

own from Public Exchequer. On the contrary, the acquisition being for a limited company it must be presumed that the compensation is to be paid by the company for whose benefit the acquisition has been made. The preamble of the notification of 2nd of September, 1960, mentions that the land "is likely to be needed by Government at public expense for a public purpose." This is sufficient for the purpose of this Court to show that the land is being acquired for a public purpose and compensation is to be paid out of public revenues.

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Shamsher
Bahadur, J.

In my opinion, there is no force in this petition which fails and is dismissed. In the circumstances of the case, I would leave the parties to bear their own costs.

B.R.T.

REVISIONAL CRIMINAL

Before H. R. Khanna, J.

THE STATE.—Petitioner.

versus

MOHINDER SINGH AND OTHERS.—Respondents.

Criminal Revision No. 1517 of 1962.

Code of Criminal Procedure (Act V of 1898)—S. 17—
Sessions Judge—Whether can assign a bail application
filed in his Court to an Additional Sessions Judge for dis-
posal—S. 498(1)—Sessions Judge—Whether includes Ad-
ditional Sessions Judge.

1963

May 14th.

Held, that section 17 of the Code of Criminal Procedure gives wide powers to the Sessions Judge for assignment of a bail application or any other urgent application to the Additional Sessions Judge for disposal. The expression "incapable of acting" does not necessarily imply that the person rendered incapable is suffering from physical incapacity. It would also cover the case where the incapacity is caused by other causes including the pressure of other work. It is for the Sessions Judge to decide whether, on

account of the rush of work or otherwise, he was rendered incapable of disposing of the bail application, and his decision in this respect cannot be questioned by the Additional Sessions Judge to whom the application is assigned.

Held, that the Court of Session, referred to in subsection (1) of section 498 of the Code of Criminal Procedure, would include the Court of an Additional Sessions Judge; and it would, therefore, follow that an Additional Sessions Judge has jurisdiction in an appropriate case to release a person, standing trial before a Magistrate, on bail provided the bail application has been duly assigned to him. An Additional Sessions Judge can dispose of cases triable by the Sessions Judge which are assigned to him for which there are various provisions in the Code of Criminal Procedure.

Case reported under section 438 of Criminal Procedure Code by Shri C. S. Tiwana, Additional Sessions Judge, Ferozepur, with his memo No. 104 of 1962; for revision of the order of Shri H. D. Lomba; Sessions Judge; Ferozepur; dated the 22nd November, 1962, in bail application in the case.

HARBHAGWAN, ADVOCATE, for the ADVOCATE-GENERAL, for the Petitioners.

BACHITTAR SINGH, ADVOCATE, for the Respondents.

ORDER OF THE HIGH COURT

Khanna, J.

KHANNA, J.—This is a reference made by the Additional Sessions Judge, Ferozepore, recommending that the order of the learned Sessions Judge, Ferozepore, whereby he assigned a bail application for disposal to the Additional Sessions Judge, be held to be without jurisdiction.

The brief facts giving rise to the present reference are that Mohinder Singh and 2 other persons, who were being tried along with others in a case under sections 452 and 342 read with section 149 and section 148, Indian Penal Code, in the Court of Magistrate I Class, Ferozepore, filed an application for the grant of

bail to the Court of Session. The learned Sessions Judge passed the following order on that application on 22nd November, 1962:—

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“I am over busy in the election petition and, therefore, this bail application is sent for disposal to the Additional Sessions Judge, Ferozepore, under section 17 (4) Cr. P. C. The petitioners’ counsel to appear tomorrow before him.”

As the Additional Sessions Judge was of the view that the learned Sessions Judge was not competent to pass that order, he has made the reference to this Court. An interim order releasing the petitioners on bail was, however, made.

