

APPELLATE CRIMINAL.

Before Sanderson C. J. and Richardson J.

TULSI TELINI

v.

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Bail—Jurisdiction of the High Court to grant bail in a case tried by a Magistrate and disposed of by it on revision—Letters Patent, 1865, cl. 41—Criminal Procedure Code (Act V of 1898) s. 498.

The High Court has jurisdiction to grant bail, under cl. 41 of the Letters Patent, 1865, only in cases falling within its provisions, and especially when the Court has declared the case to be a fit one for appeal to the Privy Council, or when the latter has granted special leave to appeal.

Reg. v. Pestanji Dinsha (1) referred to.

The High Court has no power, after disposal, on revision, of a case tried by a Magistrate, to grant bail under s. 498 of the Criminal Procedure Code, or clause 41 of the Letters Patent, 1865, in order that a petition may be made to the Privy Council for special leave to appeal, or until such petition has been disposed of by the latter.

Diwan Chand v. King-Emperor (2) followed. *Queen-Empress v. Subrahmanya Ayyar* (3) explained and distinguished.

Per RICHARDSON J. The High Court has no inherent jurisdiction to liberate an accused on bail.

THE facts of the case are stated *ante* (4). After the decision of Newbould and Suhrawardy JJ. discharging the Rule obtained by the applicant, Tulsi Telini, she applied to a Bench constituted by the Chief Justice and Mr. Justice Richardson to stay execution of the sentence passed by the Fourth Presidency Magistrate.

* Application for leave to appeal to His Majesty, in Criminal Miscellaneous Case No. 25 of 1923.

(1) (1873) 10 Bom. H. C. R. 75. (2) (1908) P. R. Cr. No. 15, p. 50.

(3) (1900) I. L. R. 24 Mad. 161. (4) See p. 565.

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and to grant bail pending her application for special leave to the Privy Council.

Mr. S. C. Chaudhuri (with him *Babu Phanindra Nath Das*), for the petitioner. Section 498 of the Criminal Procedure Code enables the High Court to allow bail "in any case," and is not limited to cases where an appeal may lie to a High Court or a Court subordinate to it: *Queen-Empress v. Subrahmania Ayyar* (1). The fact of the High Court being *functus officio*, with reference to the merits of the case, does not take away the power to allow bail. Distinguishes *Diwan Chand v. King-Emperor* (2). The Court has also inherent jurisdiction to grant bail: see *Pigot v. Ali Mahammad Mandal* (3).

The Advocate-General (Mr. S. R. Das), for the Crown. The Court has no jurisdiction to allow bail in this case. It does not appear whether the Madras High Court acted under section 498 of the Code. The Judges there may have had clause 41 of the Letters Patent in their mind. The Crown does not object to bail being allowed if the Court has jurisdiction.

SANDERSON C. J. This is an application by the petitioner, one Tulsi Telini, praying that this Court, under section 498 of the Criminal Procedure Code, will stay execution of the sentence of imprisonment passed against her, until the petition, which she alleges she is about to present to His Majesty in Council, is disposed of. The application is really that the petitioner may be admitted to bail pending the application to the Privy Council.

It appears that the petitioner was charged, under section 380 of the Indian Penal Code, in the Court of

(1) (1900) I. L. R. 24 Mad. 161. (2) (1908) P. R. Cr. No. 15, p. 50.

(3) (1920) I. L. R. 48 Calc. 522.

the Fourth Presidency Magistrate of Calcutta. The Magistrate came to the conclusion that he could not convict her on the charge of theft or of receiving stolen property. He then proceeded to say—"But at the same time I have good reasons to suspect that the money and the ornaments, especially the ornaments, were stolen property. And as the accused has not given a satisfactory explanation of her possession of the same, I find her guilty under section 54A of the Calcutta Police Act* of being in possession of property reasonably suspected to be stolen": and he sentenced her to three months' imprisonment.

The petitioner obtained a Rule from this Court which was heard by my learned brothers, Mr. Justice Newbould and Mr. Justice Suhrawardy.

The first ground upon which the Rule was granted was that the conviction under section 54A of the Calcutta Police Act was illegal, having regard to the fact that the only charge framed against the petitioner was one under section 380 of the Indian Penal Code, and the other ground was with regard to the legality of the conviction upon the facts of the case. The learned Judges discharged the Rule, and the petitioner proposes to apply to the Judicial Committee of the Privy Council for leave to appeal to His Majesty in Council, on the ground that substantial and grave injustice has been done to her: and, it has been stated in the petition that the petitioner has already sent

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* Act IV of 1886 (B. C.), section 54 A, runs as follows: (1) Whoever has in his possession, or conveys in any manner, or offers for sale or pawn, anything which there is reason to believe to have been stolen or fraudulently obtained shall, if he fails to account for such possession or act to the satisfaction of the Magistrate, be liable to fine which may extend to one hundred rupees, or to imprisonment, with or without hard labour, for a term which may extend to three months.

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instructions to a firm of Solicitors in London to file a petition of appeal to His Majesty in Council forthwith.

The petitioner has now applied to this Court to grant her bail until that petition is disposed of, and the learned counsel has argued that this Court has jurisdiction to grant bail, and that having regard to the facts of the case bail ought to be granted in the discretion of the Court.

On the other hand, the learned Advocate-General, on behalf of the Crown, argued that this Court, under the circumstances of this case, has no jurisdiction, but he stated that if the Court had jurisdiction to grant bail the Crown would not oppose bail being granted, having regard to the fact that he considered the point, which was involved, an important one.

The first point, therefore, to be considered is whether this Court has jurisdiction.

