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Court : Rajasthan

Decided On : Sep-28-1951

Reported in : AIR1952Raj149

Judge : Ranawat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 497(1); Indian Penal Code (IPC) - Sections 302; [Evidence Act, 1872](#) - Sections 114

Appeal No. : Criminal Revn. No. 311 of 1951

Appellant : Newad Ram

Respondent : Kishan and ors.

Advocate for Def. : Ram Avtar Gupta, Govt. Adv.,; D.M. Bhandari and; B.B. Sh

Advocate for Pet/Ap. : H.M. Mukerjee, Adv.

Disposition : Application rejected

Judgement :

ORDER

Ranawat, J.

1. This is a revision application filed by the complainant Newadram against an order of the Sessions Judge, Bharatpur, dated the 5th July 1951, by which the four

accused persons who had been committed to his Court by the City Magistrate, Bharatpur, to stand their trial under Section 302, I.P.C., were allowed to remain on bail. The Government Advocate has supported the application of the complainant. A notice was issued to the opposite parties.

2. The argument of the learned counsel of the applicant is that the accused persons have been committed to Sessions under Section 302, I.P.C., which is an offence punishable with death or transportation for life and under Section 497, Criminal P.C., it was not open to the Magistrate to have allowed the accused persons to remain on bail. The learned Sessions Judge, it is said on behalf of the complainant, did not apply his mind to the facts of the case in making an order in favour of the accused, 'Prima facie' it is argued there was evidence against the accused for committing them to the Court of Session to stand their trial under Section 302, I.P.C., and on this account the City Magistrate made a commitment order; that Court could not therefore be supposed to have held that there were no reasonable grounds to believe that the accused had committed an offence punishable with death or transportation for life and when the case had been committed under Section 302 the learned Sessions Judge should have held that there was a case under Section 302 against the accused and under Section 497. Criminal P.C., bail was improperly granted to the accused by the Court of the City Magistrate.

2. On merits it is contended, the learned Sessions Judge also could not have come to a contrary conclusion that there were no reasonable grounds for believing that the accused had committed an offence punishable with death or transportation for life when the accused had already been committed to his Court by the committing Magistrate under the charge of murder. The counsel on the opposite side has replied that the learned Sessions Judge did hear the arguments of both the sides and after giving due weight to the evidence he made an order under Section 498, Criminal P.C., releasing the accused on bail. The provisions of Section 498, are not limited by the provisions of Section 497, Criminal P.C.

3. It may be observed that when the learned City Magistrate committed the accused persons under a charge of murder it cannot be said that the same Court

could have come to the conclusion that there were no reasonable grounds to hold that the accused had committed an offence punishable with death or transportation for life. A case is committed to Sessions only when there are grounds to believe that at least there is a 'prima facie' case against the accused. In this view of the matter, the order of the City Magistrate granting bail to the accused appears to be contrary to the provisions of Section 497, Criminal P.C. The exceptions given in the Section do not apply to this case and obviously when the case was committed under Section 302, I.P.C., the Magistrate ought to have taken the accused persons, in custody.

However, that stage of the case is now over and it is not necessary to go back to that position off the case. The case has been committed to the Court of Session and on an application made on behalf of the accused the learned Sessions Judge has made an order in this behalf which is being impugned in this revision. Even though it can be said that the Court of the committing Magistrate could not commit the case under Section 302 and at the same time hold that there were no reasonable grounds to believe that the accused had committed an offence punishable with death or transportation for life, yet the same cannot be said against the learned Sessions Judge, because it is not necessary for the Sessions Judge to concur with the opinion of the committing Magistrate as regards the point regarding the existence of the reasonable grounds to believe that the accused had committed an offence punishable with death or transportation for life.

In spite of the fact that the case had been committed to the Court of the Sessions Judge under Section 302, I.P.C., the Sessions Judge may hold the opinion if he is satisfied after examining the record of the case that there is no reasonable ground to believe that the accused had committed an offence punishable with death or transportation for life. In a case reported in 'NISAR ALI v. ABDUL HAMID', AIR 1935 Pesh 101, a similar point was raised and it was held by a Division Bench of that Court as follows:

