



Citation : CDJ 2018 MHC 465

Court : High Court of Judicature at Madras

Case No : CrI.O.P. No. 21454 of 2016

Judges : THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

Parties : S. Maria Saranya Versus M.J. Maria Jareen & Others

Appearing Advocates : For the Appearing Parties: M. Premkumar, L. Infant Dinesh, Vijay Narayan, Advocate General assisted by P. Muthukumar, Government Advocate (Crl. Side), S. Ambigapathi, N. Lakshmanan, Advocates.

Date of Judgment : 06-11-2017

Head Note :

Criminal Procedure Code - Section 482 -

Comparative Citations:

2018 (1) MLJ(Crl) 96, 2018 (1) LW 755, 2018 (1) LW(Crl) 177,

Judgment :

(Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. seeking to cancel the Anticipatory Bail dated 16.06.2016 granted to respondents 1 to 4 in CrI.O.P.No.10535 of 2016.)

1. The petitioner/Maria Saranya has come up with this petition seeking to cancel the Anticipatory Bail dated 16.06.2016 granted to respondents 1 to 4 in CrI.O.P.No.10535 of 2016.

2. It is seen that prior to the filing of CrI.O.P.No.10535 of 2016 by the respondents 1 to 4, a petition in CrI.O.P.No.9596 of 2016 had been filed by respondents 1 to 3 herein in April 2016. Pending CrI.O.P.No.9596 of 2016, respondents 1 to 4 herein filed CrI.O.P.No.10535 of 2016 on 09.05.2016 seeking anticipatory bail. Thereafter, CrI.O.P.No.9596 of 2016 was referred for mediation and it was subsequently withdrawn in November 2016.

3. According to the petitioner/defacto complainant, there is suppression of facts with regard to the earlier anticipatory bail petition and that at no point of time, the counsel appearing for the accused-respondents has stated either before the Mediation Centre or before this Court when orders were passed in CrI.O.P.No.10535 of 2016 that CrI.O.P.No.9596 of 2016 filed by respondents 1 to 3 is pending. Furthermore, in CrI.O.P.No.10535 of 2016, respondents 1 to 4 have categorically averred that the said petition is the first anticipatory bail petition and no other petition seeking anticipatory bail, is pending before this Court.

4. Respondents 1 to 4 have filed a counter affidavit. According to the 1st respondent/husband of the defacto complainant, marriage between him and the defacto complainant was solemnized on

27.08.2015 as per Christian rites. He denied the averments of the defacto complainant that there was dowry harassment. According to him, he engaged one S.Sathish Rajan, Advocate for filing anticipatory bail petition in CrI.O.P.No.10535 of 2016 and the matter came up for hearing on 11.05.2016. On the said date, the Public Prosecutor stated that petition enquiry is pending against respondents 1 to 4 and by an order dated 12.05.2016, this Court directed the Police to complete the enquiry and file a Status Report within a period of four weeks. Subsequently, when the matter came up on 16.06.2017, this Court granted Anticipatory bail to respondents 1 to 4 with certain conditions and according to respondents 1 to 4, they have strictly adhered to the conditions imposed by this Court.

5. It is further stated by respondents 1 to 4 that they received a Notice dated 04.08.2016 from the Mediation and Conciliation Centre of this Court calling upon them to appear before the Mediation Centre on 12.08.2016 as per the order made in CrI.O.P.No.9596 of 2016. According to them, only on further verification, they came to understand that CrI.O.P.No.9596 of 2016 was filed on behalf of the 1st respondent, seeking Anticipatory Bail. According to the 1st respondent, he has not engaged any Advocate, except S.Sathish Rajan, to file the anticipatory bail petition on their behalf and that CrI.O.P.No.9596 of 2016 came to be filed without his instructions. It is also the case of the 1st respondent that he and his mother appeared before the Mediation Centre and informed the Mediators that he has not filed any application in CrI.O.P.No.9596 of 2016 and that he has filed only CrI.O.P.No.10535 of 2016 seeking anticipatory bail.

