
(1961) 08 CAL CK 0018
In the Calcutta High Court
Case No : Misc. Case No. 96 of 1961

Jainul Khan and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 21-08-1961

Acts Referred:

City Sessions Court Act, 1953 — Section 5, 6, 6(3)
Criminal Procedure Code, 1898 (CrPC) — Section 426, 493

Citation : AIR 1962 Cal 368 : 66 CWN 676 : (1962) 2 ILR (Cal) 319

Hon'ble Judges : S.K. Sen, J;N.K. Sen, J

Bench : Division Bench

Advocate : J.N. Ghosh and P.C. Borooah, for the Appellant; J.M. Banerjee, for the Respondent

Judgement

S.K. Sen. J.

1. This is an application u/s 498 of the Criminal Procedure Code By the petitioners, Jainul Khan alias Jainu and two others, for grant of bail which was refused at one stage by the learned Chief Presidency Magistrate. Along with this application u/s 498 of the Criminal Procedure Code has been heard Reference 1 of 1961 made u/s 432 (2) of the Criminal Procedure Code by the learned Chief Presidency Magistrate. The petitioners had approached the City Sessions Court for bail u/s 498 of the Criminal Procedure Code, and the learned Chief Judge of the City Sessions, Court, purporting to exercise the powers of a Sessions Court u/s 498 of the Criminal Procedure Code, directed that the petitioners be released on bail of Rs. 5000/- each with two sureties each for the like amount to the satisfaction of the Chief Presidency Magistrate, Thereupon the learned Chief Presidency Magistrate has made this reference, as in his view the City Sessions Court not having any power in appeal, reference and revision, has no power to Sat in Judgment over the order of the Chief Presidency Magistrate refusing bail.

2. Accordingly, we have to decide whether the City Sessions Court may exercise jurisdiction u/s 498 of the Criminal Procedure Code to grant bail to an accused to

whom the Chief Presidency Magistrate or any other Presidency Magistrate has refused bail.

3. Section 6 of the City Sessions Court Act is as follows:

"(1) The City Sessions Court shall not have any jurisdiction on appeal, reference or revision.

(2) The City Sessions Court shall not have jurisdiction to try any scheduled offence.

(3) Subject to the provisions of Sections 7 and 8, all matters in respect of which the City Sessions Court has no jurisdiction, shall be tried, dealt with or disposed of as if this Act had not been, passed.""

Along with Section 6 it is also necessary to consider Section 5 of the City Sessions Court Act which runs as follows :

"For the purposes of the Code, the Presidency-town of Calcutta shall be deemed to be a sessions division and a district, the City Sessions Court shall be deemed to be a Court of Session established for such sessions division and the Chief Judge and the other Judges of the City Sessions Court shall be deemed respectively to be the Sessions Judge and the Additional Sessions Judges appointed for such Court of Sessions; and save as otherwise provided in this Act all the provisions of the Code shall apply accordingly."

4. It is provided in the City Sessions Court Act that the City Sessions Court shall not have any jurisdiction in appeal, reference or revision and, therefore, it is clear that the City Sessions Court cannot exercise power in appeal, reference or revision. Now, Chapter XXXI of the Criminal Procedure Code deals with appeals and lays down the powers of the Courts in appeals. Chapter XXXII of the Code deals with references and revisions and defines the powers of the Courts in connection therewith. Section 498 does not occur in the Chapters relating to appeals, references and revisions but occurs in a separate Chapter in a subsequent part of the Criminal Procedure Code, namely Chapter XXXIX. Sub-section (1) of Section 498 of the Criminal Procedure Code provides that the amount of every bond executed under this Chapter shall be fixed with regard to the circumstances of the case and shall not be excessive; and the High Court or Court of Session may, in any case, whether there is an appeal on conviction or not, direct that any person may be admitted to bail, or that the bail required by a police-officer or Magistrate may be reduced. The power u/s 498 is generally exercised before the trial before a Magistrate has come to an end, and in some cases, before the trial has commenced. It has no application to a case where the case has already been disposed of by a Magistrate, When a Sessions Court grants bail in a case where the Magistrate has refused to grant bail, he is not exercising the powers in appeal or reference or revision but he is acting under special powers granted by Section 498 of the Criminal Procedure Code. The Judicial Committee of the Privy Council pointed out that Sections 498 to 502 of

the Code in Chapter XXXIX deal with the granting of bail to the accused before trial and not to persons tried and convicted, and that Chapter XXXIX of the Criminal Procedure Code together with Section 426 contains a complete and exhaustive Statement of the powers of the High Court (or the Court of Session) to grant bail, vide AIR 1945 94 (Privy Council) . The powers u/s 426 which relate to granting of bail when entertaining an appeal cannot, of course, be exercised by the City Sessions Court; but in view, of the terms of Section 5 of the City Sessions Court Act providing that the provisions of the Code shall apply the City Sessions Court unless expressly excluded by any other provision of the Act and the only provision of exclusion being Section 6 of the Act, I would hold that the City Sessions Court has the power u/s 498 of the Criminal Procedure Code to grant bail in a case Where the Presidency Magistrate has refused to grant bail, because in doing so the City Sessions Court is not exercising powers of appeal or revision but is acting tinder Section 498 of the Criminal Procedure Code, which power is not excluded, under Sub-section (3) of Section 6 of the City Sessions Court Act, in a case where the City Sessions Court had jurisdiction to try the particular offence. In the present case the accused petitioners are charged with the offence u/s 366 of the Indian Penal Code which the City Sessions Court may try. In the circumstances, I would agree with the learned Chief Judge of the City Sessions Court in holding that the City Sessions Court is competent to grant bail in such a case.

