

the learned District Magistrate and he has got behind these rulings by saying that this is really a second conviction. I have searched the record all over, and I find that this statement of the Magistrate is absolutely incorrect. I, therefore, set aside that part of the order of the Magistrate which imposes a daily fine. The application is otherwise dismissed.

1926

MUSAI:
r.
NOTIFIED
AREA OF
MAHOBA.

MISCELLANEOUS CRIMINAL.

Before Mr. Justice Sulaiman and Mr. Justice Banerji.

EMPEROR *v.* RAM SARUP.*

Criminal Procedure Code, section 561A—Bail—Inherent powers of High Court in the case of an applicant whose appeal is pending in the Privy Council.

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September,
1.

A High Court has inherent jurisdiction to stay the execution of its own order when the ends of justice require it. It can, e.g., admit to bail a convicted person whose appeal has been admitted by the Privy Council.

King-Emperor v. Diwan Chand (1) and Queen-Empress v. Subrahmania Ayyar (2), referred to.

THE facts of this case are fully stated in the judgement of the Court.

Pandit *Uma Shankar Bajpai*, for the applicant.

The Government Advocate (*Mr. G. W. Dillon*), for the Crown.

SULAIMAN and BANERJI, JJ.:—Criminal miscellaneous applications Nos. 185 and 186 are connected and are applications for bail together with a prayer for stay of proceedings. It appears that the two applicants appeared before Election Commissioners and gave evidence. The Commissioners came to the conclusion that they were respectively guilty of forgery and perjury, and started proceedings under section 476 of the Code of Criminal Procedure. The High Court in revision held that

* Criminal Miscellaneous No. 185 of 1926.

(1) (1908) P. R., No. 15.

(2) (1900) I.L.R., 24 Mad., 161.

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that court, not being a civil, revenue or criminal court, had no jurisdiction to proceed under section 476, but that there was nothing to prevent the Commissioners from filing a complaint. Their report to the criminal court was treated as a complaint. The applicants were accordingly prosecuted, but acquitted by the trying Magistrate. On appeal by the Government to this Court, the Bench hearing the appeal came to the conclusion that the acquittal was improper and that the accused persons were guilty. The appeal was accordingly allowed and they were convicted and sentenced to nine months' rigorous imprisonment each. There was a further order directing Ram Sarup, accused, respondent, to pay the costs of the Government.

Before surrendering and before any appeal to their Lordships of the Privy Council was actually filed, the accused applied to this Court for bail on the ground that they had sent instructions to a Solicitor in England for lodging a petition for special leave. The High Court naturally refused to entertain the application so long as the accused had not surrendered. After information had been received that they had surrendered, the Bench dismissed the application, but "without prejudice to the right to bring another application in the event of special leave being granted by the Privy Council."

It now appears that a petition for special leave has been lodged, but owing to the vacation it has not yet come up before their Lordships and is not likely to be considered before October next. The accused have accordingly applied afresh for being released on bail.

The first point which has been raised before us is as to whether we have jurisdiction to grant bail in a

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case which has been disposed of by this Court and in which an appeal may be, or is, pending in the Privy Council. The Punjab Chief Court in the case of *King-Emperor v. Diwan Chand* (1) came to the conclusion that it had no power under section 478 of the Code to release a person on bail pending an appeal to the Privy Council. Their attention was drawn to the case of *Queen-Empress v. Subrahmaniam Ayyar* (2), but they distinguished that case on the supposition that the decision might have been based under the High Court's charter. The last-mentioned case, however, shows that when the accused applied for bail to the Judicial Committee their Lordships expressed the opinion that the matter should be decided by the Madras High Court. The Madras High Court clearly came to the conclusion that it had jurisdiction to make an order in that case, releasing the accused on bail pending the decision of the Privy Council. That case was decided when the old Code was in force and there was no express section under the Code as to inherent jurisdiction. We are of opinion that a High Court has certainly inherent jurisdiction to stay the execution of its own order when the ends of justice require it. In cases where an appeal has been admitted by their Lordships of the Privy Council and there is a fear that the sentence would expire before the appeal can be disposed of, it would be within the power of this Court to grant bail. Such inherent power must be deemed to exist in the High Court. In section 561A of the Code of Criminal Procedure, it is expressly provided that nothing in that Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent the abuse of the process of any Court or otherwise to secure the ends

(1) (1908) P.R., No. 15.

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of justice. We are, therefore, clearly of opinion that we have jurisdiction to entertain this application and to grant bail.

The question still remains whether it is proper to do so. We have already pointed out that the Bench when dismissing the former application remarked that if it should happen that special leave to appeal is given by the Privy Council, it would be open to the applicants to apply to this Court for bail. Nothing has happened since that date which has substantially altered the position. Even at that stage the High Court, in view of the prospective appeal, had jurisdiction to grant bail, but refused to do so, remarking that there would be a right to apply after the special leave had been granted. All that has happened is that a petition for special leave has been lodged, but no special leave has yet been granted.

We should like to add that the applicants have not filed before us any copy of their petition of appeal or of any affidavit that they might have sent, which would show to us that this case comes within the rule laid down by Viscount HALDANE in the case of *King-Emperor v. Dal Singh* (1). We, however, think that the realization of the costs directed to be paid by the accused Ram Sarup should be stayed, as no harm can accrue by the stay of those proceedings until October next. We accordingly decline to grant the application for bail at this stage, leaving it open to the applicants to apply again if the special leave is granted by the Privy Council; but we direct that the proceedings relating to the realization of the costs be stayed till the disposal of the petition for special leave.