
statement. The expression "the plaint is vague" cannot be constructed and read as that "the agreement is vague" for want of definite particulars. If it was pleaded so specifically, Courts would have framed an issue and parties would have led evidence in that regard. As no controversy was raised by the defendant, he cannot be permitted to take up the said plea in the second appeal. Further more, it is a settled principle of law that relief of specific performance is always in the discretion of the Court. The Court can decline the specific performance even if the plaintiff was otherwise entitled to the same, if it is likely to cause serious prejudice and would imbalance the equities between the parties. To attract the applicability of this principle the parties must lead proper evidence showing serious prejudice to the right of the vendor in relation to the subject matter of the suit for the fault of the vendee/plaintiff. It is a matter of fact and cannot be presumed in favour of either party. Reference in this regard can be made to the judgment of this Court in the case of *Ram Dass versus Ram Lubhaya* (3).

(9) The learned Courts below have appreciated the evidence in its correct perspective and I see no reason to interfere in the concurrent finding of facts arrived at by the learned Courts below. Resultantly, the regular second appeal is dismissed *in limine*.

R.N.R.

Before V.M, Jain, J

KARNAIL SINGH,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

CRIMINAL MISC. NO. 25298/M OF 2000

11th August, 2000

Code of Criminal Procedure, 1973—Ss., 439(2) & 482—High Court ordering regular bail to the accused—Trial Court releasing the accused from custody on his furnishing bonds—Absence from the trial Court on the date fixed—Trial Court cancelling his bail, forfeiting bonds and issuing non-bailable warrants—whether trial Court has power to cancel the bail granted by the High Court—Held, yes—Trial Court has power to cancel the bail under the circumstances arising during trial—petition dismissed.

(3) 1998 (2) PLR 326.

Held, that the accused petitioner was ordered to be released on bail by this Court. In compliance thereof, the accused was actually released from custody by the trial Court, on his furnishing bonds. He remained on bail for sometime. Later on, he misused the concession of bail and absented himself from the trial Court on the date fixed. This led the trial Court to cancel his bail, forfeit his bonds and to order issuance of non-bailable warrants against him. This course adopted by the trial Court was perfectly within the powers of the trial Court. While cancelling the bail of the accused, the trial Court had not strictly exercised the powers u/s 439(2) Cr.P.C. on the other hand, the bail of the accused was cancelled by the trial Court in view of the new circumstances arising during trial i.e. absence of the accused from the trial Court on the date fixed. Under these circumstances, the trial Court was perfectly justified in cancelling the bail, forfeiting the bonds and ordering the issuance of non-bailable warrants against the accused.

(Para 9)

Further held, that when an accused is ordered to be released on bail by this Court, it is on the condition that the accused would appear in the trial Court on various dates fixed in the case. If the accused fails to appear before the trial Court on the dates fixed, not only the bail bonds and the surety bonds would be liable to be forfeited, but his bail would also be cancelled, to enable the trial Court to issue non-bailable warrants against the accused in order to secure his presence.

(Para 10)

D.S. Rajput, Advocate for the,—Petitioner

ORDER

V.M. Jain, J.

(1) This is a petition under section 482, Cr.P.C. filed by Karnail Singh, accused-petitioner. In the petition, it has been alleged that the petitioner was involved in case bearing FIR 177, dated 20th December, 1997, registered under Sections 363/366/376/344/496/506/34 IPC of Police Station, Julkan, district Patiala. It has further been alleged that the petitioner was arrested and later on granted regular bail by this Court (*vide* order dated 13th May, 1998). It has further been alleged that the bail bonds of the petitioner were accepted and attested by the lower court and the petitioner was released on bail and was appearing before the

trial Court. It has further been alleged that subsequently, the petitioner could not appear before the trial Court and he was arrested by the police and was produced before the trial court in April, 2000 and was sent to judicial custody *vide* order, dated 5th June, 2000. It has further been alleged that since the petitioner was released on bail by this Court, the lower court could only cancel the bail bonds, but it could not cancel the order passed by this Court granting bail. It has been prayed that the Additional Sessions Judge be directed to accept the bail bonds of the petitioner and the order, dated 6th June, 2000, passed by him sending him to judicial custody be set aside.

(2) I have heard learned counsel for the petitioner and have gone through the record carefully.

(3) During the course of arguments, it was submitted before me by learned counsel for the petitioner that once the petitioner was ordered to be released on bail by this Court, the power to cancel the bail of the accused petitioner was only with the High Court and that the trial Court (Additional Sessions Judge) could not cancel his bail, but he could only cancel the bonds. It was further submitted that the trial Court was duty bound to release the petitioner from custody if the petitioner would furnish fresh bail bonds. Reliance was placed upon *Bholai Mistry and another v. The State (1)*, *Gurcharan Singh and others v. State (Delhi Administration)* (2) and *Dandapani Rout and others v. State of Orissa* (3)

(4) After hearing learned counsel for the petitioner and perusing the record, I find no merit in the submissions made before me by the learned counsel.

