

Smt. Bindu Mehra vs Sushil Kumar Mehra on 16 March, 2007

Equivalent citations: 2007CRILJ3455, 139(2007)DLT222

Author: S. Ravindra Bhat

Bench: S. Ravindra Bhat

JUDGMENT

S. Ravindra Bhat, J.

1. The present application is preferred by the wife (hereinafter referred to as Applicant) under Section 439(2) of the Code of Criminal Procedure for cancellation of the anticipatory bail granted to the husband (herein after referred to as "respondent") by this Court in an order dated 16.5.2006, in Bail application No. 542/2006.

2. The applicant married the respondent on 20.7.94 and a daughter was born out of the wedlock. She alleged that the Respondent harassed her for dowry; and treated cruelly, in order to get his illegal demands fulfilled, ever since the inception of marriage. The applicant also alleged that she was unable to bear the torture and was constrained to file a compliant against the respondent alleging commission of offences under Sections 406/498A/34 IPC.

3. The applicant allege that she is living alone with her 7-year-old daughter ever since the Respondent has left their company. She alleges that the Respondent tried to kidnap the child on 29.7.2006 by hiring some men and for that reason she is apprehensive in sending the child to school. She also alleges that the Respondent had taken a sum of Rs. 3 lakhs from her father at the time of purchasing a house at Rohini, Delhi. However, he managed to get the sale deed registered exclusively in his name and has been creating further documentary evidence to show that he had no intention to take dowry.

4. The applicant alleges that the Respondent secured anticipatory bail by misleading as well as concealing material facts. The Respondent has in fact raised a property dispute in the anticipatory bail application and has obtained favorable orders.

5. The Applicant has alleged that the Respondent has not paid any maintenance to them other than Rs. 45,000/-, paid in the month of April 2006. This Court, by order dated 16.5.2006 had directed the Respondent to pay a sum of Rs. 2500/- per month as maintenance to the applicant and the daughter till the disposal of the maintenance application by the appropriate court. The Applicant alleges that the Respondent has not complied with that order, and has not made payments. The Respondent is a physiotherapist earning a sum of Rs. 18,060/- p.m. He allegedly produced a false

salary statement showing that he earns Rs. 6,000/- p.m. to misguide the Court. He is liable to pay a sum of Rs. 72,292/- as maintenance from 18.9.2005 to 31.10.2006. The salary of the Respondent amounting to Rs. 18,060/- p.m. has been worked out on the basis of his salary slip for the month of June 2004.

6. This Court had granted the Respondent interim protection on 27.02.2006 in the previous proceeding; the extracts of that order are as follows:

to the condition that the Petitioner pays half his salary towards maintenance for the minor child and the complainant with effect from 18.9.05

7. The respondent was on 16.05.2006 granted anticipatory bail. The extract of that order is as follows:

The learned Counsel for the petitioner shall continue to pay a sum of Rs. 2,500/- p.m towards maintenance as an ad-hoc measure to his wife and daughter.

8. The Respondent in his reply to the application has stated that the parties had an inter caste love marriage; he denies harassing the Petitioner for dowry. He alleges that the petitioner and her father conspired to grab his self-acquired property at Rohini. According to his version, he purchased the property from his father in law by obtaining a home loan from Citi Bank. He alleges that upon becoming aware of the fraud played on him by his father in law, he settled the home loan and converted it into personal loan, by the ICICI Bank.

9. The Respondent further alleges that he did not leave the company of his wife and child of his volition but did so due to the harassment by his wife. He also states that he never attempted to kidnap his child and has approached the court for custody. He alleges that he complied with the orders of the court, on several occasions, sent maintenance to the Applicant through Money orders, sent cheques through courier, all of which were received back, unaccepted. The Respondent has stated that he gets a net salary of Rs. 8,328/- p.m and HRA is deducted from the said amount. He is also re-paying installments towards liquidation of his two loans and GPF. The Respondent states that he is saving just Rs. 1000/- p.m.

10. Learned Counsel for the applicant Ms. Sangita Bhayana has argued that the gross salary of the Respondent as per his pay slip for the month of December, 2006 is Rs. 14,776/-. She submits that he has deliberately obtained loan against GPF in order that the deductions are effected to the tune of Rs. 4,000/-p.m. from his salary to show that his net income is less and that he escapes his liability to maintain his wife and daughter.

11. The learned Counsel has further argued that Rs. 4,000/- deduction as GPF is credited into the Respondents' account and is his saving. She further submitted that if the respondent is given House Rent allowance of Rs. 3184/- and Travel allowance of Rs. 100/-, his total monthly pay works out to Rs. 18,060/-. The counsel submitted that for the purpose of calculating maintenance she has taken into account Rs. 18,060/-, The Respondent has to pay Rs. 98,095/- up to January, 2007.

12. Learned Counsel relied upon a tabular statement submitted that the sum of Rs. 24,486/- is due and payable, after deducting the amount of Rs. 21,250/- paid in Court towards the admitted liability for the period 16.5.2006 to January, 2007. This was on the basis of the true income of the petitioner which was in excess of Rs. 18,000/-; he could not have claimed adjustment of his so-called installments alleged to be paid by him towards liquidating the loan.

