PRIVY COUNCIL

C.P. Matthen

Vs.

District Magistrate, Trivandrum

P.C.A.No.102 of 1938
(Lord Thankerton, Lord Porter and Sir George Lowndes JJ.)

03.04.1939

JUDGMENT

LORD THANKERTONJ.

1.This is an appeal from (1) a judgment of the Full Bench of the High Court of Madras, dated 4th November 1938, in Criminal Miscellaneous Petition No. 1003 of 1938, which on a reference by a Division Bench of the same Court, held that the orders of Pandrang Row J., a single Judge of the Court, on an application for writ of habeas corpus and relative applications, and dated 21st, 24th and 26th October 1938, made in Criminal Miscellaneous Petitions Nos. 986, 990 and 985 of 1938 respectively, were null and void, (2) a judgment and order of the said Division Bench, dated 7th November 1938, made in petition No, 1003 in implement of the above judgment, and (3) a judgment and order of the said Division Bench, dated 7th November 1938, made in petition No. 985, dismissing the application for a writ of habeas corpus. The appellants challenge the validity of certain warrants issued by the Resident for the Madras States under section 7, Indian Extradition Act (15 of 1903), to the Chief Presidency Magistrate of Madras, under which they were arrested, and they ask to be discharged. The course of procedure which has been followed has raised important questions as to the jurisdiction of the High Court of Madras to issue a writ of habeas corpus in the present case, and as to the competency of a single Judge of the High Court to issue such a writ or the analogous writ under section 491, Criminal Procedure Code (5 of 1898). The warrant against appellant 1 was in the following terms:

> To the Chief Presidency Magistrate,
> Madras.
> Whereas Mr. C. P. Matthen, Director of the Travancore National and Quilon

> Bank Ltd. (which is now under liquidation), who is now reported to be residing at Marble Hall, Sterling Road, Nungumbakam, Madras, stands charged with offences punishable under Sections 410, 419, 421, 480 and also Sections 99 and 101 of the Travancore Penal Code corresponding to Sections 409, 418, 420, 477-A, 109 and 114, Indian Penal Code, committed in the Travancore State, you are hereby directed to apprehend the said Mr. C. P. Matthen and surrender him to the frontier police station of the Travancore State for production before the District Magistrate, Trevandram. Herein fail not.
>
> (Sgd.) C. P. Skrine,
>
> Resident for the Madras States.

2. The warrants against the other three appellants were in the same terms. Appellant 4 denies that he is a director of the Bank, but that is not material at this stage. It will be noted that the warrants were not dated. The appellants were all arrested in Madras on the instructions of the Chief Presidency Magistrate, who is respondent 2 in this appeal, on 20tb October 1938. The Travancore National and Quilon Bank was formed by the amalgamation of two Banks and was incorporated in Travancore in September 1937, though the head office was in Madras and the larger part of its business would appear to be carried on in the Madras Presidency. The appellants, who are Travancore subjects, had taken up residence in Madras in 1937, in order to conduct the business there. The District Magistrate, Trivandrum, referred to in the warrants, is respondent 1 in this appeal. Learning that the appellants were to be taken to Travancore by a train leaving at 11 A. M. on 21st October 1938, and having in view that the High Court did not sit until 10.45 A. M., the sons of appellants 1 and 2 presented a petition (No. 985 of 1938) under section 491, Criminal PC, for a writ of habeas corpus in respect of all the appellants early on the morning of that day to Pandrang Row J., a Judge of the High Court, at his residence. This petition was supported by an affidavit by the son of appellant 1, and along with it a further petition (No. 986 of 1938) was presented to the Judge asking for a stay of execution of the warrants. On the latter petition (No. 986 of 1938), Pandrang Row J. made the following order, viz.:

> As the matter is extremely urgent the Chief Presidency Magistrate, Egmore, should detain these prisoners in his custody and not send them away from Madras pending further orders of the High Court.

