

(2000) 08 RAJ CK 0027
In the Rajasthan High Court
Case No : Criminal Ref. No. 1 of 1999

State of Rajasthan

APPELLANT

Vs

Fakir Mohd. alias Fakira

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 10, 193, 194, 373, 374

Citation : (2000) CriLJ 4289 : (2000) 3 WLC 453

Hon'ble Judges : J.C. Verma, J;G.L. Gupta, J

Bench : Division Bench

Advocate : R.N. Mathur, A.A.G and Ajay Purohit, P.P, for the Appellant; S.R. Bajwa, assisted by V.P. Bishnoi, Jagdeep Dhankhar and R.P. Singh, S.N. Shah, B.S. Sinsinwar and Ravi Yadav, for the Respondent

Judgement

G.L. Gupta, J.—Learned Special Judge-cum-Additional Sessions Judge, Ajmer, vide letter dt. 3-6-1999 has referred the following question for the decision of this Court:-

Whether Sessions Judge, acting u/s 439, Cr.P.C., can entertain an application for bail in a matter in which the Additional Sessions Judge, trying a case, has already decided the bail application u/s 439, Cr.P.C.?

2. The question of law being of general importance we thought it proper to invite the members of the Bar to assist the Court in deciding the same.

3. Shri R.N. Mathur, Additional Advocate General, Shri Ajay Purohit, P. P. Shri S. R. Bajwa, Sr. Advocate, Shri Jagdeep Dhankhar, Sr. Advocate, Shri S. N. Shah, Shri Biri Singh and Shri Ravi Yadav made submissions before us.

4. Shri Mathur learned Addl. Advocate General, Shri Bajwa, Sr. Advocate, Shri Jagdeep Dhankhar, Sr. Advocate, Shri Ajay Purohit, P.P., and Shri Ravi Yadav canvassed that the expression "Court of Session" appearing in Section 439, Cr.P.C. signifies the Judge, presiding over the Court of Session. They contended

that the Additional Sessions Judge is not included in the expression "Court of Session" in that section and, therefore, in a case pending before the Court of Addl. Sessions Judge, if the bail application is rejected, the Sessions Judge is empowered to entertain the bail application of the accused. Their contention was that the Sessions Judge has got special powers which are equivalent to that of, the High Court in the matter of applications for bail, and the legislature could not have intended to give similar powers to the Additional Sessions Judge or Assistant Sessions Judge who are junior Judges. In support of their contentions, they cited the decision of this Court in the case of Rajesh Choudhary Vs. State of Rajasthan,

5. Per contra, the contention of other set of the Advocates consisting of Shri Biri Singh and Shri Shah was that the Criminal P.C. confers identical powers to the Sessions Judge and Additional Sessions Judge and that the Court of Addl. Sessions Judge is included in the expression "Court of Session" vide Section 9, Cr. P.C, and therefore, any order passed on the bail application of an accused in a trial before the Additional Sessions Judge, it shall be deemed to have been passed by the Court of Session and in that situation the Sessions Judge cannot have superior powers to entertain the application for bail u/s 439, Cr.P.C. According to them, the order passed by the Additional Sessions Judge on the application for bail falls u/s 439, Cr.P.C. itself. They relied on certain observations of the Apex Court in the cases of Abdul Mannan and others Vs. State of West Bengal, and Gurcharan Singh and Others Vs. State (Delhi Administration),

6. Section 439, Cr.P.C. is read hereunder:-

439. Special powers of High Court or Court of Session regarding bail.- (1) A High Court or Court of Session may direct:-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in Sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified :

Provided that the High Court or the Court of Session may, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

Under Sub-section (1) of Section 439, Cr.P.C. bail can be granted by the High Court or the Court of Session to a person accused of any offence. While granting

bail certain conditions may be imposed by the High Court or the Court of Session.

Under Sub-section (2), the High Court or the Court of Session may cancel the bail granted to a person accused of an offence under Chapter XXXIII, Cr.P.C.

7. The expression "Court of Session" has not been defined in the Code. However, Section 6, Cr.P.C. classifies the various Courts in a State and one of them is the Court of Session. Section 7 dealing with territorial jurisdiction says that there shall be a sessions divisions in a State and a sessions division may comprise of one district or more than one district. Then comes Section 9, which empowers the State Government to establish a Court of Session in every sessions division, Section 9 of the Code is reproduced hereunder :

9. Court of Session.- (1) The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or-places in the other division as the High Court may direct.

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) xxxxxxxxxxxxxxxxx

8. A reading of sub-sections (2) and (3) of Section 9 makes it clear that the High Court is the authority to appoint a Judge in a Court of Session as also the Judges in the Courts of Additional Sessions Judges and Assistant Sessions Judges in the sessions division, and they exercise jurisdiction in that sessions division as a Court of Session.

