

ATTORNEY-GENERAL

v.

PUNCHI BANDA AND OTHERS

COURT OF APPEAL.

H. A. G. DE SILVA, J., DHEERARATNE, J. AND RAMANATHAN, J.

C.A. 498/85.

H.C. KURUNEGALA AB 16/85.

M.C. MAHO CASE No. B/10985.

NOVEMBER 19, 1985.

Criminal Procedure – Bail – Sections 114, 115, 116 and 403 (2) of the Code of Criminal Procedure Act.

With effect from 1st January 1985 when the Criminal Procedure (Special Provisions) Law lapsed, section 403 (1) of the Code of Criminal Procedure Act No. 15 of 1979 was operative without any reference to that law. A magistrate at any stage of an inquiry or Judge of the High Court at any stage of a trial is empowered to release on bail any person who is alleged to have committed or been concerned in committing or is suspected to have committed or been concerned in committing an offence punishable under sections 114, 191 and 296 of the Penal Code only with the sanction of the Attorney-General.

Subsection 403 (2) applies only in a case before the High Court at any stage of a trial on indictment by the Attorney-General.

APPLICATION in revision from the order of the High Court.

Priyantha Perera, Deputy Solicitor-General with Nihara Rodrigo, State Counsel for the Attorney-General.

D. S. Wijesinghe with R. M. Suresh Chandra for the 1st to 7th respondents.

Cur. adv. vult.

December 18, 1985.

RAMANATHAN, J.

This is an application by the Attorney-General to revise the order of the learned High Court Judge of Kurunegala granting bail in AB 16/85 on 12th March, 1985 in respect of the 3rd, 6th and 7th respondents.

The facts briefly are as follows : The 2nd to the 6th respondents were arrested by the Ambanpola police on the 20th January, 1985 on an allegation of having committed the murder of H. M. M. Bandara and causing hurt to H. M. M. Herath Banda on the 19th January, 1985.

The Magistrate, Maho made order remanding them on the 20th January, 1985 and the 7th respondent was remanded on the 23rd January, 1985. The 1st respondent made application to the High Court of Kurunegala seeking bail for the 2nd to the 7th respondents.

When the application came up for inquiry on the 19th of February, 1985, State Counsel objected to the suspects being enlarged on bail, and the application was fixed for inquiry for the 28th of February, 1985. On this date State Counsel objected to the suspects being enlarged on bail again. The learned High Court Judge had observed that since State Counsel had objected to bail the court had no power to enlarge the suspects under section 403 of the Code of Criminal Procedure Act No. 15 of 1979 and postponed further inquiry for the 12th of March, 1985 to enable the petitioners to make representations to the Attorney-General.

When the inquiry was resumed on the 12th March, 1985, counsel for the petitioner restricted his application to the 3rd, 6th and 7th respondents only. Learned State Counsel had submitted to court, that he objected to bail and that under section 403 (1) sanction of the Attorney-General was necessary for the granting of bail to a suspect against whom an allegation was that he had committed an offence punishable under section 296 of the Penal Code.

The learned Judge held that after the Criminal Procedure (Special Provisions) Law No. 15 of 1978, as amended had lapsed, section 403 (1) of the Code of Criminal Procedure Act No. 15 of 1979 also became inoperative in respect of persons charged under section 296 of the Penal Code. The learned Judge held that it was open to him under section 403 (2) of the said Act to release the suspects on bail without the sanction of the Attorney-General and made order under the said section enlarging the suspects on bail.

It is obvious that both learned State Counsel who appeared at the inquiry and the learned High Court Judge both overlooked the words "at any stage of inquiry or trial" mentioned in section 403 (2).

Mr. Priyantha Perera, Deputy Solicitor-General, contended that this order of the High Court Judge releasing the suspects on bail was made without jurisdiction, was erroneous and contrary to law. He urged that the learned High Court Judge had no jurisdiction to make

this order. It was his contention that the Criminal Procedure (Special Provisions) Law No. 15 of 1978 had lapsed on the 31st of December, 1984 and the High Court had no jurisdiction in this case to entertain an application for bail under s. 403 of the Code of Criminal Procedure Act No. 15 of 1979. Secondly, the learned High Court Judge in this case could not have released the suspects on bail even under the provisions of section 115 (3) of Act No. 15 of 1979 as a period of 3 months had not lapsed from the date the suspects surrendered to court or were arrested. He also contended that the High Court had not given any special circumstances for releasing these suspects on bail, which is the only basis on which the High Court was permitted to release a suspect on bail before the expiration of the period of 3 months referred to in the preceding provisions of that section provided that proceedings are not instituted against such suspect in a Magistrate's Court or the High Court.