3. The appellants had meanwhile been produced before the Chief Presidency Magistrate, and made an application for a reference to the Local Government under Section 8 (a), Extradition Act. While this application was in course of being heard the order passed by Pandrang Row J. was produced and the Magistrate thereupon

remanded the appellants to custody. Subsequently on the same day, the Crown Prosecutor presented a petition (No. 990 of 1938), praying that the order of Pandrang Row J. on petition No. 986 be vacated, mainly on the ground that it was passed without jurisdiction, as, under E. 2 (a) of the Appellate Side Rules of the High Court, jurisdiction under Section 491, Criminal Procedure Code, could only be exercised by a Bench of the High Court, and not by a single Judge. This petition, No. 990, was heard by Pandrang Row J. on 22nd October 1938, and on 24th October the learned Judge made an order in petition No. 990 refusing to vacate the order for stay in petition No. 986, and dismissing petition No. 990. The learned Judge held himself to be bound by the decision of a Full Bench of the High Court of Madras in *In re Govindan*Nairto the effect that the High Court had jurisdiction at common law to issue a writ of habeas corpus, and he held that such jurisdiction was vested in each of the Judges of the High Court, and could not be taken away by rules.

4. On the same day, 24th October 1938, the first of these petitions, No. 985, came before a Bench of the High Court (Burn and Stodart JJ.), who refused to proceed with the matter, as Pandrang Row J. was seized of it. In answer to the Court, counsel for the applicants stated categorically that the application was for a common law writ of habeas corpus and not a petition to the High Court to exercise its powers under Section 491, Criminal Procedure Code. On 26th October 1938, Pandrang Row J. heard petition No. 985, and made an order that a writ of habeas corpus should issue to the Chief Presidency Magistrate, returnable before himself on 28th October 1938, and a writ nisi was accordingly issued. On the same day, 26th October 1938, the District Magistrate, Trivandrum, respondent 1 in this appeal, presented a petition (No. 1003 of 1938) to the High Court, under Section 561-A, Criminal Procedure Code, and section 223, Government of India Act, 1935, praying that the orders of Pandrang Row J., dated 21st, 24th and 26th October 1938, should be quashed as having been made without jurisdiction, and calling the present appellants as respondents. This petition was supported by an affidavit by the Superintendent of Police, C. I. D., Travancore.

5. This petition, No. 1003, came on for hearing on 27th October before Burn and Stodart JJ., who, as the hearing could not be completed on that day, made an order suspending the operation of the writ nisi, issued under the order of Pandrang Row J. dated 26th October, and staying further proceedings on petition No. 985 until the further orders of the Court should be known with a direction to respondent 2 to keep the prisoners in his custody till further orders. After the further hearing on petition No. 1003, Burn and Stodart JJ., on 2nd November 1938, referred the following questions

of law to a Full Bench :

> (1) Can this High Court or any Judge of it issue the common law writ of habeas corpus in any of the cases covered by Section 491, Criminal PC.?
> (2) Can an application for a common law writ of habeas corpus or for directions under Section 491, Criminal Procedure Code, be heard and disposed of by a single Judge of this Court ? In other words : Are Rules 2 and 2-A of the Appellate Side Rules intra or ultra vires ?
> (3) If a single Judge has power to issue the common law writ of habeas corpus, is the writ issued by our learned brother Pandrang Row J. on 26th October liable to be quashed by this Court for the reason that it has been issued in contravention of the rules in force in the High Court in England ?

6. In stating their reasons for the order of reference the learned Judges dealt with the contentions submitted to them as follows : The petitioner, respondent 1 in this appeal, submitted three contentions: in the first place, that the High Court has no jurisdiction to issue the common law writ of habeas corpus in cases, which admittedly include the present case, covered by section 491, Criminal PC.; the learned Judges held themselves bound to reject this contention by reason of the decision of the Full Bench in *In re Govindan Nair,* already referred to, but gave reasons why they thought that it should be reconsidered. In the second place, the petitioner maintained that even if the High Court had still power to issue the common law writ of habeas corpus nevertheless R. 2 was intra vires and binding on all Judges of the Court, and that, accordingly, a single Judge had no power to deal with such proceedings; the learned Judges held this to be well-founded. In the third place, the petitioner maintained that even if a single Judge has jurisdiction to issue the common law writ of habeas corpus the procedure in this case had not been proper in that Pandrang Row J. had made the writ returnable to himself and not to the Court, during term time, which was in contravention of the rules in force in the High Court in England, which would apply in the case of a common law writ in the High Court of Madras; the learned Judges agreed with this contention. The respondents- the present appellants - maintained two arguments: first, that in a criminal matter, such as this one, there was no right of appeal, but the learned Judges held that the Court was entitled to entertain the petition by virtue of Section 561-A, Criminal PC. In the second place, the respondents objected to the locus standi of the petitioner, who had not been a party to the application for a writ; the learned Judges rejected this objection. Having regard to the importance of three of the questions argued before them, the learned Judges made the reference already mentioned.

