

**MISCELLANEOUS CRIMINAL.***Before Din Mohammad J.*

THE CROWN—Petitioner

*versus*

JIWAN LAL GAUBA—Respondent.

1936

May 6

**Criminal Miscellaneous No. 108 of 1936.**

*Criminal Procedure Code, Act V of 1898, section 497 — Bail — granted in case of a non-bailable offence — when liable to be cancelled.*

*Held*, that the granting of bail in a non-bailable offence is a concession allowed to an accused person and it is presupposed that this privilege is not to be abused in any manner. And where the accused person has come into contact with the prosecution witnesses and exerted undue influence on them with a view to destroy the evidence or minimise its effect against him, he disentitles himself to the privilege so granted, and his bail must be cancelled. This is more specially the case when he happens to occupy a dominating position in relation to the witnesses concerned and can injure or benefit them by his own fiat.

*Petition under section 497, Criminal Procedure Code, praying that Jivan Lal Gauba's bail be cancelled and he be remanded to judicial custody.*

*Diwan* RAM LAL, Government Advocate, for Petitioner.

M. SLEEM, for Respondent.

DIN MOHAMMAD J.—Jiwan Lal Gauba is involved in a case under section 409, Indian Penal Code. The charge against him is that in the capacity of a Director of the Bharat Insurance Company he committed criminal breach of trust in respect of Rs.19,000 odd by issuing two cheques in favour of the People's Bank with a view to purchase two decrees outstanding against his father *Lala* Harkishan Lal who has lately been adjudged an insolvent. Jiwan Lal was

DIN  
MOHAMMAD J.

1936

THE CROWN

v.  
JIWAN LAL  
GAUBA.DIN  
MUHAMMAD J.

arrested on the 30th of April, 1936, but was released on bail by the District Magistrate on the same day.

On the 4th May the present application was made by the Government Advocate under section 497, sub-section (5) of the Code of Criminal Procedure, for cancellation of Jiwan Lal's bail on the ground that he had abused his liberty and made an attempt to tamper with the prosecution evidence. This application was supported by three affidavits sworn by Khawaja Nazir Ahmad, Bar.-at-Law, Mr. Swami and Muhammad Din. Khawaja Nazir Ahmad is the receiver of the estate of Lala Harkishan Lal and as such has a substantial interest in the affairs of the Bharat Insurance Company. The other two deponents are the employees of the Bharat Insurance Company.

Notice was issued to Jiwan Lal Gauba to show cause why he should not be arrested and committed to custody. He appeared with his counsel Mr. Sleem and contended that the allegations made against him both in the application and the affidavits were false. At his own request he was examined on solemn affirmation and in the course of his examination he admitted that he had made a request to the Manager and the Assistant Manager of the Bharat Insurance Company to let him know the gist of the statements made by them to the Police and also commissioned them to procure similar statements from the other employees of the Company. He further produced all those statements which had been supplied to him in compliance with his wishes.

The question is whether the material brought on the record justifies this Court in taking action under section 497, sub-section (5), Criminal Procedure Code.

From the statement made by Jiwan Lal it is established that he brought himself into contact with some of the prosecution witnesses in the case against him. To some he made a direct request: the others he approached through the General Manager and the Assistant Manager. It is also proved that he wanted to secure this information either in their own handwriting or over their signatures. It is clear that he exercises plenary powers in relation to his employees. He has admitted that in certain cases he imposed fines on verbal orders and directed their payment to charity rather than to the coffers of the Company. He has also stated that in the case of one employee who refused to address him as Director-in-charge—a designation which he says he has coined himself—he suspended him. Now if a man of his position and influence has recourse to this novel procedure of extracting information from his own employees, either in their own handwriting or over their signatures, however innocent the matter may appear to him to be, it cannot but be interpreted otherwise by the employees themselves who may be led to believe that their safety lies in his safety and that if they wanted to retain their livelihood they should not do anything which may prejudice his case in any manner. This to my mind is nothing less than an indirect attempt to intimidate or terrorise the prosecution witnesses.

The granting of bail in a non-bailable offence is a concession allowed to an accused person and it is presupposed that this privilege is not to be abused in any manner and that the accused person has not to come into contact with the prosecution witnesses or to exert any undue influence on them so as to destroy the evidence or to minimise its effect against him. It is

1936

THE CROWN

P.

JIWAN LAL  
GAUBA.

DIN

MOHAMMAD J

1936

THE CROWN

v.

JIWAN LAL  
GAUBA.

DIN

MOHAMMAD J.

a sort of trust reposed in him by Court, and if it is found that he has betrayed this trust in any manner or that he has misused the liberty thus granted to him by Court, he disentitles himself to the privilege so granted. This is more specially so, when he happens to occupy a dominating position in relation to the witnesses concerned and can injure or benefit them by his own fiat. It is no doubt true, as contended by Mr. Sleem, that the object of section 497 (5) is not punitive. but it is equally true that the interests of the administration of justice demand that nobody should be allowed to impede the course of justice or hamper its administration in any manner.

I hold, therefore, that the application made by the Government Advocate is not without foundation and that Jiwan Lal in thus making an attempt to approach the prosecution witnesses and require them to supply him with the gist of the statements made by them to the Police abused the opportunity granted to him by the Court and has thus disentitled himself to enjoy the concession any longer.

Before I close I may remark, that the Government Advocate has also argued that as the offence under section 409, I. P. C., is punishable with transportation for life, it was not competent to the District Magistrate to enlarge the accused on bail, inasmuch as there appeared reasonable grounds for believing that the offence had been committed by him. I, however, intentionally refrain from making any observations on that point, as I apprehend that any remark made by me one way or the other may prejudice the trial of the case.

Under sub-section (5) of section 497, Criminal Procedure Code, I order that Jiwan Lal Gauba be

immediately arrested and committed to custody. He will be treated as an undertrial prisoner of class (1).

A. N. C.

*Petition accepted.*

1936

THE CROWN  
v.  
JIWAN LAL  
GAUBA.

**REVISIONAL CIVIL.**

*Before Bhide J.*

NUR DIN (PLAINTIFF) Petitioner

*versus*

AHMAN AND DEPUTY COMMISSIONER,

GUJRAT (DEFENDANTS) Respondents.

1936

June 25.

**Civil Revision No. 158 of 1936.**

*Punjab Alienation of Land Act, XIII of 1900, section 21-A : District Judge — whether can set aside a consent-decree of a lower Court — as being in contravention of the Act — where no appeal lies to his Court — High Court — whether can act suo moto in such proceedings.*

*Held, that a District Judge has no jurisdiction to set aside a consent-decree of a Civil Court (from which no appeal lay to his Court), as being in contravention of the Punjab Alienation of Land Act; a petition for revision should have been made to the High Court.*

*Held also, that the High Court can only pass such an order, on being moved by the Deputy Commissioner within two months of his coming to know of the order sought to be set aside.*

*Katara v. Arjan Singh (1), and Milkhi v. Bishan Das (2), relied upon.*

*Petition under section 44 of Act IX of 1919, Punjab Courts Act, for revision of the order of Mr. M. R. Kayani, District Judge, Gujranwala, dated 24th June, 1935, reversing that of Lala Sardari Lal, Subordinate Judge, 4th Class, Phalia, dated 28th January, 1925, and holding that the delivery of possession to Nur Din is against the provisions of the Punjab Land Alienation Act.*