9. It is crystal clear that the "Court of Session" comprises not only a Court which is presided over by a Judge appointed under Sub-section (2) of Section 9 but also the Courts presided over by the Judges viz. Additional Sessions Judges or Assistant Sessions Judges appointed under Sub-section (3). In other words, all the Courts established in a sessions division viz. the Court presided over by the Sessions Judges, or the Courts presided over by the Additional Sessions Judges, or the Courts presided over by the Assistant Sessions Judges, constitute one Court i.e., a Court of Session.

10. The point that needs to be considered is whether the expression "Court of Session" appearing in Section 439, Cr.P.C. has different meaning than that of the same expression in Section 9, Cr.P.C.

11. In the case of *Rajesh Choudhary Vs. State of Rajasthan*, Hon'ble Justice M.C. Jain, as he then was, held that the words "Court of Session" in Section 439, Cr.P.C. cannot be interpreted to include the Court of Addl. Sessions Judge, in spite of the fact that that Court is a part of a Court of Session in Section 9. His Lordship had relied on the decision of the Calcutta High Court in the case of *Prafulla Kumar Ghosh Vs. The State*, wherein the learned Judges had opined that the Sessions Judge in a sessions division is quite distinct from an Addl. Sessions Judge or the Asstt. Sessions Judge and in the Code the words "Court of Session" have been used in different sections in different manner. The learned single Judge of this Court in the case of *Rajesh* (supra) has recorded following four reasons for his opinion that the words "Court of Session" in Section 439, Cr.P.C. do not include the Addl. Sessions Judges :-

(1) The word "Court" in Section 437, Cr.P.C. includes the Court of Addl. Sessions Judge or of Asstt. Sessions Judge.

(2) There is no specific provision made for Addl. Sessions Judge and Asstt. Sessions Judge in Chapter XXXIII of the Code.

(3) The intention of the legislature is that powers u/s 439, Cr.P.C. are to be exercised by superior authorities.

(4) The power of cancellation of bail under Sub-section (2) of Section 439, Cr.P.C. is with the Sessions Judge only and there cannot be different meaning of the expression "Court of Session" in Sub-section (1).

12. The interpretation of the expression "Court of Session" appearing in Section 439, largely depends on the fact whether the Addl. Sessions Judge, while deciding an application for bail in a case pending before him, acts u/s 437, Cr.P.C. or u/s 439, Cr.P.C.

13. The Apex Court in the case of *Gurcharan Singh and Others Vs. State (Delhi Administration)*, has held in categorical terms that Section 437 is concerned with the Court of Magistrate and it excludes the Court of Session. It is pertinent to read a few lines of para 21 of the report hereunder:-

Section 437, Cr.P.C. is concerned only with the Court of Magistrate. It expressly excluded the High Court and the Court of Session.

As already stated the expression "Court of Session as defined in Section 9, Cr.P.C. includes the Court of Addl. Sessions Judge. Therefore, even if the Supreme Court has not specifically named the Court of Addl. Sessions Judge, it will have to be presumed that their Lordships were of the view that Section 437, Cr.P.C. excludes the Court of Addl. Sessions Judge.

The Supreme Court in the case of *Abdul Mannan and others Vs. State of West*

Bengal, has observed at para 4 of the report that Sessions Judge includes Addl. Sessions Judge under the Code.

14. It is, therefore, manifest that Section 437, Cr.P.C. is not meant for the Courts mentioned in Section 9, Cr.P.C. and it applies to the Courts of Magistrates only. In other words, when the Addl. Sessions Judge decides an application for bail in a case pending before him, he acts u/s 439, Cr.P.C. and not u/s 437, Cr.P.C.

15. Once it is held that the Addl. Sessions Judge considers an application for bail in a case pending before him u/s 439, Cr.P.C. and not u/s 437, Cr.P.C. there is hardly any scope to contend that the Sessions Judge is empowered to entertain an application for bail in exercise of powers u/s 439, Cr.P.C. in a case where the application was rejected by the Addl. Sessions Judge. In our opinion, the view taken in the case of *Rajesh v. State of Rajasthan* (supra) does not lay down correct law.

16. It may be that there is no specific mention of Addl. Sessions Judge in Chapter XXXIII of the Code, but that cannot lead us to infer that in the expression "Court of Session" the Court of Addl. Sessions Judge or Asstt. Sessions Judge is not included. As a matter of fact, there was no need of stating the inclusion of Court of Addl. Sessions Judge or Asstt. Sessions Judge in specific terms when the expression "Court of Session" itself includes the Court of Addl. Sessions Judge or of Asstt. Sessions Judge u/s 9.

17. It is pertinent to note that wherever the legislature wanted that particular powers are entertainable only by the Sessions Judge it has been so mentioned in specific terms.

For example, u/s 193, Cr.P.C. the power of taking cognizance of offences by the Court of Session (which includes Sessions Judge, Addl. Sessions Judge and Asstt. Sessions Judge) have been stated, but at the same time u/s 194, Cr. P.C, it has been made clear that the Addl. Sessions or Asstt. Sessions Judge shall try only those cases which are made over to them by the Sessions Judge by general or special order. This means that the Addl. Sessions Judge or Asstt. Sessions Judge, though are part of the Sessions Court, yet their power to try a case depends on the general or specific orders passed by the Sessions Judge.

