CRIMINAL REVISION.

Before Mr. Justice Stephen and Mr. Justice Carnduff.

1910
March 7.

EMPEROR
v.
SOURINDRA MOHAN CHUCKERBUTTY.*

Bail—High Court, jurisdiction of, to grant bail—Grounds of bail—Sufficient cause for further inquiry into guilt of accused—Undue delay—Taking cognizance—Application of special procedure to the case—Power of the Lieutenant-Governor—Criminal Procedure Code (Act V of 1898) ss. 190, 497, 498—Criminal Law Amendment Act (XIV of 1908) ss. 2, 12 & 14 (1).

The power of the High Court to grant bail "*in any case*" under s. 498 of the Criminal Procedure Code is not affected by Act XIV of 1908, but the Court ought, in the exercise of its discretion, to take into consideration the limitation imposed by s. 12 of the latter.

The High Court refused bail where it appeared from the record and the Magistrate's explanation that there was cause for further inquiry into the case against the petitioner, and that there had been till then no undue delay in the proceedings.

Where a police report of a dacoity was submitted to the Sub-Divisional Officer of Diamond Harbour on the 24th April 1909, the date of the dacoity, and the case was subsequently withdrawn by the District Magistrate to his own file, and on the 20th January 1910 an order was made by the Lieutenant-Governor in terms of s. 2 of Act XIV of 1908, applying the provisions of Part I to the case:—

Held, that the latter Magistrate had taken cognizance, and that the Lieutenant-Governor had power to make the order.

The petitioner is the son of Babu Mohini Mohan Chuckerbutty, a vakil of the High Court, residing at 31, Sitaram Ghose's Street in the town of Calcutta. The facts of the case appear to be that on the 24th April 1909 a dacoity took place at Nettra, and on the same day the police sent up a report of the occurrence to the Sub-divisional Officer of Diamond Harbour. On the 2nd September Lalit Mohan Chuckerbutty, one of the accused concerned, was arrested, and made a confession on the 18th October. The case was subsequently transferred by the District Magistrate of Alipore to his own file, and, on the 20th

*Criminal Miscellaneous No. 29 of 1910, against the order of F. R. Roe, Sessions Judge of Alipore, dated Feb. 17, 1910.

January 1910, an order under section 2 of Act XIV of 1908 was issued in the following terms :—

"Whereas the District Magistrate of the 24-Parganas has taken cognizance of offences under ss. 395 and 397, I. P. C., alleged to have been committed by the persons accused in the case of *Emperor* v. *Lalit Mohan Chuckerbutty* and others, known as the Nettra dacoity case, ...and whereas it appears to the Lieutenant-Governor of Bengal that ....the provisions of Part I of the Indian Criminal Law Amendment Act should be made to apply to the proceedings in respect of the said offences, now, therefore, the Lieutenant-Governor, with the sanction of the Governor-General in Council, hereby directs ..... that the provisions of the said Part shall apply to the said case.

By order of the Lieutenant-Governor of Bengal,

(Sd.) F. W. DUKE,

20th Jan. 1910. *Chief Secretary to the Government of Bengal.*"

On the same day the house of the petitioner's father was searched, but nothing incriminating found. By arrangement with the Commissioner of Police the petitioner surrendered on the 24th, and was arrested by the police and put up before the Joint Magistrate of Alipore, who remanded him to jail. An application for bail was then made on the 28th to the District Magistrate, who passed an order as follows :—"I know nothing about the accused. Let the record be put up to-morrow at my room." On the next day he refused bail stating "He was only arrested on the 24th January, and I, therefore, refuse bail." Another application made to him on the 5th February was also rejected on the ground that it was a case under special procedure, and that it was perfectly useless to ask for bail. The Sessions Judge was next unsuccessfully moved for bail under section 498 of the Criminal Procedure Code on the 17th. The petitioner then obtained a Rule from the High Court on the 23rd, calling upon the District Magistrate to show cause why bail should not be granted on the grounds that no order had been made applying Act XIV of 1908, and that there did not appear any sufficient cause for further inquiry into the guilt of the petitioner.

The Magistrate submitted the following explanation :—

"This accused has so far been in custody for one month. The police inquiry is not being conducted under my orders, but the record shows that the accused has made a full confession. It is also within my knowledge that other evidence of a similar nature is in the possession of the police. There are 17 accused

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under arrest, and I do not think the time has yet come when I would insist on the police placing before me the evidence which implicates each of them. I further beg to inform you that Sourindra Mohan Chuckerbutty is in custody on a warrant issued under s. 400, I. P. C., by the District Magistrate of Howrah."

It appeared that when the Rule came on for hearing the final police report in the case had not been submitted, nor had any magisterial inquiry under Act XIV of 1908 commenced, nor was any evidence recorded against the petitioner.

The Advocate-General (*The Hon'ble Mr. Kenrick, K.C.,*) and *The Deputy Legal Remembrancer* (*Mr. Orr*), for the Crown. A police report of the dacoity was sent in on the 24th April 1909, and the case was pending before the District Magistrate on the 20th January 1910, when the order of the Local Government under section 2 of Act XIV of 1908 was passed. It cannot be said that the Magistrate has not taken cognizance when the above order has been made and the accused are in custody under his directions. As to the jurisdiction of the High Court, section 12 of the new Act must be read with section 14 (1), and it is clear that these sections are the antithesis of sections 497 and 498 of the Code. The High Court has no power under section 498 to grant bail in cases to which the Act has been applied, as in exercising it the Court would be giving effect to a section of the Code inconsistent with the scope of the Act. The object of the recent Act is to secure a speedy trial, and the release of an accused on bail was not intended. Section 498 has, by implication, been repealed by the Act. The accused was arrested only on the 24th January, and the police investigation is still pending. It cannot now be determined that there is no ground for further inquiry into his guilt.

