

Kalu and ors. Vs. State

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Court : Rajasthan

Decided On : Jan-22-1951

Reported in : AIR1954Raj22

Judge : Ranawat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 9, 17 and 497

Appeal No. : Criminal Revn. Nos. 135 and 404 of 1950

Appellant : Kalu and ors.

Respondent : State

Advocate for Def. : Harilal Parikh, Asst. Govt. Adv.

Advocate for Pet/Ap. : Daulatmal Bhandari, Adv.

Judgement :

ORDER

Ranawat, J.

1. The Sub-Divisional Magistrate, Shahpura, Granted bail to Kaluram and 11 others on 16-2-1950 in a case that was pending in his Court under Section 302, I. P. C. A revision was filed against that order in the Court of the Sessions Judge, Jaipur, who transferred the case to the Additional Sessions Judge. The Additional

Sessions Judge on the prayer of the Public Prosecutor that the revision application may be treated as an application under Section 497(5), Cr. P. C. made an order cancelling the bail of the accused. The accused have filed this revision application against the order of the Additional Sessions Judge, Jaipur, dated 23-11-1950. A separate application under S. 498, Cr. P. C. has also been filed on behalf of the accused in this Court. Both these cases are being disposed of together.

2. It has been argued on behalf of the accused that the Additional Sessions Judge had no authority to make an order under Section 497(5), Cr. P. C. for the cancellation of the bail of the accused. 'Ba Maung v. Emperor', AIR 1930 Rang 335 (A), has been cited in support of this argument. The Government Advocate has argued that under Section 9, Cr. P. C. the Additional Sessions Judge can exercise all the powers of the Sessions Judge.

3. It may be observed that Section 9, Cr. P. C. has no bearing on their point. Wherever it has been intended that an Additional Sessions Judge or an Assistant Sessions Judge may exercise the powers of the Sessions Judge a special provision has been made in the Criminal Procedure Code. In Section 193, 409 and 438 an Additional Sessions Judge has been given powers to try a case or to hear an appeal and a revision application in such cases as are specified therein. Under Section 497 the power to cancel bail has been invested in the High Court or the Court of Session. No mention has been made regarding the exercise of those powers by an Additional Sessions Judge or an Assistant Sessions Judge. Obviously therefore it was not contemplated by the Code that the powers relating to the cancellation of bail are to be exercised by an Additional Sessions Judge, except in cases where specific powers in this behalf are conferred on him by the Sessions Judge.

It is said that the Sessions Judge, Jaipur, made an order under Section 17, Cr. P. C. by which he authorised the Additional Sessions Judge to hear and dispose of bail applications which may be transferred to his Court by the Sessions Judge or which may arise out of criminal original cases pending before him. It is argued on behalf of the Government that the order of the Additional Sessions Judge should be deemed to be in the exercise of the powers conferred by the sessions Judge

upon him but looking to the language of the order of the Sessions Judge this contention does not appear to be good. Moreover, under Section 17 the Sessions Judge can only confer powers on an Additional Sessions Judge when he is himself unavoidably absent or is incapable of acting. The order made by the Sessions Judge, Jaipur, in this case on 11-11-1950 was a general order passed with a view to proper and efficient disposal of the criminal cases. It cannot, therefore, be said that the aforesaid order was one under Section 17, Cr. P. C. The order of the Additional Sessions Judge cannot be deemed to be valid under these circumstances, because there appears to be no authority under the law in the Additional Sessions Judge to make any order under Section 497(5), Criminal P. C. 'AIR, 1930 Rang 335 (A)' supports the above view. As the Sessions Judge has not dealt with this case, it seems proper that the cases should be sent to his Court for disposal according to law and the order of the Additional Sessions Judge being ultra vires should be set aside. It is, therefore, ordered accordingly.

4. In view of this order, it is not necessary to deal with the other petition of the accused under Section 498, Cr. P. C. Mr. Bhandari also does not want to press it. The order of the Magistrate, Shahpura, dated 16-2-1950 shall revive and the accused shall remain on bail till the matter is decided by the Sessions Judge on merits.