

Queen Vs. Thakur Parshad

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All151

Judge : Robert Stuart, C.J., ;Pearson, ;Turner, ;Spankie and ;Oldfield, JJ.

Appellant : Queen

Respondent : Thakur Parshad

Judgement :

Pearson, J.

1. The question upon which I understand that the opinion of the Full Bench is required is whether the Court of Session at Allahabad was warranted by the terms of Section 390, Act X of 1872, in directing the Magistrate to admit to bail a person who had been convicted and sentenced to one month's imprisonment under Section 352, Indian Penal Code. My answer to that question is in the negative. Section 390 declares that 'the Court of Session may in any case, whether there be an appeal on conviction or not, direct that an accused person shall be admitted to bail.' The section occurs in a part of the Code which prescribes procedure incidental to enquiry and trial; and it is thus evident that an accused person is one against whom an accusation is the subject of inquiry and trial and not a convicted person. That this is so further appears from the context, if Section 390 be read in connection with the preceding and following section. By 'any case' is meant only

any case the subject of enquiry or trial before a Magistrate, whether or not, in the event of a conviction, an appeal would lie from the Magistrate's sentence or not. The section does not refer to cases in which the Court of Session is proceeding under Section 296 of the Procedure Code.

Turner, J.

2. Reading the terms of Section 390 by themselves, the natural construction appeal's to be that in all cases, both in those which, resulting in a conviction, would not be appealable to the Sessions Judge, and in those which, resulting in a conviction, would be so appealable, a Court of Session has power to admit to bail an accused person, that is to say, a person charged, but not as yet convicted of an offence, or to reduce the bail required by a Magistrate.

3. It may be dangerous to draw an inference as to the proper construction of this section from the place it occupies in the Code, because at the conclusion of the chapter we find Section 399 applying to all cases in which bail may be taken except those therein Specially excepted. The proper construction of Section 190 rests on the meaning to be given to the word 'accused.' In its ordinary sense it is most properly applied to persons against whom a charge is made, and it is opposed to the term 'convicted.' But the learned Counsel for the petitioner contends that, in other parts of the Code, we find the term 'accused' applied to persons convicted--to which it appears a reasonable answer that, in those places, as for instance in Sections 283 and 297, it is apparent from the context that the term is used in a particular sense, whereas in Section 390 there is nothing in the context to affect its ordinary meaning. It must, therefore, be held that the provisions of Section 390 do not empower the Sessions Judge to order the Magistrate to admit to bail a person who has been convicted. Of course, as an appellate Court, a Sessions Judge has power on or after the admission of the appeal to admit the convicted appellant to bail, but in the case out of which this reference has arisen no appeal lay to the Sessions Court.

Spankie, J.

4. On the question as to the legality of the order, there can be no doubt, I think, that, if made under Section 390 of the Criminal Procedure Code, it was illegal. The section is found in Part ix of the Code, which refers to procedure incidental to inquiry and trial. Section 388 * directs when bail shall be taken when any person is accused before a Magistrate; Section 389 directs when it shall not be taken in non-bailable offences, and when it may be taken. Under those sections it is the Magistrate who orders bail. Section 390 empowers the Sessions Court in any case, whether appealable to itself or not so appealable, either to admit to trial or to reduce the amount of bail ordered by the Magistrate. But the power given is to be exercised before conviction is had, and it may be exercised in all cases and without exception.

Oldfield, J.

5. The Judge's order directing the Magistrate to release the prisoners on bail is, in my opinion, illegal. The case not being appealable, the Judge could not act under Section 281, Criminal Procedure Code, as an appellate Court and admit to bail, and the power given by Section 390, Criminal Procedure Code, appears to me to refer to the procedure incidental to inquiry and trial, and to allow the Judge in any case to admit an accused person to bail at any time during the trial, but not after conviction. Section 390 should be read with the preceding section.

6. To interpret Section 390 so as to permit the Judge to take bail without restriction, in any case after conviction, would be to allow the Judge a higher power in admitting to bail than is given to the High Court as a Court of Revision, since Section 297, Criminal Procedure Code, limits that Court's power to take bail in cases coming before it as a Court of Revision to cases where the offence for which a person has been imprisoned is bailable.

Robert Stuart, C.J.

7. This reference has come back to me from the Full Bench with the opinions of the consulted Judges. They all consider that the Judge's order, purporting to direct the Assistant Magistrate to release the prisoners on bail, was illegal, and I am clearly of the same opinion. They very properly direct attention to the circumstance

that Section 390 is to be found under Part ix of the Code, which is entitled as 'Procedure incidental to inquiry and trial'; and, keeping that consideration in view in construing the section, I am of opinion that it only applies to the case of an 'accused person,' that is, to the case of a person accused of an offence, the conviction of which is appealable or not appealable, and that it was not intended to apply to such a case as the present, where there has been a conviction, final and complete. Such, I think, is the true meaning of the section. Any other reading of it, which would take it out of the category indicated by the heading of 'Procedure incidental to inquiry and trial,' would involve the necessity of holding that an 'accused person' in the section was synonymous with a convicted person, and that therefore the compiler of the Code had made a mistake in placing it under the heading of Procedure incidental to inquiry and trial.' The Sessions Judge, I think, must be understood to be of this mistaken opinion, for it appears from the correspondence which accompanies his letter of reference and by his directing Mr. Pears' attention to Section 390 of the Criminal Procedure Code, that his idea was that he could admit to bail in any case after trial, whether there had been a conviction or not. We cannot, however, put such a construction on the terms of the section, a construction entirely repugnant to them and to the whole context. An 'accused person' simply means an accused person, and nothing more, and this Section 390 was only intended for a person in that position, and who on conviction would appeal or not.

8. But in either view of the section the Judge's order in the present case ought not to have been made. If Section 390 does not apply, as I hold it does not, there is no other provision of the Code which empowered the Sessions Judge to admit to bail, and the order was altogether ultra vires. But if, on the other hand, it could be shown that the section does apply to such a case as this, the order was equally invalid, for (as I have already pointed out in my referring order) the Judge having no revisional authority, his admitting these convicts to bail was inoperative for any judicial purpose or effect and therefore futile.

*[Section 388 :--When any person appears or is brought before a

When bail shall be taken Magistrate accused of any bailable offence, he shall be admitted

to bail.]

[Section 389 :-When any person, accused of any non-bailable offence, appears or is brought

before a Magistrate, such person shall not be admitted to bail,

Bail not to be taken for

certain offences. if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If the evidence, given in support of the accusation, is in the opinion of the Magistrate,

not such as to raise a strong presumption of the guilt of the

accused person, or if such evidence is adduced on behalf of the accused person as, in the opinion of the Magistrate, weakens

the presumption of his guilt, but there appears to the Magistrate

in either of such cases to be sufficient ground for further inquiry into his guilt, the accused

person shall be admitted to bail pending such inquiry.]

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