

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Cril. Petn. No. 44 of 2021

1. Laishram Suresh, aged about 58 years, S/o (L) L Surchand Singh of Lilong Chajing Konjeng Leikai, P.O & P.S. Singjamei, Imphal West, Distric, Manipur-795001.
2. Laishram Surjit Singh, aged about 54 years, S/o Late L. Surchand Singh of Lilong Chajing Konjeng Leikai, P.O. & P.S. Singjamei, Imphal West, District, Manipur-795001.

... Petitioners.

-Versus -

The State of Manipur, represented by Officer-in-Charge, Wangoi Police Station Imphal West District, Manipur

.....Respondent.

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioners : Mr. M. Gunedhor, Adv
For the respondent : Mr. M. Rarry, Special PP
Date of Hearing : 16.12.2021 & 08.12.2021.
Date of Order : **29.12.2021**

ORDER **(CAV)**

Heard Mr. M. Gunedhor, learned counsel appearing for the petitioners and Mr. M. Rarry, learned Public Prosecutor (PP) appearing for the respondent.

[2] The matter is taken up today to consider the preliminary objection raised by the respondent about the maintainability of the present petition.

[3] Mr. M. Rarry, learned PP appearing for the respondent submitted that the present petition had been filed under Section 482 and 439 of the Cr.P.C

1973. The learned PP further submitted that inherent power of this Court under Section 482 Cr.P.C. and Section 439 Cr.P.C. are totally different and such power cannot be exercised concurrently. It has also been submitted that the petitioners can file the present petition either under Section 482 Cr.P.C or under Section 439 Cr.P.C. and not under both the said two Sections. It has been submitted by Mr. M. Rarry that in any case the present petition cannot be filed under Section 439 of the Cr.P.C. inasmuch as the special powers of the High Court or Court of Sessions to grant bail to any person accused of an offence as provided under Section 439 (1) (a) of the Cr.P.C. can be exercised only with the said accused is in custody. In the present case, the petitioners are not in custody and accordingly, they cannot avail the remedy provided under Section 439 (1) (a) and as such the present petition cannot be filed under Section 439 Cr.P.C.

[4] Alternatively, the learned PP has also submitted that the inherent power of the High Court under Section 482 cannot be exercised if an alternative remedy is provided under the Cr.P.C. It is the case of the respondent that after the petitioners are placed under custody in terms of the impugned order, they can avail the remedy of regular bail as provided under Section 439 of the Cr.P.C. and accordingly, it has been submitted that the present petition under Section 482 is not maintainable.

In support of his contentions, the learned PP placed reliance in the judgment rendered by the Hon'ble Apex Court in the case of "**Madhu Limaya Vs. State of Maharashtra**" reported in (1977) 4 SCC 4 SCC 551 wherein it has been laid down at Paragraph 8 of the judgment that the inherent powers

of the High Court under Section 482 Cr.P.C. is not be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party.

[5] The next point raised by the learned PP is that while invoking the provision of Section 482 of Cr.P.C for quashing and setting aside a judicial proceedings as define in Section 2(i) of Cr.P.C., it is mandatory for the petitioners to implead the original complainant as quashing of such criminal proceedings without notice to the original complainant has been held as unsustainable by the Hon'ble Apex Court in the case of "**Mosiruddin Munshi Vs. Md. Siraj & Ors.**" reported in (2008) SCC 434.

It has further been submitted that as the original complainant is not impleaded as one of the parties in the present case, the present petition filed under Section 482 Cr.P.C. is not at all maintainable.

[6] The learned PP also submitted that as the certified copy of the impugned order and a copy of the relevant application filed by the petitioners before the learned Judicial Magistrate First Class (JMFC), Imphal West-I have not been filed with the present petition, the present petition is liable to be rejected.

It has further been submitted that the present petition is also defective as it has not been verified by both the petitioners and the verification has been signed by only one petitioner. The learned PP lastly submitted that the impugned order had been passed by the learned Sessions Judge, Imphal West by invoking the powers under Section 439 (2) of the Cr.P.C. and

accordingly, the present petition filed under the same provision of Section 439 of Cr.P.C. is not maintainable. Accordingly, the PP submitted that the present petition should be rejected outright.

[7] Mr. M. Gunedhor, learned counsel appearing for the petitioners submitted that the learned JMFC, IW-I released the petitioners on bail after careful consideration of all the material facts and circumstances of the Criminal Trial pending before the learned Magistrate and within the scope and parameters of the provisions provided under Section 437 (6) of the Cr.P.C., vide order dated 20.03.2021 passed in Cril. Misc. (B) case No. 5 of 2021.