7. On 4th November 1938 the Full Bench (Sir Alfred Leach C. J., Madhavan Nair, Varadachariar, Wadsworth and LakshmanaRao JJ.) having heard arguments, made an order in which the questions were answered as follows :

> (1) The common law writ of habeas corpus does not run in British India in a case like this. Assuming that the Court formerly had the power to issue a writ of habeas corpus in a case like this, that power has been taken away and the powers conferred by section 491, Criminal Procedure Code, substituted.
> (2) Rules 2 and 2-A of the Appellate Side of this Court are intra vires the Court's powers.
> (3) Pandurang Row J.'s order issuing a rule nisi was passed without jurisdiction and is consequently null and void.
> (4) The position therefore is that the application filed by the respondents under section 491, Criminal Procedure Code, must be dealt with in accordance with the rules of the Court which means that it must be dealt with by the Criminal Bench.

8. In the same order the learned Chief Justice directed that the application under section 491 (No. 985) should be placed before the Criminal Bench on the following Monday, 7th November. The reasons of the Full Bench for their judgment were subsequently given on 8th November in a judgment delivered by the Chief Justice. The proceedings in petition No. 1003 were resumed by Burn and Stodart JJ. on 7th November 1938, when they made an order in accordance with the answer of the Full Bench, setting aside the order of Pandrang Row J. in petition No. 985, dated 26th October 1938, which directed the issue of the writ nisi already referred to. On the same day, 7th November 1938, Burn and Stodart JJ.dealt with petition No. 985, which came before them under the direction of the Chief Justice. After hearing arguments and considering the affidavits, the learned Judges delivered judgment and made an order dismissing the petition. This appeal is taken against (1) the judgment of the Full Bench, dated 4th November 1938, on the questions referred to them in petition No. 1003, (2) the judgment of the Division Bench, dated 7th November 1938, in petition No. 1003, and (3) the judgment of the Division Bench, dated 7th November 1938, dismissing petition No. 985.

9. Counsel for the appellants submitted four contentions, viz. 1. That respondent 1 had no locus standi in the matter raised in the appellants' petition No. 985, and that, for the same reason, his petition No. 1003 was incompetent and should not have been entertained. 2. That Rules 2 and 2 (a) of the Appellate Side Rules were ultra vires, or,

in any event were not applicable to the present case. 3. That the warrants were illegal and invalid for the following reasons: (a) that there is definite jurisdiction in the High Court to examine, on evidence, whether the conditions laid down by the Extradition Act and the rules made thereunder for issue of the warrants have been complied with; (b) that, when thus examined, it would be found that such conditions had not been complied with; (c) that, in any event, the warrants were ex facie invalid, in respect that - (i) they did not show that the conditions had been complied with, (ii) that they did not show sufficiently with what offences the appellants were charged, or when they were committed, (iii) that they did not sufficiently show where and to whom the appellants were to be delivered up, and (iv) that they were undated. (4) That jurisdiction to issue the common law writ of habeas corpus in a case such as the present still subsisted, and that PandrangRao J. had jurisdiction to order the issue of the writ nisi.

10. On the first contention, their Lordships are clearly of opinion that respondent 1 was entitled to intervene in the appellants' petition No. 985, and that the petition No. 1003 was competently presented by him. Counsel for the appellants referred to the rules made by the Governor-General in Council, under section 22, Extradition Act, 1903, as to the Procedure of Political Agents for Surrender of Accused Persons to Native States (No. 1862 I. A., dated 13th May 1904), and in particular Section 2, which provides as follows :

> 2. The Political Agent shall not issue a warrant under Section 7 of the said Act except on a request preferred to him in writing either by or by the authority of the person for the time being administering the Executive Government of the State for which he is a Political Agent, or by any Court within such State which has been specified in this behalf by the Governor-General in Council, or by the Governor of Madras or Bombay in Council, as the case may be, by notification in the Official Gazette.