'We cannot support the view that because the factum of commitment implies that the City Magistrate had sufficient grounds for committing the accused, it necessarily gave the third Additional Sessions Judge reasonable grounds for

believing that he has been guilty of the offence charged. It frequently happens in cases of violence that persons upon opposite sides are prosecuted for offences triable by a Court of Session and that the two prosecution stories are mutually destructive of each other, yet in such cases if the unrebutted evidence in each case be sufficient to afford 'prima facie' proof of the allegations made, it may be the duty of the Magistrate carrying out the judicial enquiry to commit both sets of accused for trial, in such cases he cannot possibly believe both stories and it is difficult to affirm that there are reasonable grounds for believing both stories. Again, there is no doubt that when a person is convicted of an offence punishable with death or transportation for life and appeals the appellate Court is empowered to admit him to bail pending decision, of the appeal, and therefore if Section 497, Criminal P.C., does apply to the appellate Court in such a case, we must come to the conclusion that the conviction by a Lower Court does not necessarily in itself give the appellate Court reasonable grounds for believing that the accused appellant is guilty.'

4. It cannot therefore be said that the learned Sessions Judge was bound by the opinion of the committing Magistrate that there was a 'prima facie' case against the accused under Section 302, I.P.C. It was open to the Court of Session to examine the evidence on record and to come to its own conclusion regarding the fact whether there was or was not reasonable ground to believe that the accused had committed an offence punishable with death or transportation for life. The learned Sessions Judge has not discussed the evidence on record but he has simply said in his order that it was proper to make an order releasing the accused on bail.

It may be that at that stage expression of opinion by the learned Sessions Judge was uncalled for and in order to obviate further complications he may not have considered proper to express it in so many words that there were no reasonable grounds to believe that the accused had committed an offence punishable with death or transportation for life. There is a presumption in favour of the propriety of the orders of a Court of law and it is to be presumed that an order made by a Court of law was made after considering all the material on the record of the case and after hearing both the parties. Such a presumption is rebuttable, but in the present case the parties have not filed any affidavits in order to show that this was

not so done. It would not be proper for this Court at this stage to examine the evidence on the record and to express any opinion as regards the merits of the case, because it may prejudice the case of the parties in the trial Court.

The scope of Section 498, Criminal P.C., is much wider than that of Section 497, Criminal P.C., and the order of the learned Sessions judge is not contested by the parties in this case for want of jurisdiction. However, in concluding his order the learned Sessions Judge has made certain observations regarding the propriety of the order of the Magistrate but as has already been discussed above, it is not free from doubt that the order of the Magistrate on the subject was in accordance with the provisions of law. Moreover, the discretion of the learned Sessions Judge was not in any way hampered by the order of the committing Magistrate in this behalf and the propriety or otherwise of the order of the committing Magistrate cannot in any way be taken into account to judge the legality of the order of the learned Sessions Judge.

Similarly, a passing reference has also been made by the learned Sessions Judge to an order made by this Court at an earlier stage of the case. It may be pointed out that that order was made at a prior stage on the strength of the circumstances then existing on the record of the case and after the conclusion of the enquiry in the Court of the committing Magistrate and after the commitment that order had no application to the facts of the case at the time the bail application was decided by the learned Sessions Judge. The discretion of the learned Sessions Judge was in no way affected by the existence of that order of this Court.

The learned Government Advocate has stressed that the learned Sessions Judge was misled firstly by the order of the committing Magistrate and secondly on account of a misconception regarding the applicability of the order of this Court in the changed circumstances of the case. It may be pointed out that even though a passing reference has been made to the order of the committing magistrate and the order of this Court in the order of the learned Sessions Judge, which has been impugned in this revision, it does not appear that the learned Sessions Judge was in any way influenced by the existence of those orders. He had expressed himself in unequivocal terms at the very outset that under the circumstances of the case

he considered it proper to release the accused persons on bail. The argument of the learned Government Advocate on this point, therefore, has little force.

The trial Court has exercised its Judicial discretion in the matter and it appears that all the circumstances of the case were taken note of by that Court while it made an order granting bail to the accused and it does not appear necessary for this Court to interfere in the exercise of discretion by the lower Court. The trial of the case has been unnecessarily prolonged on account of this revision application, as the trial Court had to postpone the trial of the case, because the record of the case had come in this Court in connection with the revision application. It is in the interest of justice that criminal cases, and specially cases of serious offences should be tried and disposed of expeditiously without any delay.

5. This application is rejected and it is ordered that the record of the case may be returned to the trial Court so that the proceedings in that Court may not be delayed any more.

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