdomen from which loops of intestines were coming out.

4. Two accused respondents were arrested by the police and were produced before the learned Chief Judicial Magistrate on 13.6.2005 for the purpose of seeking remand. The accused also moved a bail application seeking bail in Case Crime No.792 of 2005 which had been registered against them. The complainant-appellant Hamida also put in appearance through a counsel and filed an affidavit stating that as a serious injury had been caused to the injured Balla and accused had resorted to firing, the offence committed by them was one under Section 307 IPC, but the police in collusion with the accused had registered the case only under Sections 324, 352 and 506 IPC. It was also submitted that on account of the serious injuries received by the injured Balla, he had been referred to the Medical College, Meerut, and the bail application should be heard after summoning the medical examination report. The learned CJM, however, observed that remand of the accused had been sought only in the offences in which the case had been registered against them and as the offences were bailable, they were entitled to bail. He accordingly passed an order on the same day i.e. 13.6.2005 granting bail to the accused Rashid and Arshad. It was, however, made clear in the order that if the case was converted into a more serious offence, the accused would not get any benefit of the bail being granted to them. Subsequently, the remaining two accused were also released on bail. Balla succumbed to his injuries in the night intervening 16th and 17th of June, 2005. Thereafter, the offence was converted into one under Section 304 IPC. It was at this stage that the four accused respondents filed a petition under Section 482 Cr.P.C. before the High Court seeking a direction to the Chief Judicial Magistrate, Muzaffarnagar, to permit them to remain on same bail even after conversion of the offence into one under Section 304 IPC. The only submission made before the High Court was that on the same facts and circumstances, the accused had been granted bail by the learned Chief Judicial Magistrate and they had not misused the privilege of the bail and, therefore, they should be allowed to remain on bail even after conversion of offence. The High Court accepted the prayer made on behalf of the accused respondents and the relevant part of the order, which is under challenge, is being reproduced below :-

"In view of the facts and circumstances of the case and the submissions made by the learned counsel for the applicants, it is directed that if the applicants appear before the court concerned and furnish their personal bonds and two sureties each in the like amount to the satisfaction of the court concerned the same shall be accepted under Section 304 I.P.C.

With these observations, the application is disposed of finally."

5. We have heard learned counsel for the parties. The principal submission of learned counsel for the appellant (complainant) is that the power under Section 482 Cr.P.C. could not have been exercised by the High Court in granting bail to the accused respondents as there is a specific provision in the Code of Criminal Procedure viz. Section 439 under which the accused could approach the appropriate Court for grant of bail to them. It has been further submitted that while exercising power under Section 482 Cr.P.C. the High Court has committed grave error in issuing the direction that the bail granted to the accused for an offence under Sections 324, 352 and 506 IPC will enure to their benefit even after conversion of the case which was registered against them into one under Section 304 IPC. The submission is that the accused respondents ought to have surrendered and after they had been taken into custody, they should have applied afresh for bail in the offence under Section 304 IPC.

6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Cr.P.C. saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle that every Court has inherent power to act *ex debito justitiae* to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. As held by the Privy Council in *Emperor v. Khwaja Nazir Ahmad* AIR 1945 PC 18 with regard to Section 561-A of the Code of Criminal Procedure, 1898 (Section 482 Cr.P.C. is a verbatim copy of the said provision) gives no new powers. It only provides that those which the Court already inherently possesses shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent power had survived the passing of the Act.

7. It is well established principle that inherent power conferred on the High Courts under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power under Section 482 Cr.P.C. were examined in considerable detail in *Madhu Limaye v. State of Maharashtra* AIR 1978 SC 47 and it was held as under :

"The following principles may be stated in relation to the exercise of the inherent power of the High Court -

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

8. In *State v. Navjot Sandhu* (2003) 6 SCC 641 (para 29), after a review of large number of earlier decisions, it was held as under :

"29. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."

