

1977 Present : Wijesundera, J. and Sharvananda, J.

THE DIRECTOR OF PUBLIC PROSECUTIONS, Petitioner
and
W. GODAGE and two others, Respondents

S.C. 35/77-M. C. Matara 2827

Bail—Scope of the Magistrate's power to order bail—Administration of Justice Law No. 44 of 1973, sections 75, 77, 78, 103.

The three respondents were produced before the Magistrate, Matara, as suspects in a case of robbery of articles valued at Rs. 1,500 and the murder of four persons. The Magistrate, pending police investigation remanded the accused for a period of three months in the aggregate. After the period of three months was over, the respondents were produced before the High Court of Matara, which acting on the application of the petitioner made order under section 78 of the Administration of Justice Law extending the period for another three months.

After this period was over, the respondents were produced before the Magistrate of Matara. The Investigating Officer in terms of section 77 (2) (a) of the Administration of Justice Law moved that the suspects be remanded for a period of three months to enable the Director of Public Prosecutions to consider his final report. The Magistrate refused the application taking the view that he had no power to order further detention. He accordingly released the suspects on bail in a sum of Rs. 1,500

Held : (1) That the Magistrate had misdirected himself in refusing to order the detention of the suspects when application for detention was made under section 77 (2) (a) of the Administration of Justice Law. The statutory scheme of the law is that the Magistrate and the High Court could each order the detention of a suspect or accused for the maximum period of three months, aggregating six months, during the phase of investigation of the offence and both could make order of detention for a further period of three months each, during the stage of consideration of the report made by the Police Officer in charge of the investigation, thus totalling another six months.

(2) That in any event the respondents in the present case were suspected of committing the offence of murder. The discretion of Court to release the suspects or accused on bail within the periods above referred to is curtailed in such cases by virtue of the proviso to section 103 (3). In such cases no bail can be granted without the consent of the Director of Public Prosecutions.

APPPEAL from an Order of the Magistrate's Court, Matara.

Ranjith Abeysuriya, Director of Public Prosecutions, with
T. Wickramasinghe, State Counsel, for the petitioner.

Daya Perera, with *S. J. Gunasekera* for the respondents.

Cur. adv. vult.

March 30, 1977. WIJESUNDERA, J.

At the end of the arguments in this application the Court made the following order :—

“The order of the Magistrate of Matara dated 5.1.77 releasing the 3 respondents on bail is set aside. The 3 suspects will be remanded forthwith for a further period of three months, as the

Magistrate was empowered to order under sec. 77 (2) (a) of the Administration of Justice Law. Reasons later.”

I now give the reasons.

The three respondents were produced before the Magistrate, Matara, the 1st on the 4th July and the 2nd and the 3rd on 5th July as suspects in a case of robbery of articles valued at Rs. 1,500 and the murder of 4 persons committed on the 12th June, 1976. The learned Magistrate extended their remand till 4th October, 1976. On the 4th October, 1976, on the application of the petitioner the High Court Judge of Matara acting under the provisions of sec. 78 of the Administration of Justice Law extended the period for another three months. While that order was pending the respondents applied to this Court for bail. On the 12th of December, 1976, that application was refused by Pathirana J. and Colin Thome J. On the 5th January the day after the period of three months was over, the respondents were produced before the Magistrate of Matara. The Investigating Inspector in terms of sec. 77 (2) (a) of the Administration of Justice Law moved that the suspects be remanded for a period of three months to enable the Director of Public Prosecutions to consider his final report. The Magistrate however released them on bail in a sum of Rs. 5,000 and directed the respondents to report to the Akuressa Police once a week. The petitioner now seeks to have that order revised.

The consideration of the petition was delayed because the record was delayed. The record in this case was called for by telegram on the 11th February, 1977. But the record was not received by the Registrar of this Court till about the middle of the month due to postal difficulties. I earnestly hope that there will be no such delays in the future because the purpose of revision can be defeated by delay.