The Deputy Solicitor-General's contention was that if proceedings had been instituted against these suspects in the Magistrate's Court of Wariyapola by this date under section 136 of the Criminal Procedure Code the learned High Court Judge of Kurunegala had no jurisdiction, in any event, to make this order releasing these suspects on bail.

Although it is hardly necessary for the purpose of interpreting section 403 to refer to other provisions of the Code of Criminal Procedure Act No. 15 of 1979, yet for the proper appreciation of the situations contemplated in section 403, we were helpfully taken through the scheme of the Act by the learned Deputy Solicitor-General. An examination of the provisions of the Act would also be necessary to find out whether the learned High Court Judge could have justifiably made the order he did, under any other section in a matter of this nature.

He argued that the provisions relating to investigations in the Criminal Procedure Code Act threw some light on the law relating to bail. Section 109 deals with the steps to be taken by an officer-in-charge of a police station, when he receives information relating to the commission of an offence. In particular, section 109 (5) (b) provides that, if it appears to the police officer that there is no sufficient ground for entering on an investigation, he shall not be bound to investigate the case. It is, therefore, clear that in terms of this provision the police officer is not bound to investigate a case if there is no sufficient ground for entering upon an investigation.

The next situation envisaged by the Act is set out in section 114. Section 114 states –

“That if upon an investigation, it appears to the officer-in-charge of a police station that there is no sufficient evidence or reasonable grounds for suspicion to justify the forwarding of the accused to a Magistrate’s Court, such officer shall release the suspect, if in custody, on his executing a bond with a direction to appear if and when so required before a Magistrate’s Court having jurisdiction to try or inquire into the offence.”

This section contemplates a situation where upon investigation the police officer is unable to allege that the suspect has committed an offence.

The next stage is the situation contemplated by section 115 (1). This section provides that when the investigation cannot be completed within the period of twenty-four hours fixed by section 37 of the Code of Criminal Procedure Act, and there are grounds for believing that further investigation is necessary, the Officer-in-Charge shall forward the suspect to the Magistrate’s Court with a report of the case together with a summary of statements recorded up to that time.

In terms of section 115 (2), if the Magistrate is of the view that it is expedient to detain a suspect in custody pending further investigation, he may after recording the reasons, authorize the detention of the accused for a total period of 15 days and no more. If, at the end of the 15 days, proceedings are not instituted the Magistrate may discharge the suspect or require him to execute a Bond to appear if and when so required.

At this stage, we have to consider what is meant by the words “proceedings are not instituted” in section 115 (2). Section 136 of the Code of Criminal Procedure provides that proceedings shall be instituted by a complaint (136 (1) (a)) or a report (136 (1) (b)) which alleges ‘that an offence has been committed’. So, under the provisions of the Code proceedings are instituted when there is a complaint or a report containing a definite allegation that an offence has been committed. Therefore, when section 115 (2) provides that if “proceedings are not instituted” within the stipulated 15 days, the suspect shall be discharged or released on a Bond, it envisages a

situation where a person has been detained for 15 days without the institution of proceedings. It is clear, therefore, that a suspect could be remanded for 15 days without a definite allegation that he committed an offence. This envisages a situation where there is not sufficient material to make a definite allegation against the suspect, but the information merits further investigation and the investigation cannot be completed within the period of twenty-four hours fixed by section 37 of the Criminal Procedure Code Act. At this stage, the situation is brought to the notice of the Magistrate and judicial scrutiny commences.

Section 115 (3) provides further that if the suspected offence falls within sections 296, 191 or 114 of the Penal Code, then the Magistrate shall not enlarge the suspect on bail for a further period of 3 months, because the above three sections create the most serious offences known to our law. If, during this period of 3 months, the police fail to find evidence sufficient to make a definite allegation against the suspect, the suspect may be released on bail. The proviso to this sub-section however, authorizes the High Court to direct the detention of a suspect for a further period on an application made by the Attorney-General. Section 120 (1) and (2) also support this contention. These sections enable judicial scrutiny and control over the police investigation. This is a power given to the judiciary to supervise the progress of the police investigation with a view to ensuring that once a suspect is remanded, the suspect would not continue to remain in custody in the absence of sufficient evidence.