5. The reference made by the Chief Presidency Magistrate is answered accordingly, and the order of the learned Chief Judge of the City Sessions Court granting bail is affirmed. This makes it unnecessary to pass any separate order in the independent application u/s 498 of the Criminal Procedure Code filed in this Court by the petitioner.

6. Let the petitioners be released on bail on terms as granted by the learned Chief Judge of the City Sessions Court.

N.K. Sen, J.

7. I agree. The facts involved in the reference made by the Chief Presidency Magistrate, Calcutta under the provisions of Section 432 (2) of the Criminal Procedure Code are these :

8. Jainul Khan and two others had been arrested by the police in connection with the detention of two minor girls Amima Sikdar and Diptirani Bhanja from 11/1, Kyd Street, Calcutta. The arrested persons were placed before the Chief Presidency Magistrate on 27th June, 1961 who refused their prayer for bail and remanded them to custody till 3rd August, 1961, On the next adjourned day the learned Magistrate again refused to release them on bail and adjourned the master to the 10th August 1961. It appears that on the prayer for bail being refused by the learned Magistrate on 3rd August 1961 the accused persons moved the Chief Judge of the City Sessions Court for bail on the 8th August 1961. On 9th August 1961 the learned Chief Judge granted bail Jo the arrested

persons of Rs. 5000/- each with two sureties each of the like amount to the satisfaction of the Chief Presidency Magistrate. On the 10th August 1961 the learned Chief Presidency Magistrate again remanded the accused persons to custody till the 24th August 1961. On the 11th August, 1961 the order for bail granted by the Chief judge, City Sessions Court was placed before the learned Chief Presidency Magistrate who, however, thought that the City Sessions Court Judge had no jurisdiction over the matter. He, therefore, decided to make a reference to this Court u/s 432 (2) of the Criminal Procedure Code and pending the decision of this Court he refused to give effect to the order of the learned City Sessions Judge granting bail.

9. The learned Chief Presidency Magistrate is of the view that the order of the City Sessions Judge granting bail amounted to an Order in appeal or by way of revision both the jurisdictions Slaving been taken away by Section 6 (1) of the City Sessions Court Act, 1953.

10. I have considered the question raised in this reference and have also taken into account the order passed by the teamed Chief Judge of the City Sessions Court.

11. Section 5 of Act XX of 1953 provides : (As the text has already appeared in paragraph (3) it is omitted here--Edi.) Section 6 (1) provides that the City Sessions Court shall not have any jurisdiction on appeal, reference or revision. The net result of the provisions contained in these sections is that a Judge of the City Sessions Court is a Sessions Judge in the Presidency-town of Calcutta with all the powers of a Sessions Judge except those taken away from him by Sub-sections (1) and (2) of Section 6 of "the Act. Provisions for appeals, references and revisions are contained in Part VII of the Criminal Procedure Code. Chapters 31 and 32 of that Part contain provision for appeal and reference and revision, respectively. Chapter XXXIX which contains provisions for bail is in Part IX which provides for supplementary provisions. Question is granting or refusing bail to a person who if committed So the Court of Session on a charge which was triable by the Judge City Sessions Court was the Judge acting on appeal or revision or reference. In my view, in the present case he was not. Assuming, however, for a moment that the accused persons in the case had been committed for trial to the Judge, City Sessions Court, and they had not been granted bail by the committing Court, it could not be contended if the Sessions Judge had released them on bail pending trial that he was acting on appeal or reference or revision. Chapter XXXIX which contains provisions for bail is a complete and self-contained Chapter. In the case reported in AIR 1945 94 (Privy Council) , their Lordships of the Judicial Committee held that Chapter XXXIX together with Section 428 contains a complete and exhaustive statement of the powers of a High Court to grant bail. Section 498 of the Code gives the same powers to the Court of Session. The words "whether there be an appeal on conviction or not" cannot connote an idea that the powers to grant bail is limited to the stage after conviction. In my view these words only imply that irrespective of the fact of any

conviction the powers conferred by this section could be exercised at any stage although the consequence of that order would be to set aside an order passed by a Magistrate. That Section 498 confers upon the Sessions Judge wide powers to grant bail not handicapped by any restriction is also the view taken in a Full Bench decision of the Allahabad High Court in the case of K.N. Joglekar Vs. Emperor . The point at issue came up for consideration, in a Madras case quite recently. In the case of Ahmed Moideen Khan and Others Vs. Inspector of "D" Division, , a Division Bench of the Madras High Court had to consider the jurisdiction of the Sessions Judge, Madras, to entertain a transfer application. It must be noted that by Madras Act XXXIV of 1955 a particular office called the Sessions Court of Madras and a particular Judge called the Sessions Judge of Madras was created with powers to try cases committed formerly to the Original Side of the Madras High Court. The position is identical with the position of the Judge, City Sessions Court at Calcutta. Their Lordships, thereafter came to the conclusion that there will be conflict of jurisdiction between a Magistrate and a Sessions Judge. Applying the reasons as given in the Madras decision with which I respectfully agree I am of the view that the Judge of the City Sessions Court being a Sessions Judge for all purposes except for appeals, reference or revision was competent to deal with an application for bail. I answer the question raised in the letter of reference accordingly.

12. In the circumstances of the case I agree with my Lord that the order for bail granted to the petitioner must be upheld.