6. It is further stated by the 1st respondent in the counter that the parties attended the Mediation, but, as the defacto complainant was adamant and refused for re-union and demanded huge amount as One-Time Settlement, the mediation failed. He went on to state that even before the mediation, the Advocate who filed CrI.O.P.No.9596 of 2016 without his instructions, did not appear and that he has not suppressed any fact in CrI.O.P.No.10535 of 2016, muchless about the pendency of the earlier petition. He contended that the petition filed by the defacto complainant seeking to cancel the anticipatory bail granted to them is only to extort money from them and hence, prayed for dismissal of the present petition.

7. The 6th respondent herein/S.Ambigapathi, Advocate, Enrolment No.1882/1999 has filed an affidavit that the 1st respondent/1st accused and his family members approached one Mohideen, Advocate, practicing at Tambaram, and instructed him to file anticipatory bail application and Divorce Petition. Hence, the said Mohideen filed a Divorce Petition in I.D.O.P.No.48 of 2016 on the file of the Principal District and Sessions Judge, Chengalpattu. Subsequently, the defacto complainant filed a petition for medical examination of the 1st respondent/1st accused and she further filed a petition under Domestic Violence Act and the same is pending.

8. It is further stated by the 6th respondent herein that the said Mohideen contacted him and requested him to file Anticipatory Bail Application on behalf of respondents 1 to 3 and he also sent a Memo of Appearance for the purpose of filing an Anticipatory Bail Application. Accordingly, the 6th respondent filed CrI.O.P.No.9596 of 2016 on 25.04.2016 seeking anticipatory bail for respondents 1 to 3 and the same was listed on 27.04.2016 and subsequently posted on 29.04.2016. Later, the said petition was posted after summer vacation. After summer vacation, the said petition came up for hearing on 07.06.2016 and at the request of the defacto complainant to file an intervening petition, the case was posted to 09.06.2016 and it further stood adjourned to 05.07.2016. Thereafter, the said petition was referred to the Mediation Centre and subsequently posted for hearing on 25.11.2016, on which date, he withdrew the petition in CrI.O.P.No.9596 of 2016. In such circumstances, respondents 1 to 4, by suppressing the earlier Anticipatory Bail Application filed by the 6th respondent, filed CrI.O.P.No.10535 of 2016 seeking Anticipatory Bail for them. On coming to know the same, the defacto complainant filed the present petition for cancellation of anticipatory bail. According to the 6th respondent, he is practicing as an Advocate for the past 18 years and he is not involved in any misdeeds.

9. One S.Mohideen, Advocate has filed an affidavit stating that respondents 1 to 3 were introduced by one Prakash, Ex-Councillor of Ward No.7, Anakaputhur. After due consultation, Mohideen advised the 1st respondent to initiate legal proceedings against the defacto complainant for restitution and the 3rd respondent, who is the mother of the 1st respondent gave her Mobile Number to Mohideen to keep her informed about the progress. As instructed by respondents 1 to 3, Mohideen filed I.D.O.P.No.48 of 2016 against the defacto complainant before the Principal District Judge, Chengalpattu, which was subsequently transferred to Family Court, Chengalpattu and renumbered as F.C.I.D.O.P.No.146 of 2016 and the same is pending. The defacto complainant filed an application seeking appointment of guardian for the 1st respondent alleging that the 1st respondent is of unsound mind.

