CRIMINAL REFERENCE.

Before Mr. Justice Stephen and Mr. Justice Carnduff.

EMPEROR

v.

LALIT KUMAR CHATTERJEE.*

1910

March 11.

Bail - Power of Sessions Judge to grant bail in cases to which special procedure has been applied—Criminal Procedure Code (Act V of 1898) ss. 497, 498—Criminal Law Amendment Act (XIV of 1908) ss. 12 & 14 (1).

The power of the Sessions Judge to grant bail under s. 498 of the Criminal Procedure Code is, in cases to which the provisions of Part I of Act XIV of 1908 have been applied by section 2 thereof, abrogated by section 14 of that Act.

On the 31st January 1910 a first information report and a petition by the Superintendent of Police of Howrah were submitted against a number of persons, on a charge under section 400 of the Penal Code, to Mr. C. H. Reid, the Joint Magistrate of Howrah, who thereupon directed the issue of warrants against some of them. The petitioners were arrested on the same day and remanded to jail till the 14th February. As Mr. Reid was about to leave on transfer, the District Magistrate, Mr. H. T. S. Forrest, withdrew the case to his own Court on the 3rd February. On the same date an order was passed by the Lieutenant-Governor, under section 2 of Act XIV of 1908, applying the provisions of Part I to the case, but the order was not received by the District Magistrate till the 5th, and after he had already refused an application for bail under section 497 of the Criminal Procedure Code made on behalf of Lalit Mohan Chatterjee, Jotindra Nath Mookerjee and Nibaran Chunder Mozumdar. The three petitioners then applied to the Sessions Judge of Hooghly under section 498 of the Code, and he called for the records of the case and fixed the 11th for hearing. The District Magistrate, by his letter dated the 10th, refused to send the records, on the ground that section 498

*Criminal Reference Miscellaneous, No. 42A of 1910, by W. N. Delevingne, Sessions Judge of Hooghly, dated March 2, 1910.

1910

EMPEROR v. LALIT KUMAR CHATTERJEE.

did not apply to an inquiry under section 3 (1) of Act XIV of 1908. The Sessions Judge replied, on the 12th, pointing out to him that he had taken an erroneous view of the law, but the latter persisted in refusing to forward the records and again denied the jurisdiction of the Judge in the matter. In the meantime an application for bail, on behalf of Lalit Kumar Chatterjee, was made to and refused by the Magistrate. The applications of the petitioners for bail were taken up by the Judge on the 22nd instant, and after hearing the Advocate General for the Crown and the applicants on the question of jurisdiction, he held that he had power under the Code to release the accused on bail, but, as he had no materials before him to enable him to decide on the merits, he submitted the case on the 2nd March to the High Court, soliciting its order as to whether the District Magistrate was warranted in refusing to send the records to his Court.

The Advocate-General (The Hon'ble Mr Kenrick, K.C.,) and *The Deputy Legal Remembrancer (Mr. Orr)*, for the Crown. The object of Act XIV of 1908, as the preamble shows, is to provide for a more speedy trial of certain offences, and a special jurisdiction is created by the Act and limited to the inquiring Magistrate and the three judges of the Special Bench. The power which the Sessions Judge would otherwise possess of trying the case is thus taken away. A commitment in ordinary cases would lie to the Sessions Judge, and hence power is given him of releasing on bail under section 498 of the Code, but commitments under the Act go to the Special Bench, and the elimination of the Judge as a trying Court indicates a deprivation also of his normal power of granting bail. This view is also consistent with the object of the Act. His powers under section 435 of the Code too are in such cases abrogated. Under section 4 of the former the accused need not be present, and cannot be represented by pleader, during the inquiry, and there is no right of access to the Court. If the Judge has jurisdiction under the Code to ascertain whether sufficient grounds of further inquiry exist, and if so to release on bail, section 4

would be rendered futile and nugatory. Section 498 of the Code is inconsistent with the special procedure under the Act, and does not, therefore, having regard to section 14 (1) of the latter, apply to an inquiry under section 3.

