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Amjad Sheik Vs. the State

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Court : Kolkata

Decided On : Nov-24-1954

Reported in : AIR1955Cal141,1955CriLJ446

Judge : Guha Ray and ;Sen, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 496, 497, 497(5) and 498

Appeal No. : Criminal Misc. No. 184 of 1954

Appellant : Amjad Sheik

Respondent : The State

Advocate for Def. : N.K. Sen, Adv.

Advocate for Pet/Ap. : Nani Coomar Chakravarty, ;Dipti Kana Basu and ;B.C. Ghose Roy, Advs.

Judgement :

Guha Ray, J.

1. This Rule at the Instance or the petitioner Amjad Sheik who was arrested in connection with a case under Section 304, I. P. C., is directed against an order, of the learned Additional Sessions Judge of Malda cancelling his bail and ordering

that he should be forthwith taken into custody. It appears that after his arrest the petitioner was placed in custody by the Magistrate who refused his prayer for bail. The learned Additional Sessions Judge being moved granted his bail. Subsequently on behalf of the prosecution a petition was made before the learned Addl. Sessions Judge alleging that the petitioner was tampering with evidence and praying for the cancellation of his bail. On that petition the learned Addl. Sessions Judge went into evidence allowing the petitioner full opportunity to cross-examine the witnesses produced on behalf of the prosecution. On the evidence before him he came to the finding that the allegations made against the petitioner were correct and well founded and made the order now challenged.

2. It is not disputed before us that on the evidence before him the learned Addl. Sessions Judge was correct in taking the view that he did, viz., that the petitioner was trying to tamper with the evidence for the prosecution. What is however contended before us is that the learned Sessions Judge was not entitled under Section 497 (5), Criminal P.C. to cancel the bail which he himself had granted under Section 498, Criminal P.C., because Section 498, Criminal P.C., is not in any way connected with or controlled by the provisions or Section 497, Criminal P, C.

For this proposition reliance was placed on behalf of the petitioner on -- 'Ahmad v. The Crown', AIR I960 Lah 195 (A), which refers to three other cases, -- 'Local Govt. v. Gulam Jilani', AIR 1925 Nag 228 (B), -- 'Md. Ibrahim v. Emperor : AIR1932 All534 , and.-- 'Crown Prosecutor, Madras v. N.S. Krishnan, AIR 1945 Mad 250 (D). These cases undoubtedly support the view that Section 498, Criminal P, C., is independent of Section 497, Criminal P. C. But then the Privy Council in -- 'Jairam Das v. Emperor took a different view. The question before the Privy Council was whether the High Court in India had power to grant ball toa person who had been convicted and sentenced to imprisonment and to whom His Majesty in Council had given special leave to appeal against his conviction and sentence.

In deciding this question the Privy Council had to consider the Indian decisions which took the view that the High Court had the power. In negativing that view the

Privy Council observed that the only granting of bail which is referred to in Chapter XXXIX of the Code of Criminal Procedure is the granting of bail to accused persons and although it is true that in the Indian decisions Section 498, Criminal P. C., seems to have been treated as though it included cases in which persons already convicted were concerned, such view appeared to their Lordships to be a misapprehension based upon a mistaken reading of a few words in that. Section. It finally observed that in truth the scheme of Chapter XXXIX is that Ss. 496 and 497 provide for the granting of bail to accused persons before trial and the other Sections of the Chapter deal with matters ancillary or subsidiary to that provision.

3. The main reason which led to the other view which some of the Indian Courts took of Ss. 497 and 498, Criminal P. C., is that while in Section 497 (5), Criminal P. C., there occurred the words 'under this Section' which apparently seeks to limit the action under Section 497 (5) to bail granted under that Section only, there is no corresponding provision in Section 498, but as pointed out by the Privy ' Council, Section 498, Criminal P.C., is not really independent of Section 497, Criminal P. C.

This appears to be obvious from the following circumstances: Section 496, Criminal P.C., provides for the granting of bail in bailable cases and Section 497, Criminal P.C., provides for the granting of bail in non-bailable cases. These are the only sections which provide for granting of bail and the execution of bonds so that when Section 498, Criminal P. C., opens with the expression 'the amount of every bond executed under this Chapter', it becomes at once obvious that in order' to construe Section 498, Criminal P. C., one must hark back to the two earlier sections viz., 496 and 497, Criminal P. C.

4. Mr. Chakravarty on behalf of the petitioner frankly concedes that into this part at any rate of Section 498, Criminal P. C., the provisions of Ss. 490 and 497, Criminal P. C., have necessarily got to be read. But his contention is that the second part of Section 498, Criminal P. C., which confers on the High Court or Court of Session the power to direct the admission of any person to bail or a reduction of the bail required by a police officer or a Magistrate is quite independent of the first part.