11. He maintained that the only parties who were entitled to take part in the proceedings relative to the warrants in the present case were (a) the appellants, (b) respondent 2, the Chief Presidency Magistrate, (c) the British Resident for the Madras States, and (d) the Government of Travancore. But their Lordships are of opinion that the terms of the warrants show that the authority to whom, in terms of Section 7 of the Act, the appellants are to be delivered, is truly respondent 1, who will control their custody though the police of Travancore at the frontier station will receive the delivery on his behalf. Rule 7 of the rules above referred to makes this sufficiently clear ; it

provides as follows :

> 7. In the case of an accused person made over for trial to the Court of the State, the Political Agent shall satisfy himself that the accused receives a fair trial, and that the punishment inflicted on conviction is not excessive or barbarous ; and if he is not so satisfied he shall demand the restoration of the prisoner to his custody, pending the orders of the Governor-General in Council.

12. It is clear that if occasion arose for such an application in the present case, it would fall to be made to the Court of respondent 1. Their Lordships are of opinion that respondent 1 is entitled to vindicate his right to obtain the custody of the appellants, and that this contention of the appellants fails. It will be convenient to dispose next of the fourth contention of the appellants. On this point their Lordships agree with the conclusions of the Full Bench in the present case which are stated in the judgment delivered by the learned Chief Justice as follows:

> The High Courts Act of 1861 authorized the Legislature if it thought fit to take away the powers which this Court obtained as the successor of the Supreme Court, and Acts of the Legislature lawfully passed in 1875 and subsequent years leave no doubt in my mind that the Legislature has taken away the power to issue the prerogative writ of habeas corpus in matters contemplated by Section 491, Criminal PC. of 1898.

13. Indeed counsel for the appellants stated that he found difficulty in pressing this contention, and the reasoning of the learned Chief Justice, on which he based the above conclusion, is so clear and convincing, including his narration of the Legislative Acts referred to in his conclusion, that their Lordships are content to adopt it, as also to state that, like the learned Chief Justice, they are in the entire agreement with the judgment of Rankin C. J. in *GirindraNath Banerjee v. BirendraNath Pal,* Accordingly the appellants' fourth contention also fails. It follows that the appellants' Petition No. 985 must be treated as an application under section 491, Criminal PC. The second contention of the appellants related to the Appellate Side Rules of the Madras High Court. section 491, Criminal PC., so far as material, provides:

> 491. (1) Any High Court may, whenever it thinks fit, direct -
> (b) that a person illegally or improperly detained in public or private custody within such limits (i.e. the limits of its appellate criminal jurisdiction) be set at liberty ;
> (2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this Section.

14. The material rules of the Appellate Side Rules are as follows:

> 2. The following matters may be heard and determined by a Bench of two Judges provided that if both Judges agree that the determination involves a question of law they may order that the matter, or question of law, be referred to a Full Bench. . . .
> (4) (c) for issue of a writ of habeas corpus.
> 2A. All applications for writ of habeas corpus shall go before a Bench of Judges dealing with criminal work.

15. In view of their Lordships' opinion, already expressed, as to the incompetence of the issue of a common law writ in the present case, the appellants' contention that these rules are ultra vires so far as they affect the issue of such a writ, does not arise, but the appellants maintain that, on proper construction, these rules do not apply to an application for directions under section 491, which they maintain is not covered by the words "all applications for writ of habeas corpus." Their Lordships are unable to accept this contention, and their view is confirmed by the terms of the statutory notifications in the Fort St. George Gazette as to Section 2A, which first appeared in a somewhat different form in the Gazette, 1925, Part 2, p. 307, under date 3rd January 1925, in which it is expressly described as an amendment to the rules regulating proceedings under Section 491(1), Criminal Procedure Code, and it was as follows:

> All applications for writ of habeas corpus shall go before a Bench of three Judges, of which the Chief Justice, unless otherwise ordered, shall be one.

