

Pt. Ram Saroop Vs. King-emperor

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Court : Allahabad

Decided On : Sep-01-1926

Reported in : AIR1927All97

Appellant : Pt. Ram Saroop

Respondent : King-emperor

Judgement :

1. Criminal Miscellaneous Applications Nos. 185 and 186 are connected and are applications for bail together with a prayer for stay of proceedings. It appears that the two applicants appeared before election commissioners and gave evidence. The commissioners came to the conclusion that they were respectively guilty of forgery and perjury, and started proceedings under Section 476 of the Criminal Procedure Code. The High Court in revision held that Court not being a civil, revenue or criminal Court, had no jurisdiction to proceed under Section 476, but that there was nothing to prevent the commissioners from filing a complaint. Their report to the criminal Court was treated as a complaint. The applicants were accordingly prosecuted, but acquitted by the trying Magistrate. On appeal by the Government to this Court, the Bench hearing the appeal came to the conclusion that the acquittal was improper and that the accused persons were guilty. The appeal was accordingly allowed and they were convicted and sentenced to nine months rigorous imprisonment each. There was a further order directing Ram. Saroop accused-respondent to pay the costs of the Government.

2. Before surrendering and before, any appeal to their Lordships of the Privy Council was actually filed, the accused applied to this Court for bail on the ground that they had sent instructions to a Solicitor in England for lodging a petition for special leave. The High Court naturally refused to entertain the application so long as the accused had not surrendered. After information had been received that they had surrendered the Bench dismissed the application but

without prejudice to the right to bring an other application in the event of special leave being granted by the Privy Council,

3. It now appears that a' petition for special leave has been lodged, but owing to the vacation it has not yet come up before their Lordships and is not likely to be considered before October next. The accused have accordingly applied afresh for being released on bail.

4. The first point which has been raised before us is as to whether we have jurisdiction to grant bail in a case which has been disposed of by this Court and in which an appeal may be, or is, pending in the Privy Council. The Punjab Chief Court in the case of Diwan Chand V. King-Emperor [1908] 15 P.R. 1908 Cr. 19 P.W.R. 1908 Cr. came to the conclusion that it had no power under Section 498 of the Code to release a person on bail pending an appeal to the Privy Council. Their attention was drawn to the case of Queen-Empress v. Subramania Ayyar [1901] 24 Mad. 161; but they distinguished that case on the supposition that the decision might have been based under the High Court's charter. The last-mentioned case, however, shows that when the accused applied for bail to the Judicial Committee their Lordships expressed the opinion that the matter should be decided by the Madras High Court. The Madras High Court clearly came to the conclusion that, it had jurisdiction to make an order in that case, releasing the accused on bail pending the decision of the Privy Council. That case was decided when the old Code was in force and there was no express section under the Code as to inherent jurisdiction. We are of opinion that a High Court has certainly inherent jurisdiction to stay the execution of its own order when the ends of justice require it. In cases where an appeal has been admitted by their Lordships of the Privy Council and there is a fear that the sentence would expire before the appeal can

be disposed of it would be within the power of this Court to grant bail. Such inherent power must be deemed to exist, in the High Court. In Section 561(a) of the Code of Criminal Procedure, it is expressly provided that nothing in that Code shall be deemed to limit or affect the inherent power of the High Court to make, such orders as may be necessary to give effect to any order under this Code or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. We are, therefore, clearly of opinion that we have jurisdiction to entertain this application and to grant bail.

5. The question still remains whether it is proper to do so. We have already pointed out that the Bench when dismissing the former application remarked that if it should happen that special leave to appeal is given by the Privy Council it would be open to the applicants to apply to this Court for bail. Nothing has happened since that date which has substantially altered the position. Even at that stage the High Court, in view of the prospective appeal, had jurisdiction to grant bail but refused to do so remarking that there would be a right to apply after the special leave had been granted. All that has happened is that a petition for special leave has been lodged but no special leave has yet been granted.

6. We should like to add that the applicants have not filed before us any copy of their petition of appeal or of any affidavit that they might have sent, which would show to us that this case comes within the rule laid down by Viscount Haldane in the case of *Dal Singh v. Emperor* [1917] 44 Cal. 876. We however, think that the realization of the costs; directed to be paid by the accused, Ram Saroop should be stayed as no harm can accrue by the stay of those proceedings until October next. We accordingly decline to grant the application for bail at this stage leaving it open to the applicants, to apply again if the special leave is granted by the Privy Council; but we direct that the proceedings Relating to the realization of the costs be stayed till the disposal of the petition for special leave.