[8] Against the said order passed by the learned Judicial Magistrate, the State of Manipur filed an application under Section 439 (2) Cr.P.C. for quashing/setting aside the same. The said application was allowed by the learned Sessions Judge, Imphal West by setting aside the impugned order passed by the learned Judicial Magistrate and directing the accused persons (the present petitioners) to surrender before the learned JMFC, Imphal West-I, within 1 (one) week, i.e., on 26.11.2021, vide judgment and order dated 20.11.2021 passed in Cril. Misc. No. 100 of 2021.

[9] Mr. M. Gunedhor, learned counsel appearing for the petitioners submitted that as the learned Sessions Judge, Imphal West directed the present petitioners to surrender before the learned JMFC, Imphal West within 1 (one) week, i.e., on 26.11.2021 and in view of the urgent nature of the case, the petitioners have filed the present petition under Section 482 of the Cr.P.C. on 22.11.2021 assailing the legality and sustainability of the aforesaid

judgment and order dated 20.11.2021 passed by the learned Sessions Judge, Imphal west and as a matter of abundant caution the petitioners have also invoke Section 439 of the Cr.P.C. in case if the petitioners are again sent to custody during pendency of the present Criminal Petition. The learned counsel accordingly submitted that as the present petitioners are not in custody at the time of filing the present Criminal Petition, the present petition can be entertained under Section 482 Cr.P.C. and not under Section 439 (1) Cr.P.C. The learned counsel further submitted that as the petitioners are not in custody, there is no question of filing any application for granting regular bail and that the contentions of the counsel for the respondent that the petitioners have an alternative remedy for availing regular bail is without any basis and not sustainable.

[10] It has been submitted by the learned counsel for the petitioners that only when the provisions of section 482 Cr.P.C. is invoke for the purpose of quashing an FIR or complaint proceedings, the original complainant/informant is necessary to be impleaded as a party and to inform him of such proceedings as held by Hon'ble Apex Court in the case of ***“Mosiruddin Munshi Vs. Md. Siraj & Ors.”*** (Supra) relied on by the counsel for the respondent. In the present Criminal Petition, the petitioners are only praying for quashing and setting aside the order of the learned Sessions Judge, Imphal West dated 20.11.2021, cancelling the bail granted to the petitioners and not for quashing the FIR or the Criminal proceedings pending against the petitioners before the learned Judicial Magistrate and as such, the principle laid down by the Hon'ble Apex Court in the case of ***“Mosiruddin Munshi Vs.***

Md. Siraj & Ors.” (Supra) relied on by the counsel for the respondent is not at all applicable.

[11] It has also been submitted on behalf of the petitioners that a web/digital copy of the impugned order dated 20.11.2021 passed by the learned Sessions Judge, Imphal West, which was provided to the counsel of both the parties by the Court is enclosed in the present Criminal Petition in view of the urgency involved in the present case. As the veracity and authenticity of the impugned order is not doubted or questioned by the respondent, the petitioners should be allowed to annex the said copy of the impugned judgment and order instead of a certified copy in the interest of justice. The learned counsel further submitted that it is not mandatory and necessary to enclose the pleadings of the parties while challenging the legality and perversity of the impugned order and as such there is no substance in the contention advanced by the counsel for the respondent that the present petition is liable to be rejected for not enclosing a copy of the application filed by the present petitioners before the learned Judicial Magistrate.

So far as the contentions of the respondent about non signing of the verification by both the petitioner is concerned, it has been submitted that the affidavit and verification annexed to the present Criminal Petition had been signed by the petitioner No. 1 with the authorization of the petitioner No. 2 and as such there is no illegality in it and the contentions of the respondent are without any merit.

[12] After careful considerations of the contentions advanced by the counsel appearing for the parties and after careful perusal of the pleadings of the parties, this Court is of the considered view that the submission advanced by the counsel for the petitioners have force and merit and this Court is in complete agreement with such submissions and that the preliminary objection raised by the respondent about the maintainability of the present petition has no substance of force and accordingly, such preliminary objection is hereby rejected.

Registry is directed to list this case again on 24.01.2022 for hearing on merit. In the meantime, interim order passed earlier shall continue till the next date.

JUDGE

FR/NRF

Sapana