It has got to the seen whether that is so or not. This part of Section 498, Criminal P. C., runs as follows:

'and the High Court or Court of Session mayin any case, whether there be an appeal onconviction or not, direct that any person beadmitted to bail, or that the bail required bya police-officer or Magistrate be reduced.'

The question further arises in what cases is theHigh Court or the Court of Session to exercisesuch powers. Some of the Indian Courts, asalready stated, took the view that the expression'in any case' means that the High Court could exercise such powers in all cases whether the person concerned was an accused person or he bad already been convicted after trial. The Privy Council pointed out that that is not the meaning of the expression 'in any case', because the Chapter provided for bonds to be executed only by accused persons and not by persons convicted and further because Section 496, Criminal P. C., provided for the grant of bail to persons convicted on appeal.

The fact that the bail required by a police officer or a Magistrate can be only under Sections 496 and 497, Criminal P. C., also bear out the view that even the second part of Section 498 refers back to the earlier sections, namely Sections 496 and 497, Criminal P. C. If then the expression 'in any case' really means a case only of an accused person and does not include the case of a convicted person, the second part of Section 498 does not really stand isolated from its first part, and if that is so, provisions of Sections 496 and 497, Criminal P. C., have got to be read into that part as well.

5. In agreement, therefore, with the view taken by the Privy Council we hold that Section 498, Criminal P C., does not really grant to the High Court or the Court of Session a power independent of the earlier sections. What it really does is to extend to the High Court or the Court of Session the power granted under Sections 496 and 497, Criminal P. C., to the trial Court.

If in Section 497 (5), Criminal P. C., the words used are 'in this section', it is simply because that ia the only Section providing for the grant of bail in non-bailable cases, and if in Section 498, Criminal P. C., the words used are 'in this Chapter', it

is because bonds are to be executed under this Chapter not merely under Section 497 but also under Section 496, Criminal P. C., so that in place of the expression 'in this Chapter', the section could have equally appropriately used the expression under Section 496 or Section 497' but why in place of one it chose the other, it is difficult to say.

Clearly however no significance can be attached to this difference in the words used in Sections 498 and 497 (5), Criminal P. C., and when the High Court or the Court of Session exercises the power under Section 488, Criminal P. C., that power is really the power granted under Section 497 or Section 496, Criminal P. C., so that even when the Sessions Judge has granted bail he is entitled under Section 497 (5) to cancel that order and to make the order of committal to custody.

6. In this view the order made by the learned Additional Sessions Judge cannot be held to be illegal.

7. The Rule is accordingly discharged.

Sen, J.

8. I agree but in view of the Importance of the case I would like to add a few words. The question arising in this case is whether the Sessions Judge could cancel the bail granted by him in respect of an accused who had appeared before the committing Magistrate and in respect of whom bail had been refused originally by the committing Magistrate.

9. Mr. Chakravarti replying on the decision of the Lahore High Court (AIR 1950 Lah 195 (A))has urged strongly that the Sessions Judge had, no such power to cancel the bail granted by him because he had granted the bail under Section 498 and the bail can be cancelled under Section 497 (5) in respect of a person who had been released, 'under this Section' that is, Section 497, Criminal P. C. In the Lahore case reliance was placed on threes decisions of Indian High Courts which have already been referred to by my learned brother and which were decisions of Single Judges. In. those cases reliance was placed on the clause 'under this Section' appearing in Section 497 (5) and to the absence of any provision

corresponding to Section 497(5) in Section 498, Criminal P. C. The anomaly raised by the interpretation was fully realised. This anomaly was however sought to be avoided by reference to Section 561-A, Criminal P. C:, viz., the inherent power of the High Court and it was held that even though the Sessions Judge had no power to cancel the bail granted by himself under Section 498, Criminal P. C., and the High Court could not also cancel the same under Section 497 (5), Criminal P. C., the High Court could still examine' the case for itself under its inherent power and continue or cancel the bail originally granted by the Sessions Judge.

That was also the view adopted by the Lahore High Court in the case of AIR 1950 Lah 195 (A) and in fact their Lordships in deciding the case directed the examination of the materials on which bail had been cancelled by the Sessions Judge so that an appropriate order under Section 561-A, Criminal P. C., might be passed. If we were to rely on these decisions we might order under Section 561-A, Criminal P. C., that the bail originally granted by the Sessions Judge should be cancelled, because when the bail was granted by the Sessions Judge no prima facie case had been established, but thereafter charge-sheet under Section 304, I. P. C., had been submitted against the accused by the Police. Moreover there was the allegation proved by evidence that the accused had been interfering with the witnesses.

