

Emperor Vs. Lalit Kumar Chatterjee

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Court : Kolkata

Decided On : Mar-11-1910

Reported in : (1910)ILR37Cal439

Judge : Stephen and ;Carnduff, JJ.

Appellant : Emperor

Respondent : Lalit Kumar Chatterjee

Judgement :

Stephen and Carnduff, JJ.

1. This matter has been referred to us by the Sessions Judge of Hooghly in the following circumstances. Four persons were arrested in February last on a charge of having committed an offence under Section 400 of the Indian Penal Code by belonging to a gang of dacoits. Part I of the Criminal Law Amendment Act, 1908, has been applied to proceedings in respect of this offence by the Local Government, at what time is not stated, but no doubt on the 5th February. On that day one of the petitioners applied to the District Magistrate of Howrah, who had taken cognizance of the offence, for bail, which was refused. On the 8th February he and two others of the accused applied, no doubt in pursuance of the provisions of Section 498 of the Code of Criminal Procedure, to be admitted to bail by the Sessions Judge, who directed that the papers of the case should be called for and fixed a day for hearing the applications. Before the date so fixed the District

Magistrate declined to forward the record, on the ground that the provisions of the Code of Criminal Procedure did not apply to the inquiry which he was conducting. The Sessions Judge adjourned the hearing of the applications to the 22nd February, when the Advocate General appeared before him and argued that he had no jurisdiction in respect of proceedings under Part I of the Act. On the 1st March the Sessions Judge held that he had such jurisdiction; but, as he had no materials before him on which to make an order, he has submitted the applications to us for orders.

2. On the 24th February a fourth accused applied to the Sessions Judge to be admitted to bail, and though the District Magistrate has not refused, not having been called on, to forward the papers in his case, and though no argument has been heard on it, his application stands on the same footing as the others, and we need not distinguish between the cases of any of the four petitioners.

3. No specific question is referred to us by the Sessions Judge, but we have heard counsel on the reference, and there is no doubt that the question we have to decide is whether the Sessions Judge was correct in holding that he had jurisdiction to grant bail in these cases. If he has, it is founded of course on Section 498 of the Criminal Procedure Code, the material part of which provides that 'the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail.' The only restriction which it can be suggested should be placed on the very wide power conferred on the Sessions Judge by this section is, for present purposes, that contained in Section 14(1) of the Criminal Law Amendment Act of 1908, which is as follows: 'The provisions of the Code of Criminal Procedure, 1898, shall not apply to proceedings taken under this Part, in so far as they are inconsistent with the special procedure prescribed in this Part.'

4. The question thus is whether the power of the Sessions Judge to grant bail in cases to which the Act does not apply, is inconsistent with the procedure prescribed by Part I of the Act; and we are of opinion that it is for the following reasons. The procedure prescribed by Part I of the Act is prescribed in Sections 3 to 12, and an essential feature of it is that there shall be a commitment by the

Magistrate directly to the High Court, and the power of the Sessions Judge to try the case, which he would have were it not for the Act, is taken away. This is consistent with the preamble of the Act, which recites that it is expedient to provide for the more speedy trial of certain offences, as the effect of the Magistrate committing to the High Court is to eliminate a trial by the Sessions Judge, and to provide that the accused, should be tried at once, and finally, by the tribunal) to which he would have a right, of appeal if the ordinary procedure were followed, it being assumed that he would exercise this right if he were convicted by the Sessions Judge of one of the offences to which the Act applies. The elimination of the Sessions Judge as a trying Court seems to us to indicate that he is not to exercise his normal power of granting bail. The Act provides what is nearly a complete course of procedure. It does not give the Magistrate power to summon witnesses, which he must, therefore, do under the Criminal Procedure Code; but it casts on him a duty to record evidence, to discharge the prisoner in some circumstances, and to commit him to the High Court in others, and it does this as nearly as may be in the terms of the Code. This shows that the prescribed procedure is exclusive as far as it goes, and lends force to the argument that, if the jurisdiction of the Sessions Judge is eliminated for one purpose, it is eliminated for another. The taking away of the normal power of the Sessions Judge to grant bail is also consistent with the speedy trial recited in the preamble. We have already held, in *Emperor v. Sourindra Mohan Chuckerbutty* (1910) I.L.R. 37 Calc. 412, that the power of this Court to admit to bail is not affected by the Act, and the taking away of this power from the Sessions Judge does not, therefore, deprive the accused of any right that he is entitled to, since he retains his power of applying for bail to a superior, and what we must regard as a more capable, tribunal.

5. Against this view several arguments have been urged, which are entitled to our best consideration, though we cannot accede to them. As we have already said, we have held that this Court has power to admit to bail in such cases as the present, and the same words that confer this power on the High Court confer it also on the Sessions Judge. But there is this great difference between the two that the former is, and the latter is not, the trying Court. It is not, of course, the case that the power to grant bail under Section 498 of the Code is confined to a trying Court; for, if that were so, the powers of the Court of Sessions and of this Court

under the section would be much narrower than they are. But, as we have pointed out in the other matter referred to, it can hardly be said that there is anything in the intervention of the High Court, by which cases under the Act are to be tried, that is inconsistent with the special procedure prescribed by it. Though, therefore, we feel the force of the argument addressed to us on the terms of Section 498 of the Code, we cannot yield to it in view of the terms of Section 14(1) of the Act and the provisions that precede it.

6. Another argument that has been urged is that, until the Magistrate is satisfied that the evidence offered by the prosecution is sufficient to put the accused on his trial as provided in Section 6, he is proceeding under the ordinary law, because his inquiry may result in it appearing to him that the accused should be tried or committed for trial under the provisions of the Code for some offence not in the Schedule to the Act, in which case he must, under Section 5 of the latter, 'proceed accordingly,' that is, try him or commit him for trial for that offence. This argument, however, proves too much; for its effect would be to nullify the provisions of Sections 3 and 4. and we have no doubt that the proper reading of Section 5 is merely to make it clear that a Magistrate who is proceeding under the Act may deal with an accused in the ordinary way, if he considers that an offence mentioned in the Schedule has not been made out and that another has. Whether a magisterial inquiry under the Act would justify a commitment under the Code, or whether another inquiry would be necessary for that purpose, we need not decide; but a second enquiry is at all events open to the Magistrate, and that fact deprives the argument of the accused on this point of any weight.

7. The result is that we must hold that the Sessions Judge had no jurisdiction to entertain the applications for bail that were made to him. We need hardly repeat, but may perhaps emphasize the fact, that they might properly have been made to us.

8. We regret to have to notice that, whatever the state of the law may be, the District Magistrate acted improperly in refusing to send the record to the Sessions Judge when requested to do so. The Judge was the superior judicial authority, and the question of his jurisdiction was for him in the first instance. He was entitled to

ask for everything that he required in this case, and the District Magistrate had no right to refuse it; nor did he do so courteously.

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