Privy Council Appeal No. 102 *of* 1938

C. P. Matthen and others - - - - - *Appellants*

v.

The District Magistrate of Trivandrum and another - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD APRIL, 1939.

Present at the Hearing:

LORD THANKERTON
LORD PORTER
SIR GEORGE LOWNDES

[*Delivered by* LORD THANKERTON]

This is an appeal from (1) a judgment of the Full Bench of the High Court of Madras, dated the 4th November, 1938, in Criminal Miscellaneous Petition No. 1,003 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 the 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 the 7th November, 1938, made in petition No. 1,003 in implement of the above judgment, and (3) a judgment and order of the said Division Bench, dated the 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 of the Indian Extradition Act (XV 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 of the Code of Criminal Procedure (V of 1898).

The warrant against the first appellant 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 104 of the Travancore Penal Code corresponding to sections 409, 418, 420, 477A, 109 and 114 of the 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, Trivandrum.
>
> Herein fail not.
>
> (Sgd.) C. P. Skrine,
> Resident for the Madras States."

The warrants against the other three appellants were in the same terms. The fourth appellant 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 the second respondent in this appeal, on the 20th 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 the first respondent in this appeal.

Learning that the appellants were to be taken to Travancore by a train leaving at 11 a.m. on the 21st October, 1938, and having in view that the High Court did not sit until 10.45 a.m., the sons of the first and second appellants presented a petition (No. 985 of 1938) under section 491 of the Code of Criminal Procedure 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 the first appellant, 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."

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*) of the Indian 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 Rule 2 (*a*) of the Appellate Side Rules of the High Court, jurisdiction under section 491 of the 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 the 22nd October, 1938, and on the 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 Nair,* (1922) I.L.R. 45 Mad. 922, to 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.

On the same day, the 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 of the Criminal Procedure Code. On the 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 the 28th October, 1938, and a writ *nisi* was accordingly issued.

On the same day, the 26th October, 1938, the District Magistrate, Trivandrum, the first respondent in this appeal, presented a petition (No. 1,003 of 1938) to the High Court, under section 561A of the Code of Criminal Procedure and section 223 of the Government of India Act, 1935, praying that the orders of Pandrang Row J., dated the 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.

This petition, No. 1,003, came on for hearing on the 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 the 26th October, and staying further proceedings on petition No. 985 until the

further orders of the Court should be known with a direction to the second respondent to keep the prisoners in his custody till further orders.

After the further hearing on petition No. 1,003, Burn and Stodart JJ., on the 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 of the Criminal Procedure Code?
>
> (2) Can an application for a common law writ of *habeas corpus* or for directions under section 491 of the Criminal Procedure Code be heard and disposed of by a single Judge of this Court? In other words: Are Rules 2 and 2A 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 the 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?"

In stating their reasons for the order of reference the learned Judges dealt with the contentions submitted to them as follows:—The petitioner, the first respondent 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 of the Criminal Procedure Code; the learned Judges held themselves bound to reject this contention by reason of the decision of the Full Bench in *Govindan Nair's* case, 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 rule 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 561A of the Criminal Procedure Code. 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.

On the 4th November, 1938, the Full Bench (Sir ~~Alfred~~ Lionel Leach C.J., Madhavan Nair, Veradachariar, Wadsworth and Lakshmana Rao 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 of the Code of Criminal Procedure substituted.
>
> (2) Rules 2 and 2A of the Appellate Side of this Court are *intra vires* the Court's powers.
>
> (3) Mr. Justice Pandrang Row'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 of the Code of Criminal Procedure must be dealt with in accordance with the rules of the Court which means that it must be dealt with by the Criminal Bench."

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, the 7th November. The reasons of the Full Bench for their judgment were subsequently given on the 8th November in a judgment delivered by the Chief Justice.

The proceedings in petition No. 1,003 were resumed by Burn and Stodart JJ. on the 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 the 26th October, 1938, which directed the issue of the writ *nisi* already referred to.

On the same day, the 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 the 4th November, 1938, on the questions referred to them in petition No. 1,003, (2) the judgment of the Division Bench, dated the 7th November, 1938, in petition No. 1,003, and (3) the judgment of the Division Bench, dated the 7th November, 1938, dismissing petition No. 985.

Counsel for the appellants submitted four contentions, viz.:—

1. That the first respondent had no *locus standi* in the matter raised in the appellants' petition No. 985, and that, for the same reason, his petition No. 1,003 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 Pandrang Row J. had jurisdiction to order the issue of the writ *nisi*.

On the first contention, their Lordships are clearly of opinion that the first respondent was entitled to intervene in the appellants' petition No. 985, and that the petition No. 1,003 was competently presented by him. Counsel for the appellants referred to the rules made by the Governor-General in Council, under section 22 of the Indian Extradition Act, 1903, as to the Procedure of Political Agents for Surrender of Accused Persons to Native States (No. 1862 I.A., dated the 13th May, 1904), and in particular rule 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."

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*) the second respondent, 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 the first respondent, 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."

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 the

first respondent. Their Lordships are of opinion that the first respondent 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 authorised 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 of the Code of Criminal Procedure of 1898."

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 entire agreement with the judgment of Rankin C.J. in *Girindra Nath Banerjee* v. *Birendra Nath Pal,* I.L.R. 54 Cal. 727. Accordingly the appellants' fourth contention also fails. It follows that the appellants' petition No. 985 must be treated as an application under section 491 of the Code of Criminal Procedure.

The second contention of the appellants related to the Appellate Side Rules of the Madras High Court. Section 491 of the Code of Criminal Procedure, 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."

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."

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 rule 2A, which first appeared in a somewhat different form in the Gazette, 1925, Part II, p. 307, under date the 3rd January, 1925, in which it is expressly described as an amendment to the rules regulating proceedings under section 491 (1) of the Code of Criminal Procedure, 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." The alteration of the rule to its present form appeared in the Gazette, 1929, Part II, p. 1309, under date the 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.

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 of the 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 fall within rule 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.

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 V of the Code of Criminal Procedure. Their Lordships may also refer to the explanation to section 477A of the Indian Penal Code. This objection fails. As regards (*b*), section 7 (1) of the 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 the second respondent 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. 1,293, 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 the second respondent. 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 the 3rd April, 1939, to humbly advise His Majesty that the appeal should be dismissed.

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In the Privy Council

C. P. MATTHEN AND OTHERS

v.

THE DISTRICT MAGISTRATE OF TRIVANDRUM AND ANOTHER

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