The next stage of the investigation is dealt with under section 116. This section enacts that if upon an investigation it appears to the police that the information is well founded, he shall forward the suspect to a magistrate or take security for his appearance before such magistrate.

The words "the information is well founded" has to be examined in the light of the provisions contained in section 109 which refers to "information relating to the commission of a crime". Therefore, if after the investigation the Officer-in-Charge of a police station finds that a definite allegation could be made against the suspect, then the police would produce the suspect before the Magistrate with the allegation that he has committed an offence and proceedings are automatically instituted under the provisions of section 136 (1) (d).

A striking feature of section 116 is the absence of any stipulations as to what the Magistrate should do when a person is produced before him in terms of this section. The reason for this is obvious that, when a suspect is produced before a Magistrate with a definite allegation that he has committed an offence, proceedings are automatically instituted and what a Magistrate should do after proceedings are instituted is clearly spelt out in sections 145 and 182 (1).

The absence of a detailed provision in section 116 as to what the Magistrate should do is an indication that there is, indeed, a difference between the situations provided for in section 115 and 116 of the Code of Criminal Procedure Act. Section 115 caters to a special situation and, therefore, the legislature has set out in detail the steps to be taken in such a situation. When the situation contemplated by section 116 has arisen, no such stipulations are necessary in view of the fact that the normal procedure could be resorted to. It is, therefore, indeed clear that sections 115 and 116 cater to two different situations. Once a suspect is taken before the Magistrate by the police on the basis that information is well founded, then by virtue of section 136(1)(d) proceedings are instituted and the Magistrate is directed to start a preliminary inquiry under the provisions of section 145. Once this stage is reached if for some reason the inquiry has to be postponed, the Magistrate is empowered to act under section 263 of the Code. The Magistrate can then remand or enlarge the suspect on bail. However, his power to grant bail under this section is subject to the provisions of section 403 which is a special section relating to bail. Therefore, the suspect in respect of whom proceedings have been thus instituted would not be entitled to be enlarged on bail under the provisions of section 115 of the Code of Criminal Procedure. At this stage, the only provisions under which he could seek to be released on bail would be section 403.

We are of the opinion, that the learned High Court Judge has misdirected himself when he held that the provisions of section 403(1) of the Criminal Procedure Code had become inoperative in respect of a person charged under section 296 of the Penal Code with the lapsing of the Criminal Procedure (Special Provisions) Law No. 15 of 1978, and, that it was open to the High Court to enlarge such a suspect on bail, under the provisions of section 403(2) of the Code of Criminal Procedure Act, No. 15 of 1979, without the sanction of the

Attorney-General. On a reading of section 403(1) it is abundantly clear that the section was operative subject to the provisions of the Criminal Procedure (Special Provisions) Law No. 15 of 1978 only for so long as that Law was in force. The Criminal Procedure (Special Provisions) Law No. 15 of 1978 lapsed on the 31st of December, 1984. Thus, with effect from the 1st of January, 1985 section 403(1) would be operative without any reference to that Law. The present position would be that a Magistrate at any stage of any inquiry or Judge of the High Court at any stage of a trial, would now be empowered to release on bail any person who is alleged to have committed or been concerned in committing or is suspected to have committed or to have been concerned in committing an offence punishable under sections 114, 191 and 296 of the Penal Code only with the sanction of the Attorney-General.

It appears that section 403(2) would have no application to the facts of this case and that the learned High Court Judge has misdirected himself in releasing the suspects on bail under the provisions of this sub-section. This sub-section would apply in the case of the High Court only at any stage of a trial on indictment by the Attorney-General.

We therefore quash the High Court Judge's order of 12th March, 1985 granting bail for the 3rd, 6th and 7th respondents. But in view of the special circumstances of this case and in view of the facts that the rest of the suspects have now been enlarged on bail with the sanction of the Attorney-General, we order the release of 3rd, 6th and 7th respondents on bail in a sum of Rs. 5000 and that they report to the Ambanpola police station once a fortnight before 12 noon on the first and fourth Sunday.

H. A. G. DE SILVA, J. – I agree.

DHEERARATNE, J. – I agree.

Order quashed.