

## APPELLATE CRIMINAL

*Before Sir John Beaumont, Chief Justice, and Mr. Justice Sen.*

1939  
August 25

EMPEROR v. RAUTMAL KANIRAM MARWADI (ORIGINAL ACCUSED).\*

*Criminal Procedure Code (Act V of 1898), s. 497—Order granting bail—Case transferred—Accused tampering with prosecution evidence—Bail cancelled—Court's power to cancel bail—Inherent power—Ends of justice.*

Every Judge or Magistrate trying a criminal case has inherent power to see that the trial is properly conducted and the ends of justice are not defeated, and if facts are brought to its attention, which suggest that unless a person who is being tried is placed under arrest the ends of justice will be defeated the Court has inherent power to direct his arrest.

A City Magistrate, First Class, admitted to bail a person accused of certain offences and thereafter the case was transferred to the Court of the Honorary Magistrate, First Class. As the accused was found to be tampering with prosecution evidence, the latter made an order directing that the accused be arrested. A question having arisen whether the order was legal:—

*Held*, that the learned Magistrate was entitled to direct that the accused be arrested notwithstanding the order for his release on bail.

CRIMINAL REFERENCE made by N. R. Gundil, Sessions Judge, Satara.

Cancellation of bail.

Rautmal Kaniram Marwadi (accused) was charged with offences of house-breaking and theft under ss. 457 and 380 of the Indian Penal Code.

The accused was placed before the City Magistrate, First Class, Satara, for trial and was there released on bail on an application made by him under s. 497 (I) of the Code of Criminal Procedure on April 11, 1939.

Thereafter the case was transferred to the Honorary Magistrate, First Class, Satara.

On June 22, 1939, the police prosecutor made an application to the learned Honorary Magistrate, requesting that the bail of the accused be cancelled and that he be arrested and committed to custody, it being alleged that

\* Criminal Reference No. 82 of 1939.

the accused had been found tampering with a prosecution witness.

The learned Magistrate directed that the bail bond be cancelled and the accused be taken into Magisterial custody. His reasons were as follows :—

“ Looking into the papers recorded exhibit Nos. 1 to 8 herewith it is quite clear and I am satisfied that the accused took most undesirable and objectionable course to visit the house of Bartake at odd times and attempted to tamper with the most important evidence in the case. There is absolutely no reason to doubt the veracity of the contents in the papers recorded. Further inquiry by the Court is unnecessary. The accused has misused the liberty.”

Against this order the accused applied to the Sessions Court and the learned Sessions Judge referred the case to the High Court recommending that the order in question be set aside. In the meanwhile he released the accused on bail. In making the reference the learned Sessions Judge observed, *inter alia*, as follows :—

“ 4. Apart from the merits of the case, I am of opinion that the order of the Honorary Magistrate directing the re-arrest of the petitioner is without jurisdiction. Obviously, the Police Prosecutor's application for petitioner's re-arrest fell under s. 497 (5) of the Code of Criminal Procedure. That sub-section defines the powers of different Criminal Courts in the matter of re-arrest of a person, and it is perfectly clear that a Court, other than a High Court or a Court of Session, has no power to cause an accused to be re-arrested, unless he had been previously released by itself. In the present case, the petitioner was released on bail by an altogether different Court, viz. the Court of the City Magistrate. The two Courts can in no sense be regarded as identical. I think, therefore, that the Honorary Magistrate, First Class, Satara, had no jurisdiction to entertain an application under s. 497 (5) and equally no power to cause the petitioner to be re-arrested.

5. The illegality of the order is candidly conceded by the learned Public Prosecutor. But he argues that this Court can consider the question of petitioner's bail on the merits, independently of the Honorary Magistrate's order. I fail to see how that can be done. It will amount to considering the Police Prosecutor's application which itself was not in order, being made to a Court having no jurisdiction to entertain it. There is nothing to prevent the Public Prosecutor from making a suitable application to this Court under s. 497 (5) of the Code when it may be considered on its merits.”

The reference was heard.

K. N. Dharap, for the accused.

R. A. Jahagirdar, Government Pleader, for the Crown.

1939

EMPEROR  
v.  
RAUTMAL  
KANIRAM

BEAUMONT C. J. This is a reference made by the Sessions Judge of Satara, in which he asks us to set aside an order made by the Honorary First Class Magistrate, Satara, cancelling the bail bond of the accused.

The facts are that the accused was charged under ss. 457 and 380 of the Indian Penal Code, and he was brought before the Court of the First Class City Magistrate, Satara, and that learned Magistrate released him on bail on his own recognizance and the bond of two sureties, the conditions of the bond being that the accused should attend at the Court of the City Magistrate, First Class, on every day of the preliminary inquiry into the offence charged against him, and should the case be sent for trial to the Sessions Court or to any other Court, he should appear before that Court. The case was then transferred from the Court of the City Magistrate to that of the Honorary Magistrate, which I will assume is a different Court. In the course of the trial by the Honorary Magistrate the prosecution applied to cancel the bail bond on the ground that the accused had been found tampering with witnesses, and the learned Magistrate recorded a judgment in which he says that the accused had been actually caught red-handed tampering with one of the principal prosecution witnesses, and accordingly the learned Magistrate cancelled the bail bond, and directed the accused to be taken into Magisterial custody. An application in revision was then made to the Sessions Judge, and the learned Sessions Judge considered that the Honorary Magistrate had no power to cancel the bail bond and he referred the case to this Court for action. His view is that the case does not fall within s. 497 (5) of the Criminal Procedure Code, which provides that a High Court or Court of Session and in the case of a person released by itself, any other Court may cause any person who has been released under that section to be arrested and may commit him to custody. The learned

Sessions Judge says that the power can only be exercised by the High Court or Court of Session or by the Court which released the accused on bail, which latter Court, in this case, was the Court of the First Class City Magistrate and not the Court of the First Class Honorary Magistrate.

1939  
 ———  
 EMPEROR  
 v.  
 RAUTMAL  
 KANTRAM  
 ———  
 Beaumont C. J.

I am unable to agree with the view of the learned Sessions Judge. In my opinion every Judge or Magistrate trying a criminal case has inherent power to see that the trial is properly conducted and that the ends of justice are not defeated, and if facts are brought to its attention, which suggest that unless the person who is being tried is placed under arrest the ends of justice will be defeated, the Court has inherent power to direct his arrest. In the present case the learned Magistrate was satisfied that the accused person had been tampering with a prosecution witness, and in order to prevent a repetition of the offence I think that the learned Magistrate was entitled to direct that the accused be arrested notwithstanding the order for his release on bail. It is no answer to say, as the learned Sessions Judge does, that an application could be made to the Sessions Court or the High Court, because those Courts might not be available in an emergency to make an immediate order.

In my judgment therefore the order of the learned Magistrate was right, and the order made by the learned Sessions Judge releasing the accused on bail was wrong. We therefore set aside the order of the learned Sessions Judge, and restore the order of the Honorary First Class Magistrate.

*Order set aside.*

Y. V. D.