The learned counsel for the petitioner has based his argument upon section 498 of the Code of Criminal Procedure which runs as follows: "The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive: and 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, or that the bail required by a police officer or Magistrate be reduced": and, he called in aid of his argument the case of *Queen Empress v. Subrahmania Ayyar* (1). In my judgment that case is no authority for the learned counsel's argument. That was a case where the petitioner had been tried at the Criminal Sessions in the Madras High Court and found guilty on certain counts in the indictment. A certificate had then been granted by

the Advocate-General under clause 26 of the Letters Patent for the Madras High Court. Thereupon the High Court reviewed the case, and determined that the conviction, in respect of certain of the counts, ought not to be upheld, but the majority of the Judges of the High Court upheld the conviction on one of the counts, and imposed a sentence of imprisonment and fine. The petitioner then obtained special leave from Her Majesty in Council to appeal against the sentence; and, having obtained leave to appeal, the petitioner applied for bail to the Judicial Committee, and the Judicial Committee expressed an opinion that the matter should be decided by the Madras High Court. Thereupon, the petitioner applied to the Madras High Court for bail; the learned Advocate, who appeared for the petitioner, relied upon section 498 of the Criminal Procedure Code, and the Crown Prosecutor in opposing the application argued that section 498 could not be construed without regard to the other sections of the Code, the principle underlying which was that only the Court to which an appeal was preferred could admit to bail. The judgment of the High Court was short. They dealt with the question of jurisdiction in one sentence, viz., "In our judgment "this Court has jurisdiction to make an order, in this "case, releasing the accused on bail, pending the "decision of the Privy Council." They then proceeded to discuss the question whether the petitioner ought to be admitted to bail. It seems to me that that case is no authority in favour of the petitioner in this case for two reasons: In the first place, the learned Judges of the Madras High Court did not state in their judgment whether it was by reason of the provisions of the Criminal Procedure Code or by reason of the provisions of the Letters Patent that they had jurisdiction. It may be, as was pointed out

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in the case of *Dewan Chand v. King-Emperor* (1), that the decision may have been based upon the Charter.

Secondly, it is material to note that in a case, such as that with which the Madras High Court was concerned, this Court would have power to grant leave to appeal to the Privy Council if it thought that the case was a fit one for such appeal. I refer to clause 41 of the Letters Patent of this Court which provides, "We do further ordain, that from any judgment, order, or sentence of the said High Court of Judicature at Fort William in Bengal, made in the exercise of original criminal jurisdiction, or in any criminal case, where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us Our heirs or successors, in Council: provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf." In such a case it may be that this Court has jurisdiction to grant bail, especially when the High Court has declared the case to be a fit one for appeal, or when the Privy Council has granted special leave, as in the Madras case. Nothing I say to-day must be taken as throwing any doubt upon the jurisdiction of this Court to grant bail in a case which comes within clause 41 of the Letters Patent. But the present case does not come within clause 41 of the Letters Patent. The petitioner in this case has no right to appeal to the

Privy Council. In this case, this Court has no power to give leave to appeal to the Privy Council, and therein this case differs entirely from the case which the Madras High Court was considering in *Queen-Empress v. Subrahmania Ayyar* (1). Consequently, in this case the petitioner must rely upon section 498 of the Criminal Procedure Code and upon that section only, and the question is whether this Court, under the circumstances of this case, has jurisdiction to grant bail.

In my judgment it has not. On the true construction of the provisions of section 498 it seems to me that this Court having dealt with the application of the petitioner by way of revision, *i.e.*, having granted a Rule and having heard the Rule and discharged it, this Court is *functus officio*, and it has no jurisdiction, under the provisions of section 498, to grant bail in order that a petition for leave to appeal may be made to His Majesty in Council or until the petition for leave to appeal to His Majesty in Council is disposed of.

The result is that, in my judgment, this petition must be refused on the ground that this Court has no jurisdiction to deal with it.

I express no opinion upon the facts of the case, nor do I express any opinion upon the questions of law which were argued on the hearing of the Rule.

The learned counsel for the petitioner invited this Court to express an opinion upon the merits of the application, in order that our opinion might be placed before the Governor-General in Council or the Local Government. In my judgment, we ought not to express any opinion in that respect. By section 401(1) of the Criminal Procedure Code it is provided that "when any person has been sentenced to punishment

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If the construction of section 498 which I adopt is correct I fail to understand on what principle it can be suggested that this Court, in the absence of any statutory power, is competent, or has an inherent jurisdiction, to liberate the applicant on bail. The learned counsel has produced no authority which in my opinion would justify us in concluding that such a jurisdiction exists.

If any indulgence is to be sought for, it is open to the applicant, if so advised, to move the Local Government to suspend the sentence under section 401 of the Criminal Procedure Code.

Without expressing any opinion on the merits of the case, I agree with my Lord that the application must be refused.

E. H. M.

Application refused.

CRIMINAL REVISION.

Before Newbould and Sukrawarthy JJ

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GANESH SAHU

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Dishonest Retention—Property stolen from different persons—No evidence of receipt at different times—Conviction in respect of certain articles seized by the police on a particular date, whether a bar to a trial in respect of other articles seized on the same occasion—Criminal Procedure Code (Act V of 1898), s. 403—Penal Code (Act XLV of 1860), s. 411.

When there is no evidence that articles stolen from several persons were received on different dates, the dishonest receipt of the same is a single offence under s. 411 of the Penal Code, and a person tried on a charge thereunder, in respect of the retention of some of the articles on a certain

* Criminal Revision No. 1128 of 1922 against the order of D. K. Mitter, Additional District Magistrate of the 24-Parganas, dated Nov. 28, 1922.