Whenever a person suspected of having committed an offence is produced before a Magistrate under sec. 75 (1) of Administration of Justice Law, if he considers that there are grounds for believing that the information is well founded he can have the suspect detained in any prison for 15 days and no more if he finds it is expedient to do so for reasons to be recorded by him, pending the completion of investigations. If however the offence under investigation is one that is not triable by a Magistrate, the period the Magistrate is empowered from time to time to authorise, under the proviso 1 to sec. 75 (2) of Administration of Justice Law, the detention of a suspect for successive periods of 15 days for a period not exceeding 3 months. So that in this case that period came to an end on the 4th October, 1976. The

purpose of the remand or detention is to complete the investigations. There can be cases where the investigations cannot be complete within three months and where it is also necessary that suspects should be detained. Sec. 78 of Administration of Justice Law provides for that eventuality and the High Court of Matara extended that period till 4th January, 1977.

When that period came to an end on 4th January, 1977, on the 5th January, 1977, the Investigating Officer informed the Magistrate that the investigations were completed and that under sec. 77 (1) (b) of Administration of Justice Law he had forwarded a report to the Director of Public Prosecutions and to the Magistrate, and further moved for an extension of the period of remand by another three months under sec. 77 (2) (a) of the Administration of Justice Law to enable the Director of Public Prosecutions to consider the report and take action under sec. 77 (3) of the Law. The Magistrate under sec. 77 (2) (a) is empowered where he considers it expedient for reasons to be recorded by him, to detain the suspect for a further period of 3 months to enable the Director of Public Prosecutions to consider the report of the Investigating Officer. The period of three months is to commence "upon receipt of a report in terms of sub-sec. (1) (b)" which in this case is 5.1.77.

It was the contention of the learned Attorney for the respondents that the report after the completion of investigations had been filed on 29.9.76 and the period of three months should commence from that date and that period had expired. In the record of the proceedings there is a report dated 29.9.76. But it is a copy sent to the Magistrate of a report by the Assistant Superintendent of Police to the Director of Public Prosecutions under sec. 80 of the Administration of Justice Law which requires the Assistant Superintendent of Police of the area to report to the Director of Public Prosecutions in respect of all offences committed in his area. The report contemplated in sec. 77 (1) (b) of the Law is the report by the Investigating Police Officer not by the Assistant Superintendent of Police. So that the report dated 29.9.76 is not the report filed by the Investigating Inspector after the completion of the investigations. The Attorney's submission fails.

It was next submitted that the Magistrate had no power on 5.1.77 to extend the remand after the High Court had made an order. Upon the application of the Director of Public Prosecutions for good reasons sec. 78 empowers the High Court to order the extension of the period of remand of a suspect in two situations:—(1) Where a Magistrate had remanded under the proviso 1 to sec. 75 (2) of the law a suspect for three months

pending the completion of the investigations and it is found that that time is insufficient, a High Court is empowered to extend the period by 3 months for the purpose of completing the investigations.

(2) Where a Magistrate has under sec. 77 (2) (a) remanded a suspect for 3 months pending the consideration by the Director of Public Prosecution of the report filed under sec. 77 (1) (b) a High Court is again empowered to extend that period by another 3 months for that purpose.

A Magistrate can remand a person suspected of committing an offence which he cannot try, under the proviso 1 to sec. 75 (2) for the completion of investigations and under sec. 77 (2) (a) for the consideration of the report of the investigation by the Director of Public Prosecutions. The Magistrate is empowered to make the order under sec. 77 (2) (a) only upon receipt of the report after the completion of the investigations. Investigations may be long and an Investigating Officer may require the period of remand order by a Magistrate under the proviso to sec. 75 (1) extended by the High Court under sec. 78 to complete the investigations, as in this case. Therefore the law contemplates the situation where an order under sec. 77 (2) (a) is made by a Magistrate after an extension of the period of remand for completion of the investigations by the High Court. Then the Magistrate was empowered to extend the period of remand on 5.1.77 under sec. 77 (2) (a) of the Law.