10. While so, respondents 1 to 3 herein approached Mohideen on 15.04.2016 and showed him the copies of the complaint lodged by the defacto complainant, C.S.R. given by the 5th respondent and also the petition copy in CrI.O.P.No.7446/2016 and requested Mohideen to file Anticipatory Bail for them before this Court. Since Mohideen is practicing in lower Court, he contacted his colleague viz. Ambigapathy, the 6th respondent herein and apprised him of the situation. The 6th respondent sent necessary papers to Mohideen along with Memo of Appearance to obtain the signatures of respondents 1 to 3 herein. Mohideen handed over the Memo of Appearance to respondents 1 to 3 for their signatures. The 6th respondent also filed Anticipatory Bail Application before this Court and the matter was posted after summer vacation. Thereafter, the matter was referred to Mediation Centre for possible settlement. At that time, the Mediation Officer informed Mohideen as to how there were two Bail applications for respondents 1 to 3 herein. Only then, he came to know that respondents 1 to 3 herein have filed another bail application suppressing the earlier bail application.

11. According to Mohideen, in the present petition seeking to cancel the anticipatory bail granted to respondents 1 to 4 herein, the accused not only instructed him to file the Anticipatory Bail application by signing necessary papers, but also gave the typographical version of the conversation between the defacto complainant herein and the 4th respondent herein and instructed him to use the same during arguments in the said Anticipatory bail application. He further stated that he came to know from his colleague, the 6th respondent herein that respondents 1 to 4 have filed a second Anticipatory bail petition suppressing the pendency of the earlier bail application and only then, he made a detailed enquiry and found out that even in the Domestic Violence case, the 1st respondent herein has changed his counsel for more than three times as per the instructions of respondents 2 to 4.

12. It is also stated by Mohideen that he even accompanied respondents 1 to 3 nearly three to four times to the office of the 5th respondent and he had been interacting with them from the beginning and filed the Anticipatory Bail Application only as per their instructions. He went on to state that when respondents 1 to 3 did not get immediate result in the Anticipatory Bail Application filed by him, they immediately chose to engage a new counsel, suppressing the earlier application filed by him. According to Mohideen, he has discharged his professional duties as an Advocate in the above matter and he has not indulged in any malpractice or has acted against professional ethics.

13. Heard the learned counsel on either side and perused the material documents available on record.

14. Normally, this Court will be very slow in cancelling bail/anticipatory bail orders, more particularly in family matters, as the intention of this Court is to ensure that the parties unite and that no damage is caused not only to the couple, but also to the children born to the couple. In this case, there is a categorical averment by the Advocates who appeared on behalf of the respondents/accused that the accused have been in the habit of changing counsel frequently and they admitted the pendency of the anticipatory bail petition in CrI.O.P.No.9596 of 2016. The Mediation Report is also silent about the disposal of CrI.O.P.No.10535 of 2016.15. In view of the above, it is clear that respondents 1 to 4 have filed the Anticipatory Bail Petition in CrI.O.P.No.10535 of 2016, suppressing

the pendency of the earlier anticipatory bail petition in Crl.O.P.No.9596 of 2016. Also, taking note of the fact that respondents 1 to 4 have been in the habit of changing counsel, the Anticipatory Bail granted to respondents 1 to 4 herein, stands cancelled.

16. In this case, the Enrolment Number of the 7th respondent/Mr.Manivasagam, Advocate, who has attested the Vakalat in Crl.O.P.No.9596 of 2016 is mentioned as 2671/2004. When this matter is taken up for hearing today, it is represented that the correct enrolment Number of Manivasagam is 2671/2009. This Court cannot now go into the question as to whether the year of enrolment of Mr.Manivasagam is 2004 or 2009. Moreover, Mr.Manivasagam, has not appeared before this Court, despite being informed by the 6th respondent/Ambigapathi about the hearing of this case today.

17. In an earlier occasion, the then Advocate General, Mr.Muthukumarasamy represented before this Court that the last enrolment in the year 2004 bears the Number 2092/2004 and that enrolment No.2671/2004 mentioned by the 7th respondent/Manivasagam, is fake. Already records have been produced in this matter and at this stage, a new enrolment Number is cited. Whether the enrolment Number of the 7th respondent/Manivasagam is of the year 2004 or 2009 has got to be ascertained from the Bar Council of Tamil Nadu. According to Bar Council, there was no Advocate, by name Manivasagam in that year.