Similarly, under Sections 373 and 374, Cr.P.C. appeal lies to the Court of Session against an order to give security, or against an order of conviction by a Magistrate or even by an Asstt. Sessions Judge but the Addl. Sessions or Asstt. Sessions Judge is empowered to entertain and decide only such appeals, which are made over to him by the Sessions Judge u/s 381, Cr.P.C.

So also, u/s 397 and u/s 398, Cr.P.C. only Sessions Judge has been empowered to entertain a revision. Addl. Sessions Judge may exercise powers of a revisional Court only when a case is transferred to him by special or general order.

Again, Sections 408 and 409, Cr.P.C. empowers only the Sessions Judge to transfer or withdraw a case from one Court and make over the same to other

court. The power of withdrawal or transfer of a case or appeal is not available to the Addl. Sessions Judge, because the words used are "Sessions Judge" and not a "Court of Session."

We do not want to burden this judgment by making mention of other sections of the Code in which the legislature has either used the expression "Sessions Judge" or if the expression "Court of Session" has been used, a clarification signifying the definite intention of the legislature has been made in the same section or other section. If there is nothing in the provision then the expression "Court of Session" in our opinion would certainly include the Court of Addl. Sessions Judge.

18. The legislature has made its intention in explicit terms. Wherever it wanted that the powers of Addl. Sessions Judge or Asstt. Sessions Judge should not be at par with the powers of Sessions Judge, it has made clear a provision. There being no exclusion of the Addl. Sessions Judge in Section 439, Cr.P.C. it has to be held that the powers of the Addl. Sessions Judge are same as that of the Sessions Judge.

19. Of course, Section 439, Cr.P.C. speaks of special powers of the High Court and the Court of Session, but that does not exclude the Addl. Sessions Judge from exercising power u/s 439, Cr.P.C. for the simple reason that he presides over a Court, which is a part of the "Court of Session."

The contention that the legislature could not have intended to confer powers of bail which are equivalent to the High Court to a junior Judge is devoid of merit. Even a Chief Judicial Magistrate may be empowered u/s 10 of the Code to dispose of urgent applications in the absence of Sessions Judge, Addl. Sessions Judge and Asstt. Sessions Judge. The expression "urgent application" in Section 10 obviously includes the applications containing bail matters. Thus even the Chief Judicial Magistrate has been considered competent by the Legislature to exercise powers u/s 439, Cr.P.C. Then how this contention can prevail that the legislature could not have intended to confer special powers of bail u/s 439, Cr.P.C. to a junior Judge.

20. The last contention presupposes that the powers of cancellation of bail under Sub-section (2) of Section 439, Cr.P.C. cannot be exercised by the Addl. Sessions Judge. No ruling of the Apex Court or of this Court has been cited in which it has been held that powers of cancellation of bail under Sub-section (2) of Section 439, Cr.P.C. cannot be exercised by the Addl. Sessions Judge. Since the expression "Court of Session" includes the Court of Addl. Sessions Judge, there is absolutely no force in the contention that powers under Sub-section (2) cannot be exercised by the Addl. Sessions Judge.

21. It is the golden rule of interpretation that words used in a section must be given their ordinary meaning, unless the interpretation leads to manifest absurdity or repugnance. In the instant case the expression "Court of Session" is defined u/s 9. The ordinary meaning of the expression in Section 439 certainly

does not lead to an absurdity or repugnance. Rather, this interpretation serves the purpose and it is beneficial to the litigating public residing away from the district head quarters. If the Addl. Sessions Judges posted at remote places are held to be empowered to exercise powers u/s 439, Cr.P.C. the poor litigants will not be required to travel to the headquarter of the I Sessions Judge for seeking bail.

22. It is significant to point out that a Full Bench of this Court in exercise of powers under Article 227 of the Constitution of India in the case of K.N. Sharma v. State of Rajasthan (1988) 1 RLR 68, keeping in view the difficulties of the people residing in remote areas, directed that all the Addl. Sessions Judges in Rajasthan would hear bail applications Under Sections 438 and 439, Cr. P.C, which emerge from the cases which are registered in their territorial jurisdiction and under those directions, the Addl. Sessions Judges have been exercising powers Under Sections 439 and 438, Cr.P.C. It is obvious that the Full Bench approved the exercise of powers u/s 439, Cr.P.C. by the Junior Judges in spite of the fact that Section 439, Cr.P.C. speaks of special powers of High Court and Court of Session

23. Having considered the matter from various angles, we are of the considered opinion that the decision in the case of Rajesh Choudhary Vs. State of Rajasthan, does not lay down correct law. The correct legal position is that the Sessions Judge cannot entertain application for bail u/s 439, Cr.P.C. of a person who is being tried by the Addl. Sessions Judge and whose application has been dismissed by the said Addl. Sessions Judge.

24. For the reasons stated above, the question of law set out at para No. 1 above is answered in negative.