
(1961) 08 CAL CK 0002
In the Calcutta High Court

Tulsidas Mundhra and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 24-08-1961

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120, 120B, 409, 458

Citation : (1962) CriLJ 533 : (1962) 2 ILR (Cal) 338

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

Bench : Division Bench

Judgement

S.K. Sen, J.—This application u/s 498, Cr.PC for bail by the petitioner Tulsidas Mundhra has been heard along-with the Reference by Shri M. Roy, Presidency Magistrates, Calcutta u/s 432 (2) of the Cr.PC on a question of law, viz., whether the City Sessions Court has jurisdiction to entertain an application u/s 528 (1c) of the Code in connection with a commitment proceeding pending before a Presidency Magistrate. The case against the petitioner Tulsidas Mundhra and another was started on a chargesheet submitted by the police Under Sections 467 and 468 of the Indian Penal Code. After examination of some witnesses, the learned Presidency Magistrate framed charges Under Sections 120B, 409, 471/458 and 477A/109 of the Indian Penal Code against the accused. At that Stage, an foliation for transfer of the case from the file of the Presidency Magistrate was filed before the Chief Presidency Magistrate. The learned Chief Presidency Magistrate dismissed the application for transfer of the case, and the case went back to the learned Presidency Magistrate, on 10-8-1951. The learned Magistrate fixed 14-8- 1961 for further orders. On that date the learned Advocate for the petitoners informed the Court that a stay-order had been granted by the Chief Judge, City Sessions Court on an application u/s 528 (1c) of the Cr, P. C. for transfer of the case out of the file of the Presidency Magistrate Shri M. Roy. Thereupon the learned Presidency Magistrate has made this reference as, in his opinion, the City Sessions Court has no jurisdiction to entertain an application u/s 528 (1c) of the Cr.PC

2. Section 5 of the City Sessions Court Act, 1953, provides that the City Sessions Court shall be deemed to be a Court of Session established for the Sessions Division comprising the Presidency town of Calcutta, and that save as otherwise provided under the Act, all the provisions of the Code shall apply to the Chief Judges and other Judges of the City Sessions Court, as if they were the Sessions Judge and Additional Sessions Judges. Section 6 of the Act provides that the City Sessions Court shall not have any jurisdiction in appeal, reference or revision, and that it shall not have power to try any slummed offence. Sub-section 3 of Section 6 is as follows .

(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.

The first question for consideration is whether jurisdiction to transfer a case from one magistrate to another within the same Sessions Division under the provisions of sec-528 (1c) of P.C. is an exercise of jurisdiction in appeal, reference or revision. If so, clearly, the City Sessions Court cannot have such jurisdiction. The learned Presidency Magistrate has observed that the Chief Presidency Magistrate rejected the application for transfer of the case, and that the application to the Chief Judge of the City Sessions Court is practically an application in revision of the order of the Chief Presidency Magistrate. But Sections 526 and 528 of the Cr.PC do not occur in the Part of the Criminal Procedure Code dealing with appeals and revisions; they occur in a separate Part of the Criminal Procedure Code. In this connection, we may usefully recall some observations of the Privy Council in the case AIR 1945 94 (Privy Council) , where in connection with an application for bail it was observed that Sections 498 to 502 of Chapter XXXIX of the Code of Criminal Procedure form a complete and exhaustive statement of the powers of the High Court to grant bail taken along with Section 426 of the Cr.PC which, however, applies only when appeal is entertained. It was observed that Sections 498 to 502 in connection with bail had nothing to do with the question of appeal and they apply primarily to the stage before the trial and conviction. Accordingly, powers under Sections 498 to 502 would be considered to be independent powers and not powers in appeal and revision. Similarly, Sections 526 and 528 must be considered as independent powers of transfer which the Sessions Judges or the High Court exercise, and they are not powers of such Judge or Court in appeal, reference or revision. Accordingly, in a matter in which the City Sessions Court has jurisdiction, the City Sessions Court may also entertain an application for transfer u/s 528 (1c) of the Cr.PC but in this connection Sub-section (3) of Section 6, which has already been quoted above, must be taken into consideration. All matters in which the City Sessions Court has no jurisdiction must be dealt with as if the City Sessions Court Act does not exist. Therefore, in a matter in which the City Sessions Court has no jurisdiction, Section 5 of the City Sessions Court Act is of no avail, and in such a case the City Sessions Court cannot exercise jurisdiction u/s 528(1c) of the Code. Mr, A. K, Dutt has referred us to Rule 23 of the Rules framed under the