16. The alteration of the rule to its present form appeared in the Gazette, 1929, Part 2, p. 1309, under date 17th August 1929, and the description of the amendment is identical with that in the earlier notification. Accordingly, Pandrang Row J. as a Single Judge, had no jurisdiction to deal with Petition No. 985.

17. It only remains to deal with the appellants' contentions as to the warrants. In the first place, they maintained that the Court is entitled to examine, on evidence, whether the conditions laid down by the Extradition Act, and the rules made under Section 22 of the Act have been complied with, and that the appellants were entitled to an opportunity to satisfy the Court (a) that the offences must have been committed in Madras, and (b) that, in reality, the Travancore authorities desired to get the appellants into their jurisdiction in order to charge them with political offences, which would not be extraditable offences. It must be remembered that the warrants are issued by the agent of the Government of India, and not by an agent of the Travancore State, and this executive act is safeguarded in various ways by the Act and by the rules. For

instance, Rule 4 provides that the Political Agent shall, in all cases before issuing a warrant under Section 7 of the Act, satisfy himself, by preliminary inquiry or otherwise, that there is, prima facie, a case against the accused person. The appellants do not suggest that the Resident did not so satisfy himself in the present case. But, if such a suggestion were to be made, their Lordships are of opinion that it would not be properly the subject of inquiry by the Court, but should be stated to the Magistrate on an application to him to report to the Local Government under section 8A, Extradition Act. Their Lordships see no reason why the offences charged cannot have been committed in Travancore, and what they have stated above directly applies to the suggestion that the true object of the extradition is to enable the appellants to be charged with political offences. It may be added that a bogus trial of the offences, in respect of which the extradition is made, would appear to fail within Section 7, and to make it the duty of the Political Agent, in such an event, to demand the restoration of the prisoners to his custody.

18. Lastly, the appellants contend that the warrants are illegal ex facie in respect (a) that they do not sufficiently show with what offences the appellants were charged or when they were committed, (b) that they do not sufficiently identify the place where, and the person to whom, the appellants were to be delivered up and (c) that they are undated. As regards (a) no form of warrant is prescribed by the Extradition Act or the rules, and the warrants clearly describe the offences with which the appellants are charged, which is all that is required by the ordinary form of warrant of arrest prescribed by Section 75 and Form II of Schedule 5, Criminal PC. Their Lordships may also refer to the Explanation to section 477-A, Indian Penal Code. This objection fails. As regards (b), Section 7(1), Extradition Act, uses the words "for his arrest and delivery at a place and to a person or authority indicated in the warrant" and their Lordships are of opinion that all that is required is that the place and person shall be sufficiently indicated to enable the Chief Presidency Magistrate to whom the warrants are addressed to act in pursuance of such warrants and to give directions accordingly. It is clear that respondent 2 has no difficulty in this regard and if there were any doubt on the warrants taken by themselves which their Lordships are not prepared to assume the matter is placed beyond doubt by the Government of Madras (Home Department) Order No. 1293, 10th March 1938 under which the Government direct that in future all persons extradited should be handed over at "the nearest frontier police station in the Travancore State." That order was addressed, among others, to respondent 2. There can be no difficulty in identifying the nearest frontier police station of the Travancore State for production before the District Magistrate, Trivandrum and in

their Lordships' opinion, a police station is a perfectly lucid description of the authority to whom the surrender is to be made. Contention (c) as to the absence of date also fails in their Lordships' opinion. While it undoubtedly would be the usual and better practice to date the warrants, no provision in the Act or the rules, appears to require directly or implicitly that the warrants must be dated; no period is expressed as running from the date of the warrants. This disposes of all the appellants' objections to the validity of the warrants. Their Lordships have now stated the reasons which led them on 3rd April 1939 to humbly advise His Majesty that the appeal should be dismissed.

Appeal dismissed.

Cases Referred.

, (1922) 9 AIR Mad 499=68 IC 838=23 Cr LJ 614=45 Mad 922=43 MLJ 396 (FB)

(1922) 9 AIR Mad 499=68 IC 838=23 Cr LJ 614=45 Mad 922=43 MLJ 396 (FB)

(1927) 14 AIR Cal 496=102 IC 647=54 Cal 727=31 CWN 593