Mr. A. Chaudhuri (with him *Mr. J. N. Roy* and *Babu Narendra Kumar Bose*), for the petitioner. Section 498 of the Code confers the power of granting bail on both the High Court and the Sessions Judge in the same terms, and, therefore, as the jurisdiction of the former is not affected by the new Act, neither is that of the latter. The jurisdiction of a Court cannot be taken away by implication. Section 14 of the Act does not take it away in express terms. Section 12 of the Act qualifies only section 497 and does not touch section 498 of the Code. The power of the Judge under section 498 is not inconsistent with the special procedure under the Act requiring commitment to, and trial by, the Special Bench. The exercise of this power is independent of the power of holding a trial, as in the case of European British subjects charged with offences for which there must be a commitment to the High Court. It exists also under the terms of the section irrespective of appellate jurisdiction. Until the Magistrate is satisfied that the evidence is sufficient to justify a commitment to the Special Bench he proceeds under the ordinary law, because, if the evidence is not sufficient to put the accused on trial for a scheduled offence, qut some other offence is made out, he is required by section 5 to "proceed accordingly." The subsequent proceeding, which is under the Code, is a continuation of the inquiry under the Act. Under section 435 of the Code the Sessions Judge can call for the records, and the Magistrate has no power to refuse to send them.

STEPHEN AND CARNDUFF, JJ. This matter has been referred to us by the Sessions Judge of Hooghly in the following circumstances. Four persons were arrested in February last on a charge of having committed an offence under section 400 of the Indian Penal Code by belonging to a gang of dacoits. Part I of the Criminal Law Amendment Act, 1908, has been

1910

EMPEROR v. LALIT KUMAR CHATTERJEE.

applied to proceedings in respect of this offence by the Local Government, at what time is not stated, but no doubt on the 5th February. On that day one of the petitioners applied to the District Magistrate of Howrah, who had taken cognizance of the offence, for bail, which was refused. On the 8th February he and two others of the accused applied, no doubt in pursuance of the provisions of section 498 of the Code of Criminal Procedure, to be admitted to bail by the Sessions Judge, who directed that the papers of the case should be called for and fixed a day for hearing the applications. Before the date so fixed the District Magistrate declined to forward the record, on the ground that the provisions of the Code of Criminal Procedure did not apply to the inquiry which he was conducting. The Sessions Judge adjourned the hearing of the applications to the 22nd February, when the Advocate General appeared before him and argued that he had no jurisdiction in respect of proceedings under Part I of the Act. On the 1st March the Sessions Judge held that he had such jurisdiction; but, as he had no materials before him on which to make an order, he has submitted the applications to us for orders.

On the 24th February a fourth accused applied to the Sessions Judge to be admitted to bail, and though the District Magistrate has not refused, not having been called on, to forward the papers in his case, and though no argument has been heard on it, his application stands on the same footing as the others, and we need not distinguish between the cases of any of the four petitioners.

No specific question is referred to us by the Sessions Judge, but we have heard counsel on the reference, and there is no doubt that the question we have to decide is whether the Sessions Judge was correct in holding that he had jurisdiction to grant bail in these cases. If he has, it is founded of course on section 498 of the Criminal Procedure Code, the material part of which provides that "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." The only restriction which it can be suggested should be placed on the

very wide power conferred on the Sessions Judge by this section is, for present purposes, that contained in section 14 (1) of the Criminal Law Amendment Act of 1908, which is as follows :—"The provisions of the Code of Criminal Procedure, 1898, shall not apply to proceedings taken under this Part, in so far as they are inconsistent with the special procedure prescribed in this Part."