18. In this case, respondents/Advocates are directed to appear before the Bar Council and put forth their submissions to ascertain about the counsel, who has attested/signed the Vakalat. It is open to the Bar Council of Tamil Nadu to summon the 7th respondent/Manivasagam and verify his credentials.

19. Before parting with this judgment, Mr.Vijay Narayan, learned Advocate General appearing for the 5th respondent/State submitted that to avoid fraud and filing of fake documents, this Court can frame certain guidelines, so that it can be followed by the Registry before numbering the petition. It is his further submission that the Appellate Side Rules needs amendment for procedures. In this regard, learned Advocate General drew the attention of this Court to Rule 8 of the Appellate Side Rules and the same reads as under:

- R.8. The Vakalatnama shall be executed before and its execution attested by (i) any judicial officer,
- (ii) or a village Munsif,
 - (iii) or a gazetted officer,
 - (iv) or a notary appointed under the Notaries Act, 1952,
 - (v) or a manager of the High Court, Appellate Side,
 - (vi) or a commissioner for oaths,
 - (vii) or a member of the Legislative Council or Legislative Assembly of any State or a Member of Parliament,
 - (viii) or a retired gazetted officer receiving pension from the Government,
 - (ix) or a retired non-gazetted officer receiving pension from Government who has served as a Sub-Magistrate or Additional First-class Magistrate prior to his retirement,
 - (x) or any superintendent of the office of Commissioner, Madras Hindu Religious and Charitable Endowments,

(xi) or a member of a district board or Panchayat constituted under the enactments in force,

(xii) or a municipal councillor,

(xiii) or an advocate other than the advocate in whose favour the Vakalatnama is executed or an advocate who has appeared for the party in the proceeding,(xiv) or in the City of Madras before any Sub- Registrar,

(xv) or a pleader practising in Madras State; who shall subscribe his own signature adding his designation on the Vakalatnama in authentication of its execution and attestation:

Provided that when a Vakalatnama is executed by any individual who appears to the person before whom it is executed, to be illiterate, blind, or unacquainted with the language in which the Vakalatnama was read, translated or explained in his presence to the executant, that he seemed to understand it and that he made his mark or affixed his signature in his presence.

20. It is very clear in terms of Rule 8 that execution of a Vakalat has to be attested by an Advocate other than the Advocate in whose favour the Vakalat is executed or an Advocate who has appeared for the party in the proceedings.

21. The Chairman of the Bar Council, in a statement which appeared in the Dailies, has stated that more than 33% of the lawyers in Tamil Nadu are fake. Undoubtedly, legal profession is deteriorating through persons, who are conducting Kangaroo Courts. To avoid malpractice, filing procedures shall be followed while executing the Vakalat in terms of Rule 8 extracted supra.

22. In view of the above, the following procedures are to be followed:

(i) Bail/anticipatory bail application should be in the form of an affidavit/petition duly signed by the petitioner/petitioner's counsel concerned in all pages;

(ii) If the anticipatory bail application is filed in petition format, the Advocate-on-record should sign in all the pages of the petition and if the anticipatory bail petition is filed in the affidavit format, the person who is attesting the affidavit shall sign in all the pages;

(iii) In either case, the name of the Advocate/Attesting Person should be written/affixed in capital letters, mentioning his place of qualification, enrolment Number and Cell Phone Number;

(iv) The photograph of the Advocates-on-record and that of the Advocate, who attests the Vakalat shall form part of the Vakalat and Registry shall scan the Vakalat so filed;

(v) The Advocate-on-record and the Advocate, who attested the Vakalat shall produce copies of the Enrolment Certificate, Bar Council Identity Card and the present residential or official address as proof. The Vakalat shall contain address together with e-mail address and Cell number. This will reduce malpractice and eradicate fake Advocates.