I have heard Mr. Bachittar Singh, on behalf of the petitioners, and Mr. Har Bhagwan (on behalf of the State. Both of them have urged that the recommendation of the learned Additional Sessions Judge be not accepted, and, after giving the matter my consideration, I am of the view that the aforehead recommendation should be turned down. Sub-section (1) of section 498 of the Code of Criminal Procedure, *inter alia* provides that the Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by Police-officer or Magistrate be reduced. The Court of Session, referred to in the above sub-section, would include the Court of an Additional Sessions Judge, and it would, therefore, follow that an Additional Sessions Judge has jurisdiction in appropriate case to release a person, standing trial before a Magistrate, on bail provided the bail application has been duly assigned to him. An Additional Sessions Judge can dispose of cases triable by the Sessions Judge which are assigned to him and there are

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various provisions of the Code of Criminal Procedure dealing with this matter. Section 17(4) of the Code prescribes for the disposal of urgent applications by an Additional Sessions Judge and other judicial officers. Urgent applications would obviously include bail application. Provision of law in this respect under section 17(4) is as under:—

“(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.”

Sub-section (2) of section 193 of the Code prescribes for the trial of the cases by Additional Sessions Judges and Assistant Sessions Judges, and reads as under:—

“(2) Additional Sessions Judges and Assistant Sessions Judges, shall try such cases only as the State Government by general or special order may direct them to try, or Sessions Judges of the division by general or special order, may make over to them for trial.”

Sub-section (2) of section 409 of the Code makes provision for the disposal of appeals by Additional Sessions Judges and Assistant Sessions Judges, and reads as under:—

“(2) An Additional Sessions Judge or an Assistant Sessions Judge shall hear only such appeals as the State Government may, by general or special order, direct or as the

Sessions Judge of the division may make over to him."

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Khanna, J.

Sub-section (2) of section 438 of the Code makes provision for the disposal of revisions by an Additional Sessions Judge, and is to the following effect:—

"(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

It would appear from the above that wide powers have been given for assignment of various types of cases by the Sessions Judge to the Additional Sessions Judge and the comprehensive nature of those powers goes to show that the Sessions Judge can, in appropriate cases, assign an application for bail in a pending case to the Court of Additional Sessions Judge. In actual practice, such a power has always been exercised by the Sessions Judges to relieve the congestion of work in their Court and the ensure equitable distribution of work in the Court of Additional Sessions Judges.

The learned Additional Sessions Judge was of the view that the power to assign bail application to an Additional Sessions Judge can only be exercised by the Sessions Judge under section 17(4) of the Code of Criminal Procedure if the Sessions Judge is absent or is physically incapacitated by illness or like such cause. In my opinion, there is no warrant for placing such a limited construction on the expression "incapable of acting". According to *Corpus Juris Secundum*, Volume 42, page 498, incapable means 'lacking or wanting in natural ability, capacity or qualification' or "wanting in capacity for the purpose or end in view". Keeping in view the above meaning of the word, it would follow that "incapable" does not

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necessarily imply that the person rendered incapable is suffering from physical incapacity. It would also cover the case where the incapacity is caused by other causes including the pressure of other work. The order of the learned Sessions Judge shows that on 22nd November, 1962, he was busy in the election petition. He accordingly, directed that the bail application should come up for hearing before the Additional Sessions Judge. The order clearly conveys that because of being busy in the election petition, the learned Sessions Judge was not capable of disposing of the bail application himself. In my opinion, it was for the learned Sessions Judge to decide whether, on account of the rush of work or otherwise, he was rendered incapable of disposing of the bail application, and his decision in this respect could not be questioned by the Additional Sessions Judge who, as stated in rule 4, Chapter 1-G of the Rules and Orders of the High Court, Volume IV, is under the general control of the Sessions Judge.

I, therefore, decline to accept the recommendation of the learned Additional Sessions Judge.

B.R.T.

REVISIONAL CRIMINAL

Before H. R. Khanna, J.

CHANAN SHAH,—*Petitioner.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 1531 of 1962.

Code of Criminal Procedure (Act V of 1898)—S. 499—Bond—Contents of—Non-compliance with the requirements of law—Surety—Whether can be held liable.

1963

May, 30th.

Held: that the perusal of section 499(1) of the Code of Criminal Procedure goes to show that the time and place