9. In *Arun Shankar Shukla v. State of U.P.* (1999) 6 SCC 146 the High Court had entertained a petition under Section 482 Cr.P.C. after an order of conviction had been passed by the Sessions Judge and before the sentence had been awarded and further proceedings in the case had been stayed. In appeal this Court set aside the order of the High Court after reiterating the principle that it is well settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. It was further observed that the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence and intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial. The order of the High Court was accordingly set aside on the ground that a petition under Section 482 Cr.P.C. could not have been entertained as the accused had an alternative remedy of an appeal as provided in the Code. It is not necessary to burden this judgment with other decisions of this Court as the consistent view throughout has been that a petition under Section 482 Cr.P.C. cannot be entertained if there is any other specific provision in the Code of Criminal Procedure for redress of the grievance of the aggrieved party.

10. In the case in hand, the accused respondents could apply for bail afresh after the offence had been converted into one under Section 304 IPC. They deliberately did not do so and filed a petition under Section 482 Cr.P.C. in order to circumvent the procedure whereunder they would have been required to surrender as the bail application could be entertained and heard only if the accused were in custody. It is important to note that no order adverse to the accused respondents had been passed by any Court nor there was any miscarriage of justice or any illegality. In such circumstances, the

High Court committed manifest error of law in entertaining a petition under Section 482 Cr.P.C. and issuing a direction to the subordinate court to accept the sureties and bail bonds for the offence under Section 304 IPC. The effect of the order passed by the High Court is that the accused after getting bail in an offence under Section 324, 352 and 506 IPC on the very day on which they were taken into custody, got an order of bail in their favour even after the injured had succumbed to his injuries and the case had been converted into one under Section 304 IPC without any Court examining the case on merits, as it stood after conversion of the offence. The procedure laid down for grant of bail under Section 439 Cr.P.C., though available to the accused respondents, having not been availed of, the exercise of power by the High Court under Section 482 Cr.P.C. is clearly illegal and the impugned order passed by it has to be set aside.

11. Learned counsel for the appellant has submitted that charge under Section 302 IPC has been framed against the accused respondents by the trial court and some subsequent orders were passed by the High Court by which the accused were ordered to remain on bail for the offence under Section 302 read with Section 34 IPC on furnishing fresh sureties and bail bonds only on the ground that they were on bail in the offence under Section 304 IPC. These orders also deserve to be set aside on the same ground.

12. In the result, the appeal is allowed. The impugned order dated 1.7.2005 passed by the High Court and all other subsequent orders whereby the accused respondents were directed to remain on bail for the offence under Section 302 read with Section 34 IPC on furnishing fresh sureties and bail bonds are set aside. The accused respondents shall be taken into custody forthwith. It is, however, made clear that it will be open to the accused respondents to apply for bail for the offences for which they are charged before the appropriate Court and in accordance with law.

13. Before parting with the case, we feel constrained to observe that in spite of repeated pronouncements of this Court that inherent power under Section 482 Cr.P.C. should be exercised sparingly with circumspection in rare cases and that too when miscarriage of justice is done, the High Court entertained the petition under Section 482 Cr.P.C., the ultimate result whereof was that the order of bail granted in favour of the accused for an offence under Sections 324, 352 and 506 IPC enured to their benefit even after the offence had been converted into one under Section 304 IPC and also subsequently when charge had been framed against them under Section 302 read with Section 34 IPC. The accused did not remain in custody even for a single day nor did they approach the Court of Chief Judicial Magistrate or Sessions Judge for being granted bail under Section 304 or 302 IPC, yet they got the privilege of bail under the aforesaid offences by virtue of the order passed by the High Court. The dockets of the High Courts are full and there is a long pendency of murder appeals in the High Court from which this case has arisen. Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under Section 482 Cr.P.C. at an interlocutory stage which are often filed with some oblique motive in order to circumvent the prescribed procedure, as is the case here, or to delay the trial which will enable the accused to win over the witnesses by money or muscle power or they may become disinterested in giving evidence, ultimately resulting in miscarriage of justice.