13. Learned Counsel for the respondent urged that the present proceeding under Section 439(2) Cr.P.C. is an abuse of process of Court and that no grounds were made out for cancellation of bail. He contested the claim of the petitioner that amounts were not paid and submitted that repeated attempts to pay the monthly maintenance directed by the Court in May, 2006 i.e. Rs. 2500/- were resisted just with a view to put him into trouble. He also urged that the contentions of the petitioner regarding the so-called true income were all gone into by the Court which passed the final order upon the bail application of 15.5.2006. Therefore, the petitioner could not have been aggrieved by the so-called non-compliance with the interim arrangement that existed till that final order. In any case the amount of Rs. 45,000/-, was admittedly released for the concerned party and, therefore, there is no question of paying any balance amounts.

14. Learned Counsel reiterated the defense urged in the reply and also contended that the respondent is facing other proceedings. He further submitted that in order to pay all liabilities, loan was secured which is being re-paid to monthly Installments aggregating to more than Rs. 5,000/- and that the petitioner is left with only a meager sum which is barely sufficient to sustain him. He submitted that there was no withholding of information from the Court or the material suppression of facts warranting variation of the bail order and that the present application was moved only with a view to harass the respondent.

15. It is well-established that there is a distinction between grant or rejection of bail at the initial stage and cancellation of bail, already granted. Cogent and over-whelming grounds or circumstances are required, for the issuance of an order cancelling the bail granted by Court on an earlier occasion (see *Subhandu Mishra v. Subrat Kumar Mishra* ; *Dolat Ram v. State of Haryana* .)

16. In the present case the Court had in the previous bail proceedings, by way of an interim arrangement directed the respondent to pay half of his salary towards maintenance for the minor child and the petitioner/complainant, with effect from 18.9.2005 and granted two weeks for the purpose. It was made clear that the arrangement was made purely ad hoc and that in case of failure to comply with the order the interim protection could be vacated. The parties were directed to be present before the Secretary, Delhi High Court Legal Services Committee on 3.3.2006. The pleadings disclose that for the month of December the gross pay of the respondent was Rs. 14,776/- of which there were deductions to the tune of Rs. 6448/-. These included GPF advance of Rs. 4,000/- besides income tax (Rs. 1,000/-). The net salary of the respondent indicated was Rs. 8,328/- in the copy of the salary slip filed along with the counter affidavit. The copy of the response under the Right to Information Act discloses that for previous months i.e September-November, 2006 the total emoluments comes to Rs. 18,068/- and the net salary was nearly Rs. 12,000/-. The tabular chart furnished under the RTI discloses that the House Rent Allowance being given to the petitioner was withdrawn in December, 2006 and January, 2007.

17. Having regard to the restricted and extremely narrow scope of the jurisdiction under Section 439(2) it would neither be necessary nor desirable for the Court to meticulously sift the materials with a magnifying glass as it were, to find out what was the correct income of the respondent for the period in question. Such a course of action is also perhaps inappropriate since the final order granting bail had directed payment of Rs. 2500/- per month to the petitioner. The broad question is whether the respondent had practiced such a deception as to warrant cancellation of the anticipatory bail. The materials do suggest that some amount of exaggeration in the final pay package available to him, appears to have been made. The net salary disclosed was Rs. 8328/-. However, at the relevant time he appears to have been enjoying a better salary. Having regard to the nature of jurisdiction invoked, I am of the considered view that such conduct does not ipso facto entitle the court to exercise the power under Section 439(2), which entails serious consequences.

18. Without going into further details as to the extent of the respondent's true income I am of the opinion that for the period in question namely 18.9.2005 to 15.5.2006, ends of justice would be met with if the respondent is directed to pay Rs. 12,000/-. He is directed to do so within six weeks from today. The Court had while reserving orders, directed the respondent to pay the amounts, as previously directed by the order finally granting bail to him on or before 7th of every month through crossed pay order/demand draft/cheque and hand it over to petitioner's counsel Ms. Sangeeta Bhayana, who was to issue receipts in this regard. That direction is reiterated.

19. In view of the above discussion, the following directions are issued:

(i) The respondent shall pay a sum of Rs. 12,000/- to the petitioner through crossed cheque/demand draft/pay order within a period of six weeks. The same shall be handed over to her counsel Ms. Sangeeta Bhayana, who will issue receipts in this regard.

(ii) The respondent shall continue to pay on or before the 7th of every month a sum of Rs. 2500/- to the petitioner through her counsel Ms. Sangeeta Bhayana in terms of the order dated 27.2.2007 in the present petition;

(iii) The above order is subject to final determination by any competent Court in regard to the maintenance or amounts payable to the petitioner. In case any Section 125 Cr.P.C. application has been filed by the petitioner, the same shall be dealt with expeditiously and disposed off within four months from today.

The petition is disposed off in the above terms.