City Sessions Court Act by the High Court, showing that the High Court contemplated Miscellaneous cases Under Sections 528, 498 and some other sections of the Code coming up before the City Sessions Court. Mr. Dutt has, therefore, urged that the City Sessions Court must be deemed to have jurisdiction u/s 528 of the Cr.PC. That is quite correct so far as it relates to cases in which the City Sessions Court has jurisdiction. Such cases comprise the greater part of the Sessions triable cases, but not cases involving offences mentioned in the schedule of the City Sessions Court Act. including inter alia offences u/s 458 or 477A of the Indian Penal Code. In respect of the latter class of cases, the City Sessions Court has no jurisdiction; and it is, therefore, clear that in view of Sub-section (3) of Section 6, all applications in respect of such cases must be dealt with as if the City Sessions Court Act had not been passed i.e. all applications for transfer (as well as bail) in relation to such cases must be filed before and dealt with by the High Court and not the City Sessions Court, in cases when parties have been unable to obtain relief from the Chief Presidency Magistrate or the Presidency Magistrate concerned. of the City Sessions Court Act; and as the present case involves scheduled offences, the Chief Judge, City Sessions Court, acted without jurisdiction in entertaining the application u/s 528 (1c) of the Code.

3. Reference has been made to the decision of the Madras High Court *Sri Chamundeeswari Weaving and Trading Co. (Private) Ltd. Vs. Mysore Spinning and Manufacturing Co. Ltd. and Another*, where it was observed that a court of Session established for the Presidency town will have all the powers of the Sessions Judge given under the Code including the power to transfer a case pending before the Chief Presidency Magistrate, and there could be no conflict as the Chief Presidency Magistrate's power to transfer u/s 528 (2) of the Code would be controlled by the superior powers of transfer vested in the City Sessions Judge. In connection with the above observation it must be remembered that in Madras, all Sessions cases are now triable by the City Sessions Court only and not by the High Court Sessions. There is no division of jurisdiction in respect of sessions cases between High Court Sessions and the City Sessions Court as in Calcutta. So far as the Calcutta City Sessions Court is concerned, we must have the limits of Sub-section (3) of Section 6 of the City Sessions Court Act in view. That sub-section excludes the power of the City Sessions Court to entertain an annulment u/s 528 of the Code, or any other application whatever, in respect of cases involving scheduled offences.

4. It should be mentioned that Mr. Dutt at one stage of his argument challenged the reference made by the Presidency Magistrate as incompetent, and referred in this connection to *Kedarnath Sikdar and Others Vs. Bijoy Mandal and Others*. I do not find that the aforesaid decision has any bearing on the question raised. Under Sub-section (2) of Section 432 of the Code, the reference made by the Presidency Magistrate is clearly competent.

5. Accordingly, the reference by the learned Presidency Magistrate is answered

as follows: that the City Sessions Court has jurisdiction to entertain a transfer application u/s 528 (1c), Cr.PC in relation to cases pending before Presidency Magistrate, except where such cases involve one or more of the scheduled offences

6. So far as the bail application is concerned, Mr, Harideb Chatterjee, appearing for the State, does not oppose the grant of bail. The learned Presidency Magistrate's order dated 14-8-1951 committed the used petitioner to jail custody under the provisions of Section 432 (3) of the Code when making the reference u/s 432 (2) of the Code. From his subsequent order passed on the same date it appears that the learned Magistrate was under the impression that since he had framed charges with the intention of committing the accused to the High Court Session, the commitment had in fact already been made and he had no longer any jurisdiction to grant bail. This view taken by the learned Magistrate was not correct. It is true that before Section 207-A of the Code came into force, the Presidency Magistrate was not required to write out a commitment order; but even then, after complying with the provision of Sections 211 and 212, he had made a formal order committing the accused to High Court Sessions after he had framed the charge. In following the procedure u/s 207-A, after the charges have been framed and copies thereof given to the accused, the Presidency Magistrate must comply with Sub-section (9) and then write out a commitment order by n under Sub-section (10) thereof, making the commitment. (Hence the accused cannot be deemed to have been committed to High Court Sessions as soon as charges have been framed intending to commit the accused to High Court. It is clear therefore that the learned Magistrate cancelled the existing bail bond under a misapprehension. When issuing the Rule we suspended the operation of this portion of the order of the learned Magistrate. We now cancel this portion of his order altogether, with the result that the petitioner will continue to be on the same bail as before. This order will not interfere with the discretion of the learned Magistrate for passing an appropriate order as to bail or commitment to custody at the time when he makes the order of commitment.

