

Delhi High Court

Ashish Kumar Pal vs State (Govt. Of Nct Delhi) [Along ... on 18 March, 2005]

Equivalent citations: 119 (2005) DLT 30, 2005 (81) DRJ 759

Author: R Jain

Bench: R Jain

JUDGMENT R.C. Jain, J.

1. Prashant Kumar Pal along with his brother-Ashish Kumar Pal, stand convicted for the offences punishable under Section 376 IPC, 120B IPC, 506 IPC and Section 342 of the IPC. Each of them has been sentenced to undergo RI for seven years and pay fine of Rs.2,000/- for offence punishable under Section 376 IPC, RI for one year for offence under Section 120B IPC, RI for three years for the offence under Section 506 IPC and to undergo six months imprisonment for the offence under Section 342 IPC. All the substantive sentences have been ordered to run concurrently vide an order dated 9.9.1999. The appellants have filed separate appeals against their conviction and sentence. After the appeal remained pending for some time, vide an order dated 8.3.2001 passed by R.S. Sodhi, J, the sentences of the appellants were suspended during the pendency of the appeal on their furnishing personal bonds in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the Court concerned. Soon after availing the concession of bail, the appellant did not appear in the Court when the criminal appeal was taken up for hearing on 7.10.2002 and the Court was constrained to issue warrants against them. However, later on applications moved on behalf of the appellant issuance of warrants was recalled.

2. Through this application made by the applicant, who is none else except the father of the prosecutrix, has approached this Court for cancellation of the bail of the appellants with the averments and allegations that after release on bail, the appellants started threatening and harassing the applicant and were leaving no stone unturned to mentally torture the applicant and his family members by making threatening phone calls and abuse and scandaluous messages on the phone and Mobile phone No.9810179122 of the applicant. They in connivance of each other threatened the applicant to kill him and kidnap his family members if he did not stop pursuing case against them pending before this Court. It is stated that such calls were received by the applicant from phone No.31193411 on his phone No.22524141 on 5.5.2004 and 6.5.2004. On receipt of the threatening phone calls, the applicant approached PS Preet Vihar on 7.5.2004 with a complaint against the appellants but no FIR was registered. On 9.5.2004 again a phone call was made from phone No.22611205 on the phone of the applicant giving similar threats and further stating that they will not allow the applicant to live in peace and to allow her daughter marry anywhere. On 9.5.2004 the applicant again lodged a complaint with the PS Preet Vihar and a D.D.No.32 was noted, but still no FIR was recorded and no action was taken against the appellants. The applicant received repeated calls on 10.5.2004 and 15.5.2004 from Mobile phone No.9871495328 and 22610365. Again a phone call was received on 18.5.2004 and the matter was reported to the police with a copy to the DCP (East) and Commissioner of Police, but still not action was taken against the culprits. The applicant continued to get such threatening calls and fed up with the same and inaction of the police, had to approach this Court with a criminal writ petition and it was only with the intervention of the Court that an FIR was registered by the police and investigation taken up. It is also alleged that not only the appellant is making frequent threatening calls and messages to the

applicant on his land line and mobile phone, the applicant got a letter from the appellant along with nude photographs with the face of the daughter of the applicant implanted on it with trick photography. On receiving the same, the applicant was shocked and terrified. It is stated that the appellant has mis-used the concession of bail granted to him and there is a constant threat to the life and liberty of the applicant and his daughter and other family members.

3. The application is opposed on behalf of the appellant and a reply has been filed raising preliminary objections disputing the locus of the applicant to make the present application and the application being the mis-use of the process of the Court. It is not denied that the appellants were convicted and sentenced as above and they have filed appeals, which are pending disposal. All other allegations in regard to the appellants having given any threat to the applicant or any member of his family are denied. It is alleged that the allegations are unfounded and that the prosecutrix was in an emotional relationship with the appellant-Prashant Kumar Pal which did not find favor with the applicant and so, he has made this application.

4. I have heard learned counsel for the parties and have given my thoughtful consideration to their respective submissions. Learned counsel for the applicant has highlighted the inaction of the police in not registering the case against the appellants, who had made various threatening calls to the applicant during the months of May and June, 2004. That the police registered case, but still the investigation is inconclusive even after several months. It is alleged that the police is deliberately not arresting the appellant, though there is enough material available with them during the course of the case in FIR 488/2004 under Sections 387/507/509/34 IPC. Attention of the Court has also been invited to the conduct of the appellant, as has been noticed by the learned trial court itself in its order of sentence dated 9.9.1999, which reads as under:

"It further reflects that the convict persons moved calculatedly to take the girl in their trap. The other facet of the coin is to be depicted here. Convict Ashish Kumar Pal opted to criminally intimidate, over-awe and threaten the judge, when verdict was pronounced to him. The society is faced with the persons, who can go to any extent. He deserved some initiation of proceedings against him, which was not done when his father pleaded with folding hands. These factors reflect about the conduct of the convict persons, their dare-devil act and modus operandi they operated in sexually exploiting a girl of tender age. Therefore, I am of the opinion that a leniency is not called for in the case. Making a balance of the situation, I feel that minima provided by the law should be adhered to, while awarding sentence to the convict persons."

5. On the other hand, learned counsel representing the appellant / non-applicant has urged that the allegations in regard to the threatening calls made by the appellant to the applicant are false and frivolous and the figment of applicant's own imagination. It is urged that the appellant after having been convicted and sentenced and released on bail by this Court could not have dared to make any such phone calls. It is denied that the appellant has mis-used the concession of bail.

6. The subject of witness's/victim's protection has been agitating the mind of various courts in this country, including the Apex Court because the menace of threatening the witnesses and the complainants during the course of investigation and trial or after conviction are on an increase.

Sometimes the witnesses succumb to the pressure exerted by the culprits by various modes and reconcile to their fate and do not support the complaint or their version. One reason why such witnesses or complainant succumb to the pressure of the culprits appears to be that they do not get the requisite protection from the concerned authorities who are responsible for providing the same. The present case highlights this aspect very prominently because the father of the prosecutrix is being put to constant threats by the convicts even after their conviction and sentence. Police, it appears, lacked the sensitivity in the matter and he had to approach the police on more than one occasion and lastly to the Court for redressal of his grievance. The police was not moved and they did not consider it their duty to even register a report disclosing several cognizable offences. The reasons for not doing so are not very difficult to understand.

7. Having regard to the totality of the facts and circumstances of the case, the conduct exhibited by the appellants before the trial court as well as during the pendency of the appeal before this Court, this Court is clearly of the opinion that the appellants have grossly mis-used the concession of bail granted to them and, therefore, this Court finds it a fit case where the applications should be allowed and the bail of the appellants should be cancelled. Ordered accordingly.

8. The concerned SHO shall ensure that the appellants are arrested and committed to Central Jail, Tihar forthwith. List on 23rd March, 2005 for reporting compliance.

Let a copy of the order be given to the learned standing counsel (criminal) for necessary action under the signatures of the Court Master.