

1941

Present : Nihill J.

ZOYSA v. NANNIYARAN AIYAR.

IN THE MATTER OF AN APPLICATION FOR THE CANCELLATION OF BAIL
GRANTED IN M.C. MALLAKAM, No. 22,395.

Bail—Application to cancel bail granted by Magistrate—Accused committed for trial—Powers of Supreme Court—Criminal Procedure Code, s. 395 (4).

Where a Magistrate has granted bail under section 395 (3) of the Criminal Procedure Code to an accused person, who has been committed for trial to the Supreme Court on a charge of attempted murder, the Supreme Court has no power to commit the accused to custody except in terms of section 395 (4), viz., "at any subsequent stage of the proceeding".

In the present instance the next stage in the proceedings will not be reached until the accused appears before the Supreme Court to stand his trial.

THIS was an application by the Superintendent of Police, Jaffna, for the cancellation of the bail granted by the Magistrate to the accused in the above case.

S. Alles, C.C., for petitioner.

G. G. Ponnambalam, for the respondent.

August 12, 1941. NIHILL J.—

This is a petition from the Assistant Superintendent of Police, Jaffna, for a cancellation of the bail granted by the Magistrate to the accused in the above-mentioned case in which the accused was committed to stand his trial before the Supreme Court on a charge of attempted murder. The petition is supported by an affidavit by one A. Sabapathy, who states that on July 17 last, he was cut by the accused with a knife. A Sabapathy is a witness against the accused in the trial now pending in the attempted murder charge.

The grounds for the application are that the accused is likely to tamper and intimidate other witnesses for the prosecution. The accused has been charged with causing grievous hurt to A. Sabapathy and that case is pending in the Magistrate's Court at Mallakam.

On the respondent being asked to show cause against the application Mr. Ponnambalam has taken two points. Firstly, that the case against the respondent in respect of the alleged attack upon A. Sabapathy is a weak one which is evidenced by the fact that the learned Magistrate refused a Police application that bail should not be granted. This I understand is so.

With regard to this point the application of A. Sabapathy discloses a prima facie case against the respondent which, if true, shows him to be a person likely to tamper with the ends of justice by intimidation of witnesses.

If I therefore had the power I would commit the respondent to the custody of the Fiscal pending the determination of the grievous hurt charge. Mr. Ponnambalam has however taken another point which presents a difficulty in law. He claims that I have not the power to grant this application under section 395 (4) of the Criminal Procedure Code, since the petition is "not made at any subsequent stage of any proceeding under this Code".

He has called my attention to the fact that this sub-section is identical with sub-section (3) of section 497 of the Indian Code of Criminal Procedure as it stood before it was amended by Act XVIII, of 1923. By that Act the sub-section was deleted and the following substituted:—"A High Court or Court of Session, and in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody".

A similar amendment has not been made in the Ceylon Code of Criminal Procedure.

Now it is clear that under the Indian sub-section as amended there would be no difficulty in acceding to this application and Mr. Ponnambalam urged that the amendment must have been made in India to meet such a case. He is unable to quote any Indian decisions to show that

difficulties had arisen under the unamended section and I notice that the commentators are silent on the precise reasons that brought about the alteration in the law. Neither can any help be obtained from Ceylon authorities as there appears to be no recorded instance of an order having been made on an application similar to this.

I have therefore to consider whether there is substance in Mr. Ponnambalam's submission.

Mr. Alles for the petitioner asks me to regard this petition as a stage in the proceedings on the charge of attempted murder. To do so it appears to me that for the words "at any subsequent stage of any proceeding" under this Code I should have to read the words "at any time". This I cannot do. The Criminal Procedure Code marks out the various stages which precede the trial of an indictable offence by the Supreme Court. There is the investigation and inquiry by the Magistrate. There is the committal for trial and consideration by the Attorney-General. There is the filing of the indictment and the presentation of that indictment before the Court. In the present instance the charge of attempted murder against the respondent has reached the stage when he has been indicted and awaits his trial, but the next stage in the proceedings will not be reached until he appears before the Supreme Court to stand his trial.

Can an intervenient create a further stage in the proceeding by the mere presentation of a petition to this Court? I do not think so. It cannot in my view be said to constitute a subsequent stage in a proceeding under the Code. In the converse case where an accused person applies to the Supreme Court for bail the wording of section 396, though not in express terms, would allow the grant of bail at any time.

I have considered whether the difficulty could be overcome by an exercise of this Court's revisionary powers under sections 356 and 357 of the Criminal Procedure Code. But the order I am asked to rescind is the order for bail made by the learned Magistrate when he committed the respondent for trial on the charge of attempted murder.

The Magistrate had a discretionary power to make such an order under section 395 (3) and *ex facie* there was nothing illegal or improper in the order.

There is therefore nothing that calls for the revision of that order as such. The same consideration might not apply with equal force to the Magistrate's order granting bail in the grievous hurt case as the Magistrate then knew the position.

Although I might be of the opinion that the Magistrate would have been well advised to have refused bail I cannot on the material before me reach the conclusion that he exercised his discretion unjudicially.

For the above reasons the application cannot be entertained. At the same time it is clearly desirable that the case pending in the Magistrate's Court should be heard with as little delay as possible and I therefore direct that a copy of this order should be sent to the learned Magistrate with the request that he should fix as early a date for the hearing as he conveniently can.

Application refused.