But the basis of these decisions must be held to have been knocked out by the Privy Council decision in the case , in which it was held that Section 561-A, Criminal P. C., would not apply to the subject of bail. The exact words used by their Lordships were as follows:

'Finally their Lordships take the view that Chap. 39 of the Code together with Section 426 is, and was intended to contain, a complete andexhaustive statement of the powers of a High Court in India to grant bail, and excludes the existence of any additional inherent power in a High Court relating to the subject of bail.'

Their Lordships were concerned with the question of granting bail to a convicted person, but it is clear that the remarks apply equally well to the question of cancelling a bail already granted, because the clause 'excludes the existence of any additional inherent power relating to the subject of bail' applies to granting as

well as to cancellation of bail. Thus if it were to beheld that where bail had been granted by the Sessions Judge in a case before the committing Magistrate, the bail could not be cancelled by the Sessions Judge, there would remain an anomalywhich could not be solved by recourse to Section 561A,Criminal p. C.

The only solution of the anomaly is to hold that even where the Sessions Judge or the HighCourt grants bail in a non-bailable case under Section 498, Criminal P. C., the accused is really released under the provisions of Section 497, Criminal P. C. This view finds support from the observation of the Privy Council in the case already referred to, viz.,

'In truth the scheme of Chapter 39 is that Sections 496 and 497 provide for the granting of bail to accused persons before trial, and the other sections of the chapter deal with matters ancillary or subsidiary to. that provision.'

Thus Section 498 must be regarded as ancillary or subsidiary to Sections 496 and 497, and where we areconcerned with a non-bailable case, it must be held that Section 497 is the section under which bail is really granted, even though the bail is grantedunder an order by the Sessions Judge or by the High Court under Section 498, Criminal P. C., directing that a person be admitted to bail.

In other words, Section 498 is not a section. giving independent powers of granting bail to an undertrial prisoner by the Sessions Judge or High Court, but is controlled by the provisions of Section 497, and the Sessions Judge or the High Court, when dealing with an application under Section 498, must be guided by the provisions contained in Sub-sections (1) to (4) of Section 497. Any direction for admitting a person to bail must be in consonance with those provisions, and so when bail is granted under such a direction, it may be said that bail has been granted and the person released under Section 497. It may be noted furtherthat while Section 497 relates to taking of bail, Section 498 relates to powers to direct admission to bail.

It may therefore be held that under Section 498,a superior Court directs admission to bail, and under such direction, the Court before whom the accused is appearing actually releases such person on bail. Thus in such a case, the person is 'released under this section' as recited in Section 497.

10. A Full Bench of Madhya Bharat HighCourt has taken the contrary view in -- 'Champalal v. State', AIR 1952 Madh B 189 (P) and followed the decisions : AIR1932 All534 , AIR 1945 Mad 250 CD) and AIR 1925 Nag 228 (B). It was held as in-those cases, .that if bail is granted by the Sessions Judge under Section 498, the High Court can as a Court of Revision cancel the bail; and when the bail is granted by the High Court, the High Court can in the exercise of its inherent power saved under Section 561-A cancel the bail.

But if the Sessions Judge has no jurisdiction to cancel a bail granted by him under Section 498, it is difficult to see how the High Court can as a Court of Revision cancel the bail. The High Court can under its revisional power examine the correctness, legality or propriety of any order when the inferior Court has Jurisdiction to pass the order, and when the inferior court has acted without jurisdiction, the High Court must in revision vacate such order.

Where the order of the Sessions Judge granting bail is not challenged as initially wrong, but the bail is sought to be cancelled, for causes whichhave come into existence subsequently, there must be an original application for cancellation of bail, and if the Sessions Judge cannot entertain such an application, the High Court must entertain and deal with such original application.

This could only be done in exercise of the inherent powers of the High Court, as in the case of an application for cancellation of bail granted by the High Court under Section 498. But the question is whether the High Court has such inherent powers. With reference to the dictum, previously quoted, of the Privy Council in , the Madhya. Bharat Pull Bench held that the same should be understood with reference to the question under consideration in that case, viz., whether the High Court has inherent power to grant bail to a convicted prisoner, and that the observations of the Privy Council could not mean that the High Court cannot exercise its inherent powers to cancel bail when necessary in the interests of justice.

With due respect, it may be said that if the Privy Council only meant to lay down that the High Court could not under its inherent powers grant bail to a convicted prisoner, there is no reason why the general proposition should be laid down that

'Chapter 39 of the Code with Section 426 is.....a complete and exhaustive statement.....andexcludes the existence of any additional inherent power relating to the subject of bail.'

We would prefer to give the natural, grammatical meaning to the above observations of thePrivy Council and hold that under its inherentpowers, the High Court can neither grant norcancel bail, and therefore the power to cancelbail must be that flowing from Section 497 (5) and itis necessary to interpret Section 497 (5) as we havedone.

11. I agree therefore that the order passed by the learned Sessions Judge was legal, and that the Rule must stand discharged.

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