

HIGH COURT OF MADHYA PRADESH JABALPUR

Cr. Rev. No.5623/2018

Jamini Bai

Vs.

State of Madhya Pradesh

Present : Hon'ble Shri Justice Vishnu Pratap Singh Chauhan

Name of counsel for the parties:

Shri Dilip Shrivastava, counsel for the applicant.

Shri K.S. Patel, P.L. for the respondent/State.

ORDER
(13.12.2018)

This revision under Sec.397/401 of the Cr.P.C., has been filed by the applicant being aggrieved by the impugned order dated 27.10.18 passed by Special Judge, SC/ST (Prevention of Atrocities), Act, 1989, Jabalpur, whereby the learned Special Judge, directed that the applicant, being a surety holder, be sent to custody for six months.

2. Facts giving rise to this revision, in short, are that a Sessions Trial No.43/2011 (State of M.P. Vs. Durgesh), is pending before the Special Court in connection with Crime No.97/2011, in which accused Durgesh was granted bail. The applicant executed a surety bond in favour of this accused Durgesh, but later on, accused Durgesh absconded and did not attend the Court. Notice was issued to the applicant Jamini Bai under Sec.446 of the Cr.P.C., as to why surety amount should not be forfeited.

3. After hearing learned counsel for the parties, the learned Special

Judge passed the impugned order dated 27.10.2018, stating that the surety amount of Rs.25,000/- be forfeited from the applicant. The applicant was not in a position to deposit that amount, and therefore, the trial Court has sent the applicant to the jail for six months.

4. Learned counsel for the applicant has submitted that this revision has been filed on the ground that the impugned order is totally illegal, perverse and contrary to law. The applicant was not given any opportunity of hearing. If the applicant is kept in custody for six months, it will effect her family, as she is the only earning member in the family. It is also argued that the applicant is ready to deposit a sum of Rs.10,000/- before the Trial Court and the remaining amount shall be deposited by her in the near future, after some time.

5. On the contrary, learned Panel Lawyer for the state has formally opposed the prayer.

6. After hearing learned counsel for the parties and on perusal of the record, it emerges out that the applicant executed surety bond of Rs.25,000/- in favour of the accused Durgesh, but later on, this accused Durgesh absconded and did not attend the proceedings in ST No.43/2011 pending before the trial Court. For this reason, proceedings under Sec.446 of the Cr.P.C., has been initiated against the applicant and notice was issued against her. It also emerges that the applicant was represented by counsel, in the proceedings before Trial Court. Thus, it is clear that the applicant has been provided opportunity of hearing in the matter. It will also be apposite to mention here that the learned Trial Court in the impugned order observed that, the applicant is a Safai Worker in the Municipal Corporation and she has no other source of income, hence there is no need to issue the warrant of

attachment of property. This type of finding is not correct and according to law. The Trial Court ought to have issued warrant for attachment of property first and if the amount is not deposited the trial Court should have issued a civil jail warrant.

7. In view of the above and the fact that the applicant is the only earning member in the family and that she is ready to deposit, Rs.10,000/- for the present, and ready to deposit the remaining amount as soon as possible, this revision is allowed. The impugned order dated 27.10.2018, passed by the Special Judge, Jabalpur is hereby set aside. It is directed that the applicant shall deposit a sum of Rs.10,000/- (ten thousand only) before the Trial Court and remaining amount shall be deposited by her within 30 days from the date of this order. The applicant be released from jail on production of receipt of Rs.10,000/-.

8. The revision is disposed of in above terms.

(Vishnu Pratap Singh Chauhan)
JUDGE