

CRIMINAL REVISION.

Before *S. K. Ghose and Henderson J.J.*

SULTAN AHMAD

v.

EMPEROR.*

1934
Dec. 3.

Approver—Detention of the approver pending appeal, if legal—Code of Criminal Procedure (Act V of 1898), s. 337 (3).

The detention of an approver under section 337 (3) of the Code of Criminal Procedure after conviction of the co-accused is illegal.

Emperor v. Kothia (1) and *Emperor v. Abani Bhusan Chuckerbutty* (2) referred to.

CRIMINAL REVISION.

The material facts and arguments appear from the judgment.

Debendranarayan Bhattacharjya for the petitioner.

Lalitmohan Sanyal for the Crown.

GHOSE J. The petitioner in this Rule is one Sultan Ahmad, who was an approver at the trial of a case under section 395 of the Indian Penal Code in the court of the Sessions Judge at Chittagong. The case ended in conviction and the co-accused of the petitioner were sentenced to various terms of imprisonment. On the 18th July 1934, the Public Prosecutor prayed that the approver might be released immediately. Thereupon the learned Sessions Judge recorded the following order on the 17th August, 1934:—

Read the petition of the Public Prosecutor praying that the approver may be released immediately. This cannot be allowed until the period fixed by the law of limitation expires or until appeals (if any) to the Hon'ble Court are heard and determined, since the Hon'ble Court has every authority and power to order a re-trial of the case if that is found to be necessary and in that event the approver's evidence would again be taken.

*Criminal Miscellaneous Case, No. 145 of 1934.

(1) (1906) I. L. R. 30 Bom. 611. (2) (1910) I. L. R. 37 Cal. 845.

Against that order, the petitioner has moved this Court. It is contended on his behalf that the further detention of the petitioner in jail is contrary to law. The learned advocate for the Crown has contended that the order of the learned judge quoted above is not contrary to the provisions of section 337 of the Code of Criminal Procedure. Sub-section (3) of that section provides:—

Such person, "unless he is already on bail," shall be detained in custody until the termination of the trial.

It is contended that the word "trial" here includes the proceedings, if any, in the court of appeal, on the ground that the appeal is merely the continuation of the trial. It is pointed out that in the old Code of 1898 the words of the corresponding sub-section (3) were as follows:—

Such person, "if not on bail," shall be detained in custody until the termination of the trial by the Court of Sessions or the High Court as the case may be.

This argument overlooks the wording of sub-section (1), which shows that the High Court or Court of Sessions is being considered in this section as the court where an offence is being tried and there is no question of proceedings in appeal. On the other hand, sub-section (3) clearly provides that, so far as the trial court is concerned, the detention in custody of the approver must end with the trial. The expression "unless he is already on bail" is also governed by the words "the termination of the trial". This view has been taken in the case of *Emperor v. Kothia* (1) and this has been followed in the case of *Emperor v. Abani Bhushan Chuckerbutty* (2). Mr. Bhattacharjya, appearing for the petitioner has pointed out that the expression "termination of the trial" means the same thing as the expression "conclusion of trial", which occurs as a sub-heading over section 297 of the Code of Criminal Procedure and which shows that in a jury trial the termination

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must either be according to section 306 or section 307 of the Code. In the present case the trial in the court of sessions terminated according to section 306 and thereafter the learned judge had no authority to order the detention of the petitioner in anticipation of any possible orders from the court of appeal.

The Rule, therefore, must be made absolute and the petitioner must be released from custody and discharged from the bail bond.

Let the record be detained for the hearing of the appeals already preferred by some of the convicted persons.

HENDERSON J. I agree. The learned Sessions Judge ordered the detention of the petitioner under the provisions of section 337, sub-section (3) of the Code till the period of limitation for filing an appeal has expired. It is quite clear that this provides no criterion for deciding when the trial terminates. There may never be an appeal. In such a case it would be absurd to suggest that the trial must be held to have continued until the period of limitation has expired.

Rule absolute.

A.C.R.C.