(vi) For getting change of Vakalat, the consent of the counsel-on-record is duly required. Wherever the party is unable to get change of Vakalat, the new counsel should file Vakalat along with necessary documents, mentioned supra along with affidavit and petition of the party. The Courts below can accept it as a petition for changing the counsel and pass appropriate orders, immediately to avoid further sufferings to the litigants in criminal matters.

23. The procedure for filing Vakalat applies to all the Courts/Tribunals situated in Tamil Nadu. The procedure for filing the Vakalat in the pattern mentioned supra shall take effect from 02.01.2018.

24. All Courts/Tribunals in Tamil Nadu shall have the power to demand the Identity Card/Enrolment Certificate/Address proof of an Advocate, if it has doubt and even direct them to produce photostat copies of the same and Courts can refer it to the respective Bar Council for verification and if required, for necessary action.

25. The Bar Council of India has passed a Resolution in a meeting held on 30.04.2010, regarding the All India Bar Examination Rules - 2010, which is published at page 5839 in the Gazette of India, dated 12.06.2010 and the relevant Rule is extracted hereunder:

"9. No Advocate enrolled under Section 24 of the Advocates Act, 1961 shall be entitled to practise under Chapter IV of the Advocates Act, 1961, unless such advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. It is clarified that the Bar Examination shall be mandatory for all law students graduating from academic year 2009-2010 and onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961."

26. The Apex Court, in the case of Krishna District Co-operative Marketing Society Limited vs. N.V.Purnachandra Rao, (1987) 4 SCC 99, while dealing with the provisions of the I.D. Act and the Andhra Pradesh Shops and Establishments Act, 1966, incidentally suggested that the provisions of the I.D. Act require amendment and the relevant paragraph is extracted hereunder:

"11. We may incidentally observe that the Central Act itself should be suitably amended making it possible to an individual workman to seek redress in an appropriate forum regarding illegal termination of service which may take the form of dismissal, discharge, retrenchment etc. or modification of punishment imposed in a domestic enquiry. An amendment of the Central Act introducing such provisions will make the law simpler and also will reduce the delay in the adjudication of industrial disputes. Many learned authors of books on industrial law have also been urging for such an amendment. The State Act in the instant case has to some extent met the above demand by enacting section 41 providing for a machinery for settling disputes arising out of termination of service which can be resorted to by an individual workman. In this connection we have one more suggestion to make. The nation remembers with gratitude the services rendered by the former Labour Appellate Tribunal which was manned by some of our eminent Judges by evolving great legal principles in the field of labour law, in particular with regard to domestic enquiry, bonus, gratuity, fair wages, industrial adjudication etc. The Industrial Disputes (Appellate Tribunal) Act, 1950 which provided for an all-India appellate body with powers to hear appeals against the orders and awards of Industrial Tribunals and Labour Courts in India was repealed in haste. If it had continued by now the labour jurisprudence would have developed perhaps on much more satisfactory lines than what it is today. There is a great need today to revive and to bring into existence an all-India Labour Appellate Tribunal with powers to hear appeals against the decisions of all Labour Courts, Industrial Tribunals and even of authorities constituted under several labour laws enacted by the States so that a body of uniform and sound principles of Labour law may be evolved for the benefit of both industry and labour throughout India. Such an appellate authority can become a very efficient body on account of specialisation. There is a demand for the revival of such an appellate body even from some workers' organisations. This suggestion is worth considering. All this we are saying because we sincerely feel that the Central Act passed forty years ago needs a second look and requires a comprehensive amendment."

27. The Court suggests that there should be amendments to the All India Bar Council Examination Rules, 2010 and if required to the Advocates Act, 1961, to allow enrolment and practise of newly enrolled Advocates only after passing of the Bar Council exams, i.e. enrolment shall take place only after clearing of Bar Council exams.

28. This Criminal Original Petition is ordered accordingly with the above directions and observations.

29. Registry is directed to circulate a copy of this order to all the Courts below/Tribunals.

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