Babu Sarat Chandra Roy Chowdhry (with him *Babu Dasharathi Sanyal*), for the petitioners. Act XIV of 1908 does not apply to the case of the present accused. There is nothing to show that the petitioner was arrested as an accused in the case to which the Government order of the 20th January refers. The Act can only be applied after a Magistrate has already taken cognizance. There is nothing to indicate that cognizance has been taken of any case against the present accused. The

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Magistrate's explanation shows that cognizance has not yet been taken. The final police report has not yet been sent in, and there is no suggestion that cognizance could be taken in any other way under section 190 of the Code: *Lee* v. *Adhikary* (1). Further, the Magistrate cannot be said to have taken cognizance, as under section 3 of Act XIV of 1908 the inquiry next follows, and no police investigation, as is now pending, can intervene between the taking of cognizance and the inquiry. As to the jurisdiction of the High Court under section 498 of the Code, the new Act does not affect it. Section 12 thereof only curtails the power of the Magistrates under section 497 of the Code, and the provisions of section 498 of the latter are not inconsistent with any procedure prescribed by the Act. The power of the High Court under section 498 cannot be taken away by implication: see Maxwell on Interpretation of Statutes, 4th edition, pp. 122, 193 and 233. This is a fit case for bail. The accused has been in custody for over a month without evidence against him being recorded. The police have had ample time since his arrest to procure evidence, but it does not appear that they have any incriminating evidence against him: *Jamini Mullick* v. *Emperor* (2).

STEPHEN AND CARNDUFF JJ. A rule has been granted in this case on the District Magistrate of the 24-Parganas to show cause why bail should not be granted on the ground that no order has been made applying the Indian Criminal Law Amendment Act, 1908, to the case; and on the further ground that there does not appear to be any sufficient cause for further inquiry into the guilt of the accused.

The facts relating to this matter are as follows. A dacoity, commonly referred to as the Nettra dacoity, took place on the 24th April 1909. On the 20th January 1910, the Local Government made an order under section 2 of the Criminal Law Amendment Act, 1908, purporting to apply the provisions of Part I of that Act to the offence. On the 24th January 1910 the petitioner was arrested on suspicion of being concerned in it,

(1) (1909) I. L. R. 37 Calc. 49. (2) (1908) I. L. R. 36 Calc. 174.

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and so having committed offences under sections 395 (dacoity) and 397 (dacoity with attempt to cause death or grievous hurt) of the Indian Penal Code. On the 28th January he applied to the District Magistrate to be released on bail, which was refused, and a similar application was afterwards made on the 5th February and likewise refused. On the 17th February he made a third application to the Sessions Judge, and this also was refused. On this rule two points have been taken: the first is that the Local Government had no power to make the order of the 20th January; and the second, that we ought to admit the petitioner to bail on the merits of the case.

The first point rests on the assertion that a Magistrate had not taken cognizance of the Nettra dacoity on the 20th January. The appellant's advocate has laboured under the disadvantage of not having seen the record in the case, as the magisterial inquiry was, according to section 4 of the Act, *ex parte*, and we have not thought it right to allow him access to it. He had, therefore, a right to make any suppositions as to the facts appearing on the record, asking us to verify them afterwards. On looking at the record, we find that a police report was made to the Sub-divisional officer of Diamond Harbour on the 24th April, the day when the dacoity is alleged to have taken place, and that the case was afterwards transferred to head-quarters. Cognizance had, therefore, been taken of the offence on the 20th January 1910, as recited in the order of the Local Government of that date; for taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence.

On the second point, as to whether we should grant bail in this case, we must first consider the point whether we have jurisdiction to do so. As to this the law seems to us quite clear. As the High Court, which we are for present purposes, our power to grant bail "in any case," as given by section 498 of the Criminal Procedure Code, is quite unfettered, though we consider that in exercising our discretion we ought to take into consideration the limitations on the power of other authorities

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to grant bail imposed by section 497. The question then arises whether any restriction has been placed on our power by the Criminal Law Amendment Act, 1908, and we are of opinion that it has not. By section 12 of that Act the powers of releasing on bail, given by section 497 of the Criminal Procedure Code, have been made subject to the provision that no person remanded to custody in the course of proceedings under the Act shall be released on bail if there appear to be sufficient grounds for inquiry into his guilt. The former section does not in terms apply to section 498 of the Code, but we are of opinion that we ought to take its provisions into consideration in the same way as we think we ought to take into consideration those of section 497. We have then to consider whether there is anything in section 498 of the Code, as to the granting of bail by the High Court, which is inconsistent with the special procedure prescribed by Part I of the Act of 1908, and is, therefore, abrogated by force of section 14 (1) of that Act. We must hold that there is not. In the first place section 498 of the Code is not referred to in section 12 of the Act, and, *primâ facie*, the provisions of the former are left intact. Secondly, as a prominent feature of the special procedure before a Magistrate under the Act is the absence of the accused during the magisterial enquiry, it is difficult to see how the grant of bail by proper authority can be called in question. And, thirdly, as the scheme of the Act is commitment by the Magistrate direct to the High Court, there is nothing in the intervention of the High Court which is inconsistent with that special procedure. We hold, then, that it is open to us to exercise the power of the High Court under section 498 of the Code.

We then come to the real question before us, which is whether we ought to admit the petitioner to bail in this case. On reading the record and the Magistrate's explanation, we are of opinion that there is cause for further inquiry into the case against the petitioner, and that there has not so far been undue delay in the proceedings. The rule is, therefore, discharged.

E. H. M. *Rule discharged.*