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KANCHAN KUMARI

v.

THE STATE OF BIHAR & ANR.

(Criminal Appeal No. 1031 of 2022)

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JULY 25, 2022

[K. M JOSEPH AND HRISHIKESH ROY, JJ.]

- C *Code of Criminal Procedure, 1973: s.438 – Anticipatory Bail granted to second respondent by High Court, however adverse directions passed against third party – In the instant case, second respondent filed an application u/s.438 before High Court seeking anticipatory bail for offences u/ss.406, 420, 467 and 468 IPC – High Court while allowing the said application, directed the authority to cancel the licence of agent granted to appellant and not to allow to work as agent in Bihar or anywhere else –*
- D *Justification of such peremptory direction – Held: High Court went beyond what was needed for the disposal of the application u/s.438 – It passed peremptory direction against the third party – Such a peremptory direction, without even issuing any notice to the appellant was clearly unjustified – The adverse impact of the direction goes to the very livelihood of the appellant – Order of High Court modified by vacating the direction.*
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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1031 of 2022.

F From the Judgment and Order dated 27.04.2022 of the High Court of Judicature at Patna in Criminal Miscellaneous No.55125 of 2021.

Somesh Chandra Jha, Parvez Alam, Advs. for the Appellant.

Manish Kumar, Harsh Choudhary, Advs. for the Respondents.

The following Order of the Court was passed:

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ORDER

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1. Leave granted.
 2. The second respondent filed an application under Section 438 of the Code of Criminal Procedure (Cr.P.C.) seeking anticipatory bail in connection with Pirbahore P.S. Case No. 174 of 2021 registered for

offences under Sections 406, 420, 467 and 468 of the Indian Penal Code. By the impugned order, the High Court has found it fit to allow the said application under Section 438 Cr.P.C. The matter did not end there and it is this which has led to the present appeal. The following are the directions which has led the appellant to approach this Court with a petition under Article 136 of the Constitution of India:

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“Senior Superintendent of Post Office, Bankipore is directed to cancel the licence/authorization of agent granted to Kanchan Kumari and for being an agent of the Post Office, she should not be allowed to work as agent in Bihar or anywhere else.”

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3. We have heard the learned counsel for the appellant and the learned counsel for the respondent-State.

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4. Learned counsel for the appellant would contend that the High Court has clearly erred in passing the said direction, which alone is the subject matter of the challenge before this Court. By virtue of the said direction, the appellant, who was not a party before the High Court, has been gravely prejudiced in the case of the appellant. The High Court did not issue any show cause before the said directions were issued. It is her case that her livelihood has been adversely affected. It amounts to blacklisting the appellant for her lifetime and that too, without issuing any show cause. The appellant would impugn the competence of the Court to pass such adverse orders wherein the appellant is not even a party and without issuing any notice and when the matter arose from an application under Section 438 Cr.P.C. seeking anticipatory bail by a person.

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5. The appellant draws our attention to the view of this Court in the decision reported in *Sumit Mehta v. State of N.C.T. of Delhi* (2013) 15 SCC 570. In other words, the case appears to be that the conditions must be appropriate, apposite, reasonable and relevant to the scope of the *lis* before the Court. The *lis* before the Court revolved around the question as to whether the applicant had made out a case for grant of anticipatory bail to him.

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6. Learned counsel for the respondent-State very fairly pointed out that as far as the legal position is concerned, the Court dealing with the application under Section 438 Cr.P.C. must confine itself to the issue before it viz., as to whether the applicant has made out a case for grant of anticipatory bail or not.

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- A 7. We are convinced that the High Court has gone beyond what was needed for the disposal of the application under Section 438 Cr.P.C. What is impugned before us is not a mere observation. It is a peremptory direction affecting a third party. The adverse impact of the direction goes to the very livelihood of the appellant. It has also civil consequences for the appellant. Such a peremptory direction and that too, without even issuing any notice to the appellant was clearly unjustified. We are, therefore, of the view that the appellant must succeed. The appeal is allowed to the extent that the impugned order shall stand modified by vacating the direction which we have extracted hereinabove. The appeal is allowed as above.

Devika Gujral
(Assisted by : Shevali Monga, LCRA)

Appeal allowed.