The application for the extension of remand of 5.1.77 was made on behalf of the Director of Public Prosecutions. The report of the Investigating Inspector and of the Assistant Superintendent of Police to the Director of Public Prosecutions were before the Magistrate. The respondents are suspected of committing four murders. The offence of murder is non-bailable and is punishable with death. In terms of the proviso to sec. 103 (3) the respondents could have been admitted to bail by the Magistrate only with the consent of the Director of Public Prosecutions. There was no such consent. For all these reasons the order made by the Magistrate is wrong. In the only affidavit filed in this Court the Investigating Officer has stated that the suspects if released on bail "would abscond" and will interfere with the witnesses as they are from the same village. In the exercise of the powers of revision this Court sets aside the order of the Magistrate and directs that the suspects be remanded for a further period of three months commencing from 5.1.77.

SHARVANANDA, J.

I agree with the order and reasons given by Wijesundera J.

As there appears to be a misapprehension regarding the scope of a Magistrate's power to order detention where the offence under investigation is not one triable by a Magistrate, I have sought to clarify the position by an analysis of the relevant sections of the Administration of Justice Law, No. 44 of 1973.

When application was made under section 77(2) (a) of the Administration of Justice Law for the detention of the suspects for a period of 3 months, pending consideration of the investigating Police officer's report by the Director of Public Prosecutions, the Magistrate refused the application with the elliptic remark that he had no power to order further detention. The Magistrate appears to have been under the misapprehension that he could authorise the detention of the accused, if the offence under investigation is not one that is triable by a Magistrate's Court for the maximum period of 3 months only as directed by the section 75(2) proviso and that once he had ordered detention of the accused for that period in the exercise of his power under the proviso to section 75(2), he had become functus to exercise any jurisdiction to make further order for detention even under section 77(2) (a). This is an erroneous view.

An accused or suspect may be kept in custody pending investigation and pending consideration of the report of the Police officer in charge of the investigation. During the investigation stage, the Magistrate may, in terms of section 75(2) proviso, authorise the detention of the accused for a period not exceeding 3 months in the aggregate. If the investigation is not completed by the end of that period, the Director of Public Prosecutions may, in terms of section 78, apply to the High Court that the suspect who is held in custody upon an order by a Magistrate made in terms of the proviso to section 75(2) be held in further custody for a further period not exceeding 3 months pending the completion of the investigation. Thus, a suspect may be held in custody upon an order by a Magistrate in terms of the section 75(2) proviso for the maximum period of 3 months, and upon an order of the High Court on the application of the Director of Public Prosecutions for a further period of 3 months pending completion of the investigation in terms of section 78.

Section 77(1) provides that on completion of the investigation, the Police officer in charge of the investigation shall forward a report to the Director of Public Prosecutions and to the Magistrate. Pending the consideration of that report by the Director of Public Prosecutions, section 77(2) vests jurisdiction

in the Magistrate to order the detention of the suspect or accused for a period of 3 months, and section 78 empowers the High Court to make a further order of 3 months.

Thus, the statutory scheme of the law is that the Magistrate and the High Court could each order the detention of the accused for the maximum period of 3 months, aggregating 6 months, during the phase of investigation of the offence and both could make order of detention of the accused for a further 3 months each, thus totalling another 6 months, during the stage of consideration of the report made by the Police officer in charge of the investigation. Thus, a suspect could be kept in custody on the orders of the Magistrate for 3 months maximum under the section 75(2) proviso, and for a further 3 months under section 77(2) (a), and by the High Court for a further period of 3 months during the investigation stage, and another 3 months pending consideration of the investigating officer's report on application made for that purpose by the Director of Public Prosecutions.

On the above clarification, it would appear that the Magistrate misdirected himself in refusing to order the detention of the suspects when application for such detention was made under section 77(2) (a).

The discretion of Court to release the suspects or accused on bail within the periods referred to above is however curtailed in cases where the person is suspected or accused of an offence punishable with death. The proviso to section 103(3) makes it imperative that such a person can be admitted to bail only with the consent of the Director of Public Prosecutions. The consent of the Director is a *sine qua non* in such cases.

Application allowed.