N.K. Sen, J.

7. The facts giving stated as follows rise to this reference may be

8. On 7-7-1960 the Chief Presidency Magistrate, Calcutta took cognizance of offences u/s 120B/409 and Sections 409 and 477A, IPC against the petitioner and another. The case was then transferred to Sri M. Roy, Presidency Magistrate for disposal. After various adjournments the learned Magistrate on 7-7-1961 framed two charges against the petitioner and four charges against the co-accused. The charges framed against the petitioner were firstly u/s 120B and secondly under Section 409, IPC the charges against the co-accused were Under Sections 120, 409, 468 and 477A IPC Although charges have been framed under the provisions of Sub-section (8) of Section 207-A of the Code, yet commitment-proceedings had not still then been completed inasmuch as Sub-sections 9 and 10 had still to be complied with. On that very day the accused petitioner filed a

petition before the learned Magistrate informing him of his intention to move a higher Court for a transfer of the case from the Court of the trying magistrate upon which the learned Magistrate refrained from passing further orders to finalise the commitment. The case was then adjourned to 20-7-1961.

9. The petitioner then moved the C. P. M. u/s 528, Cr.PC for withdrawal of the case from the file of the trying magistrate. The learned Chief Presidency Magistrate, however by his order dated 9-8-1961 rejected the application made u/s 528, Cr.PC

10. It appears that the petitioner thereafter on 11-8-1961 moved the Chief Judge of the City Sessions Court u/s 528 (1c), Cr.PC for a transfer of the case from the file of the trying magistrate.

11. The learned Judge stayed further proceedings in the matter reserving, however, final orders on the application for transfer till 24-8-1961.

12. Upon the dismissal of the application u/s 528, Cr. P, C. by the Chief Presidency Magistrate, the matter went back to the trying magistrate who, however, ignoring the order of the learned Judge staying further proceedings made this reference u/s 432 (2) to this Court by his order dated 14th August, 1961. He has raised two points, viz., (1) whether the Judge, City Sessions Court can sit in appeal over a considered Judgment passed by the Chief presidency Magistrate and (2) and what was the proper and legal interpretation of Sections 528 (1c) and 528 (2), Cr.PC

13. It must be remembered that the connected application (Cr. Misc. No. 97 of 1961) is directed only against that part of the order of the learned Magistrate refusing bail to the petitioner.

14. Mr. Ajit Kumar Dutt, appearing on behalf of the accused petitioner, has taken two points. First, that the present reference u/s 432 (2), Cr.PC is incompetent and secondly that the Judge, City Sessions Court was quite competent to deal" with any application u/s 528 irrespective of whether he had any Jurisdiction to try the case and in any event the trying magistrate was wrong in making this reference until the Judge, City Sessions Court had finally disposed of the application that was pending before him.

15. Mr. Harideb Chatterjee appearing on behalf of the State has submitted that the Judge of the City Sessions Court has no jurisdiction whatever to deal with any application of transfer, in any event the present application which related to a case exclusively triable by the High Court in its Original Side.

16. In support of the contention that this reference was not in accordance with law, Mr. Dutt has referred to the Full Bench decision in the case of Girish Chandra and Others Vs. Emperor, . Rankin, C.J. observed at page 25 as follows:

Now, it appears to me that the power of reference conferred upon the Presidency Magistrate by Section 432 of the Code is confined to questions of law which the

Magistrate requires to decide in order to perform his duty in disposing of the case before him; and that the magistrate ought not to refer to this Court questions of law unless they are matters upon which he has a duty to make up his mind.

It, however, appears that nonetheless, the Bench constituting the Full Bench "decided the points they were called upon to decide in the reference before the Full Bench.

