Bipat Ram And Anr. vs The State on 4 January, 1954

Equivalent citations: 1954CRILJ1416

ORDER

Harish Chandra, J.

1. This is a revision application against an order of the Sessions Judge, Gorakhpur, cancelling the bail of the applicants. It is said that he had no jurisdiction to do so.

2. It appears that the learned Sessions Judge granted bail to the applicants in a case which was proceeding in his court against them. 17-8-1953, was fixed for the hearing of the case. They absented themselves and/ submitted medical certificates which were accepted and 30-9-1953, was fixed for the hearing of the case. But on 30-9-1953, they were again absent, and only a telegram was received by the court from one of them indicating that the other was ill. At the request of the District Government Counsel, the learned Sessions Judge cancelled the bail, I think he acted quite correctly. If an accused who has been granted bail misuses his liberty and absents himself without proper cause in a case proceeding before a court, that court has inherent jurisdiction to cancel the bail previously granted by it. A court must have full power to enforce its orders, maintain its authority and see that the progress of the case is not hampered by anything.

3. My attention has been drawn to the case of Bachchu Lal v. State in which a Division Bench of this Court held that a Court of Session had no jurisdiction to direct the cancellation of the bail already granted by it to an accused person. But that was a case which was proceeding in the court of a Magistrate and the Sessions Judge had granted bail acting under Section 498, Criminal P. C. It was held that he could not subsequently cancel the bail which he had previously granted to the accused. The question, whether the sessions Judge had inherent jurisdiction to cancel the bail or not was considered by the Court. It was held that this inherent Jurisdiction could be exercised by the High Court alone under Section 581-A of the Code and that a Sessions. Judge had no jurisdiction to cancel it under that section. It being a Division Bench case it is binding on me although I feel that the view that a court cannot amend, vary or rescind any order passed by it even though the altered circumstances may justify such a step may lead to practical difficulties and that it was not the intention of the Legislature that it should be so.

No doubt, a Judgment once signed cannot be altered or reviewed except to correct a clerical error (see Section 369, Criminal P. C.). But various orders are passed by a court from time to time during the progress of a case and the orders once passed have often to be amended, varied or rescinded when circumstances justify it. A court may reject an application presented on behalf of an accused person praying that his personal attendance be exempted. But it may on a subsequent application and on a consideration of certain circumstances amend the order and grant him such exemption. Other instances of a similar nature may easily be conceived. But on the view taken by the Court in

the case referred to above which, as I have stated above, is binding on me, I find that there are considerations which distinguish the present case from the one referred to above.

It appears that it was urged before the Court in that case that the law recognises the existence of inherent powers in every Court even in the absence of an express provision in that behalf in the Code. Their Lordships observed:

> The principle is that whenever it is found impossible to do something which the law requires a court to do and that something is not expressly authorised in the Code the omission has to be rectified by resort to the fiction that in the absence of an express provision in the Code, the law empowers the doing of everything necessary for the doing of justice for which alone Courts of law exist, the rules of procedure being merely rules for rendering aid in achieving the eventual result and not to hinder the doing of that which is right.
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> But they say:
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> Where, however, a case is pending before a Magistrate and the Sessions Judge admits the accused to bail, the power of cancellation of the order cannot be deemed to inhere in the Court of Session for two reasons : (1) Because he is not seized of the trial or inquiry, and (2) Because the provisions of Section 561-A do not confer any jurisdiction on the Sessions Court.

4. In the present case, however, proceedings were going on before the Sessions Judge himself and in my view he had inherent jurisdiction to cancel the bail which he had granted to the accused persons when he found that they were absenting themselves without reasonable cause and delaying the progress of the case.

5. Another case which has been cited before me is that of Munshi Singh v. State . In that case also a Judge of this Court held that the Sessions Judge had no inherent power to cancel the bail which he had once granted to an accused person. The facts of the case are not clear. But it seems to me that in that case also the proceedings were going on in the Court of a Magistrate and not before the Sessions Judge himself.

6. I, therefore, see no reason to interfere and reject the application. Let the papers be returned. The order staying the operation of the order of the learned Sessions Judge dated 30-9-1953, is discharged.

7. It is certified that this is a fit case for appeal to the Supreme Court.