CALCUTTA HIGH COURT

Emperor

Vs

Sourindra Mohan Chuckerbutty

(Stephen and Carnduff, JJ.)

07.03.1910

JUDGMENT

Stephen and Carnduff, JJ.

1. 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.

2. 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, 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.

3. 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.

4. 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 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, prima 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.

5. 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.