The question thus is whether the power of the Sessions Judge to grant bail in cases to which the Act does not apply, is inconsistent with the procedure prescribed by Part I of the Act ; and we are of opinion that it is for the following reasons. The procedure prescribed by Part I of the Act is prescribed in sections 3 to 12, and an essential feature of it is that there shall be a commitment by the Magistrate directly to the High Court, and the power of the Sessions Judge to try the case, which he would have were it not for the Act, is taken away. This is consistent with the preamble of the Act, which recites that it is expedient to provide for the more speedy trial of certain offences, as the effect of the Magistrate committing to the High Court is to eliminate a trial by the Sessions Judge, and to provide that the accused should be tried at once, and finally, by the tribunal to which he would have a right of appeal if the ordinary procedure were followed, it being assumed that he would exercise this right if he were convicted by the Sessions Judge of one of the offences to which the Act applies. The elimination of the Sessions Judge as a trying Court seems to us to indicate that he is not to exercise his normal power of granting bail. The Act provides what is nearly a complete course of procedure. It does not give the Magistrate power to summon witnesses, which he must, therefore, do under the Criminal Procedure Code ; but it casts on him a duty to record evidence, to discharge the prisoner in some circumstances, and to commit him to the High Court in others, and it does this as nearly as may be in the terms of the Code. This shows that the prescribed procedure is exclusive as far as it goes, and lends force to the argument that, if the jurisdiction of the Sessions Judge is eliminated for one purpose, it is eliminated for another. The taking away

1910

EMPEROR v. LALIT KUMAR CHATTERJEE.

of the normal power of the Sessions Judge to grant bail is also consistent with the speedy trial recited in the preamble. We have already held, in *Emperor* v. *Sourindra Mohan Chuckerbutty* (1), that the power of this Court to admit to bail is not affected by the Act, and the taking away of this power from the Sessions Judge does not, therefore, deprive the accused of any right that he is entitled to, since he retains his power of applying for bail to a superior, and what we must regard as a more capable, tribunal.

Against this view several arguments have been urged, which are entitled to our best consideration, though we cannot accede to them. As we have already said, we have held that this Court has power to admit to bail in such cases as the present, and the same words that confer this power on the High Court confer it also on the Sessions Judge. But there is this great difference between the two that the former is, and the latter is not, the trying Court. It is not, of course, the case that the power to grant bail under section 498 of the Code is confined to a trying Court ; for, if that were so, the powers of the Court of Sessions and of this Court under the section would be much narrower than they are. But, as we have pointed out in the other matter referred to, it can hardly be said that there is anything in the intervention of the High Court, by which cases under the Act are to be tried, that is inconsistent with the special procedure prescribed by it. Though, therefore, we feel the force of the argument addressed to us on the terms of section 498 of the Code, we cannot yield to it in view of the terms of section 14 (1) of the Act and the provisions that precede it.

Another argument that has been urged is that, until the Magistrate is satisfied that the evidence offered by the prosecution is sufficient to put the accused on his trial as provided in section 6, he is proceeding under the ordinary law, because his inquiry may result in it appearing to him that the accused should be tried or committed for trial under the provisions of the Code for some offence not in the Schedule to the Act, in

(1) (1910) I. L. R. 37 Calc. 412.

which case he must, under section 5 of the latter, "proceed accordingly," that is, try him or commit him for trial for that offence. This argument, however, proves too much; for its effect would be to nullify the provisions of sections 3 and 4, and we have no doubt that the proper reading of section 5 is merely to make it clear that a Magistrate who is proceeding under the Act may deal with an accused in the ordinary way, if he considers that an offence mentioned in the Schedule has not been made out and that another has. Whether a magisterial inquiry under the Act would justify a commitment under the Code, or whether another inquiry would be necessary for that purpose, we need not decide; but a second enquiry is at all events open to the Magistrate, and that fact deprives the argument of the accused on this point of any weight.

The result is that we must hold that the Sessions Judge had no jurisdiction to entertain the applications for bail that were made to him. We need hardly repeat, but may perhaps emphasize the fact, that they might properly have been made to us.

We regret to have to notice that, whatever the state of the law may be, the District Magistrate acted improperly in refusing to send the record to the Sessions Judge when requested to do so. The Judge was the superior judicial authority, and the question of his jurisdiction was for him in the first instance. He was entitled to ask for everything that he required in this case, and the District Magistrate had no right to refuse it; nor did he do so courteously.

Rule discharged.

E. H. M.