17. In the present case it appears that on 10-8-1961 the records of the case had been received by the trying Magistrate after the learned Chief Presidency had rejected the application for transfer with a direction that he was to take necessary action in the matter. The learned trying magistrate adjourned the matter to 14-8-1951 on which date he thought that he was in a queer predicament. He says he was informed of an order for stay of further proceedings having been made by the Judge, City Sessions Court and in front of him was the order of the Chief Presidency Magistrate asking him to proceed. The question of law that arose at the hearing of the case was indeed one which presented difficulties to him and arose in course of the hearing of the case. Although the learned magistrate was not trying the case but was making enquiries under chapter 18, it cannot in my view be argues that he was not hearing the case, in this view i am of the opinion that the present reference is not incompetent.

18. Mr. Dutt contends that the City Sessions Court Act. 1953 has by Section 5 created Calcutta to be a Sessions division and a district and the Chief Judge and other Judges of the City Sessions Court to be the Sessions Judge and additional Sessions Judges thereof. Therefore, they have all -the powers of a Sessions Judge except those mentioned in Sub-section (1) of Section 6 of the Act. He then argues that Sub-section (2) of Section 6 takes away the jurisdiction of the City Sessions Court only so far as trial of any scheduled offence is concerned, but does not take away the right of the Sessions Judge to deal with an application u/s 528, Cr.PC for transfer, a jurisdiction not arising on appeal, reference or revision-. According to Mr. Dutt Sub-section (3) of Section 6 only refers to matters mentioned in Sections 7 and 8 of the Act.

19. The above argument does not appeal to me. Sub-section (3) of Section 6 clearly lays down that 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. The governing words "subject to the provision of Sections 7 and 8" do not in any view confer any jurisdiction on the Judge of the City Sessions Court to deal with any scheduled offence. Section 7 only deals with the procedure for committal and Section 3 mentions nothing which confers any jurisdiction upon the Judge, City Sessions Court to deal with any matter relating to a scheduled offence.

20. Mr. Dutt relied on the decision in the case of Ahmed Moideen Khan and Others Vs. Inspector of "D" Division, , where a Division Bench of the Madras High

Court had to consider the jurisdiction of the Sessions Judge, Madras to entertain a transfer application. This case cited by Mr. Dutt in support of his contention does not appear to me to have any bearing on the facts of the present case. The Madras Act 34 of 1955 has taken away the jurisdiction of the Original Side of that Court to try cases which formerly used to be committed for trial there. The result thereof was that the High Court of Madras could not try any sessions case which by virtue of Madras Act 34 of 1955 was now being tried by the Sessions Judge of Madras. In Calcutta, however, only certain offences not mentioned in the schedule of the City Sessions Court Act of 1953 are now being tried by the Judge, City Sessions Court. The scheduled offences however, are beyond the jurisdiction of the Sessions Judge and are within the exclusive jurisdiction of the original side of the High Court. That being the position the Madras decision does not help Mr. Dutt.

21. In my view, the City Sessions Court Act 1953 was never enacted to deal with any matter whether mentioned in the schedule or not with the only restriction mentioned in Sub-section 1 of Section 6. I am of the view that in so far as scheduled matters are concerned the City Sessions Court Act had no application. It follows therefore, that in the present case the learned Judge had no jurisdiction to entertain the application u/s 528, Cr.PC

22. Mr. Chatterjee has pointed out that the accused in the case had moved the Chief Presidency Magistrate for transfer of the case and thereafter, he has again moved the Judge, City Sessions Court u/s 528 (1c). He argues that the law has not given the accused both the rights. This argument overlooks the fact that Section 528 (2) only authorised the Chief Presidency Magistrate to withdraw or recall any case which he has made over to any magistrate subordinate to him and enquire into or try such case himself or make it over to some other competent Magistrate under him. Sub-section (1c) of Section 528, Cr.PC on the other hand, gives the Sessions Judge power to transfer any particular case from one Criminal Court to another Criminal Court in the same Sessions division. This point, however, does not arise in view of my finding that in the present case the proceeding u/s 528, Cr.PC before the City Sessions Court was without jurisdiction. The reference is answered accordingly.

23. I therefore, entirely agree with the reasons and the conclusions stated in the judgment just delivered by my Lord.