Before J. M. Tandon, J.

STATE OF PUNJAB,—Petitioner.

versus

AMRITSARIA RAM,—Respondent.

Criminal Revision No. 1045 of 75

July 31, 1979.

Code of Criminal Procedure (2 of 1974)—Sections 107, 151 and 440—Person asked to furnish bail in security proceedings—Application made to the court of Session for reduction of the amount of bail —Such application—Whether maintainable—Sub-section (2) of section 440—Whether applicable to security proceedings under Chapter VIII.

Held, that under sub-section (1) of section 498 of the Code of Criminal Procedure 1898 the power of the High Court was restricted to the amount of bond executed under Chapter XXXIX of the Old Code which contained this section. The position stands altered under section 440 of the Code of Criminal Procedure 1973. The splitting of sub-section (1) of section 498 of the old Code into two independent sub-sections in section 440 of the Code of Criminal Procedure 1973 and the construction thereof is suggestive that the Legislature did not intend to restrict the power of the High Court or the Court of Session under sub-section (2) to the bonds executed under Chapter XXXIII of the Code. Sub-section (2) of section 440 being independent of sub-section (1) will thus have application to security proceedings under Chapter VIII of the Code of Criminal Procedure 1973 as a whole. An application to the Court of Session for the reduction of the amount of bail is, therefore competent.

(Para 6)

Petition under section 397/401 Cr.P.C. for the revision of the order of the Court of Shri H. S. Chaudhary, Sessions Judge, Kapurthala dated 11th August, 1975 modifying the order of the Executive Magistrate, Kapurthala reducing the amount of bond Rs. 5,000 for both appearance and for security proceedings.

A. S. Sarhadi, A. G. Punjab with B. S. Wasu, Advocate, D. S. Khatra, Advocate, for the Petitioner.

Nemo, for the Respondent.

JUDGMENT

J. M. Tandon, J.

(1) In proceedings under section 107/151, Criminal Procedure Code, 1973, the Executive Magistrate, Kapurthala, directed Amritsaria Ram to furnish bail in the sum of Rs. 20,000 for appearance and Rs. 30,000 for security purposes. Amritsaria Ram approached the Sessions Judge under section 440, Criminal Procedure Code, alleging that the amount of bail demanded was excessive and prayed for its reduction. An objection was raised before the Sessions Judge, regarding his competency to entertain the application under section 440, Criminal Procedure Code. The Sessions Judge,—*vide* order, dated August 11, 1975, held that he was competent to entertain the application under sub-section (2) of section 440, Criminal Procedure Code. He also found that the amount of bail demanded for appearance and security purposes was excessive and reduced it to Rs. 5,000 each. It is against this order that the present revision has been filed by the State.

(2) The learned Advocate General has argued that the learned Sessions Judge erred in holding that he was competent under sub-section (2) of section 440, Criminal Procedure Code to entertain the application of Amritsaria Ram for reduction of bail amount demanded from him in security proceedings. Sub-section (1) of 440 is restricted to bonds executed under Chapter XXXIII of the Code. Sub-section (2) of section 440 is not independent of sub-section (1) thereof. The provisions relating to security proceedings are contained in Chapter VIII of Criminal Procedure Code. Sub-section (2) of section 440 shall, therefore, have no application to the security proceedings under Chapter VIII of the Criminal Procedure Code. In my opinion, the contention is devoid of force.

Section 440 of the Criminal Procedure Code reads: —

440. (1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced."

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(3) Under sub-section (1) of section 440, it is specifically provided that it shall relate to the bonds executed under the Chapter containing this section. Section 440 is contained in Chapter XXXIII. This sub-section is directory. Under sub-section (2), the High Court and the Court of Session have been given the power to reduce the bail required by a police officer or a Magistrate. The point for consideration is: whether sub-section (2) of section 440 is restricted to Chapter XXXIII of the Criminal Procedure Code or it will apply to the security proceedings as well, the provisions of which are contained in Chapter VIII of the Code?

(4) The application of the provisions contained in sections in Chapter XXXIII of the new Code is not *per se* restricted to this Chapter. The provision contained in sub-section (1) of section 440 has been specifically restricted to the bonds executed under Chapter XXXIII. Sub-section (2) of section 440 is independent of sub-section (1) thereof and is not subservient thereto. The restriction imposed in sub-section (1), therefore, shall not extend to sub-section (2).

(5) The learned Advocate General has relied upon *Jagir Singh and another* v. *Emperor,* (1), wherein it was held that section 117(3) had been introduced for the purpose of preventing a breach of peace or disturbance of the public tranquility or the commission of any offence or in the interest of public safety pending an enquiry under sections 108, 109 and 110. It was not, therefore, open to the High Court under provisions of section 498 to reduce the security which the Magistrate orders to be furnished. In this authority, the power of the High Court under sub-section (1) of section 498, Criminal Procedure Code (old) in proceedings under section 117(3) of the old Code was examined and it was held (and rightly) that the High Court could not reduce the security which the Magistrate orders to be furnished. This limitation on the power of the High Court was imposed by section 498, Criminal Procedure Code (old), itself which read: —

> "498. (1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any

(1) A.I.R. 1930 Lahore 529.

person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced.

(2) ...   ."".

(6) It is clear from sub-section (1) of section 498, (reproduced above) that the power of the High Court was restricted to the amount of bond executed under Chapter XXXIX of old Criminal Procedure Code which contained this section. The position stands altered under section 440, Criminal Procedure Code, 1973. The splitting of sub-section (1) of section 498, Criminal Procedure Code (old) into two independent sub-sections in section 440, Criminal Procedure Code, 1973, and the construction thereof is suggestive that the Legislature did not intend to restrict the power of the High Court or the Court of Session under sub-section (2) to the bonds executed under Chapter XXXIII of the Code. Sub-section (2) of section 440 being independent of sub-section (1) will thus have application to security proceedings under Chapter VIII of the Criminal Procedure Code, 1973, as well. The learned Sessions Judge, therefore, rightly entertained the application of Amritsaria Ram for reducing the amount of bail demanded from him by the Executive Magistrate.

(7) The learned Advocate General has not challenged the correctness or the propriety of the impugned order reducing the amount of the bail bond.

(8) In the result, the revision fails and is dismissed.

_H.S.B._

FULL BENCH

Before S. S. Sandhawalia, C.J., M. R. Sharma and S. S. Sidhu, JJ.

STERLING STEELS & WIRES LTD.,—_Petitioner._

versus

STATE OF PUNJAB and others,—_Respondents._

Civil Writ Petition No. 304 of 1979

October 30, 1979.

East Punjab General Sales Tax Act (46 of 1948)—Sections 4, 4A, 4B and 5—Central Sales Tax Act (LXXIV of 1956)—Section 15—Constitution of India 1950—Article 286—Declared goods consumed for the manufacture of finished articles—Such goods—Whether