(5) The accused-petitioner, Karnail Singh, was ordered to be released on bail by this Court, in Criminal misc. 7782-M of 1998, *vide* order, dated 13th May, 1998, in FIR 177, dated 20th December, 1997, under Sections 363/364/34 IPC (Section 376, IPC, added) of Police Station Julkan, as per copy of order, dated 13th May, 1998, placed on the record as Annexure P1. The accused-petitioner, Karnail Singh, had submitted the bonds and was released on bail. During trial, he absented himself from the Court and accordingly, his bail was cancelled, the bonds were

(1) 1977 CrL. LJ 492 (Calcutta)

(2) 1978 CrL. LJ 129 (Delhi Administration)

(3) 1984 (2) Crimes 781 (Orissa)

forfeited and non-bailable warrants were issued against him. In pursuance of the non-bailable warrants, the accused-petitioner, Karnail Singh, was arrested by the police and he was produced before the learned Additional Sessions Judge on 6th June, 2000, who directed that he be taken into custody and sent to Central Jail, Patiala, and be produced on 8th June, 2000, the date already fixed in the case. Admittedly, the accused-petitioner had not moved any application for bail before the trial Court (Additional Sessions Judge). On the other hand, the petitioner has filed the present petition under Section 482, Cr.PC, in this Court, seeking direction to the Additional Sessions Judge to accept the bonds of the petitioner and to release him on bail, alleging that the order, dated 6th June, 2000, is unconstitutional and liable to be set aside.

(6) In 1977 CrL. Law Journal, 429 (*supra*), the accused-petitioners were granted anticipatory bail under Section 438, CrPC, by the Calcutta High Court. When one of the accused-petitioner attended the trial Court, he was taken into custody, as on that date, the learned Magistrate had committed the petitioners to the Court of Sessions for trial. It was under those circumstances that it was held by the Calcutta High Court that bail granted by the High Court under Section 438, CrPC, can only be cancelled by the High Court under Section 439(2), CrPC, and that a Magistrate or a Court of Sessions had no power to cancel the bail which has been granted by the High Court. In 1984(2) Crimes, 781 (*supra*), some of the accused were granted anticipatory bail by the Orissa High Court, while others were released on bail by the Sessions Court under Section 439, CrPC. The Officer in-charge of the Police Station moved an application before the learned Magistrate, alleging therein that the accused petitioners had violated the conditions of the bail bonds, whereupon the learned Magistrate cancelled the bail and directed issuance of non-bailable warrants of arrest against the petitioners. This order passed by the Magistrate was sought to be quashed before the Orissa High Court. It was under those circumstances that it was held by the Orissa High Court that the Magistrate could cancel the bail under Section 437(5), CrPC, if he had granted bail to the petitioners and since the bail was granted either by the High Court or by the Court of Sessions, the learned Magistrate had no jurisdiction to cancel it under Section 437(5), CrPc.

(7) These authorities relied upon by the learned counsel for the petitioner. thus would have no application to the facts of the present case.

(8) In 1978 Crl Law Journal, 129 (*supra*), the accused-appellants were arrested in pursuance of the FIR lodged by the Superintendent of Police, CBI, in "Sunder murder case". The accused-appellants were released on bail by the Sessions Judge on various dates. Chargesheet was submitted. The Delhi Administration filed a petition under Section 439 (2), CrPC, before the High Court, against the orders passed by the Sessions Judge and sought cancellation of bail granted to the accused-appellants. The Delhi High Court set aside the order passed by the Sessions Judge and cancelled the bail granted to the accused-appellants and they were ordered to be taken into custody forthwith. The said order passed by the Delhi High Court was challenged by the accused-appellants before their lordships of supreme Court. On those facts, it was held by their lordships of the Supreme Court as under :—

"Under Section 439(2), CrPC, of the new Criminal Procedure Code, a High Court may commit the person released on bail under Chapter XXXIII by any Court including the Court of Sessions to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Sessions cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial, after the accused person has been admitted to bail by the High Court. If, however, the Court of Sessions had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen, which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2), Cr.PC, to commit the accused to custody. When, however, the State is aggrieved by the orders of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail."

The law laid down by their Lordships of Supreme Court in Gurcharan Singh's case (*supra*), in my opinion, would be of no help to the accused petitioners.

(9) In the present case, the accused petitioner was ordered to be released on bail by this Court. In compliance thereof, the accused petitioner was actually released from custody by the trial Court, on his furnishing bonds. He remained on bail for sometime. Later on, he misused the concession of bail and absented himself from the trial Court on the date fixed. This led the trial Court to cancel his bail, forfeit his bonds and to order issuance of non-bailable warrants against him. In my opinion, this course adopted by the trial Court was perfectly within the powers of the trial Court (Additional Sessions Judge). While cancelling the bail of the accused-petitioner, the trial Court had not strictly exercised the powers under Section 439(2), Cr.PC. On the other hand, the bail of the accused petitioner was cancelled by the trial Court, in view of the new circumstances arising during trial i.e. absence of the accused from the trial Court on the date fixed. Under these circumstances, in my opinion, the trial Court was perfectly justified in cancelling the bail, forfeiting the bonds and ordering the issuance of non-bailable warrants against the accused.

(10) When an accused is ordered to be released on bail by this Court, it is on the condition that the accused would appear in the trial Court on various dates fixed in the case. If the accused fails to appear before the trial Court on the dates fixed, not only the bail bonds and the surety bonds would be liable to be forfeited, but his bail would also be cancelled, to enable the trial Court to issue non-bailable warrants against the accused in order to secure his presence.

(11) In the present case, as referred to above, the accused-petitioner absented himself from the trial court on the date fixed, hence his bail was cancelled, bonds were forfeited and non-bailable warrants were ordered to be issued against him. No fault could be found with this course adopted by the learned Additional Sessions Judge, similarly, no fault could be found with the order, dated 6th June, 2000, passed by the learned Additional Sessions Judge, while sending the accused to custody.

(12) For the reasons recorded above, finding no merit, this petition is hereby dismissed.
