CRIMINAL MISCELLANEOUS.

Before Rankin and Duval JJ.

BISSESWAR RAJ GARIA

v.

EMPEROR.*

1926

May 26.

Warrant—Warrant issued by the Chief Secretary to the Government of Bengal under the Goondas Act—Refusal of bail by the Deputy Commissioner of Police, Criminal Investigation Department—Legality of such orders—Power of the High Court to interfere with the warrant and the orders refusing bail—Criminal Procedure Code (Act V of 1898), ss. 439 and 491—Goondas Act (Beng. I of 1923) s. 4.

The High Court has no power to interfere under s. 439 of the Criminal Procedure Code, with the warrant issued by a Secretary to the Local Government under section 4 of the Goondas Act (Beng. I of 1923), or with the orders of the Deputy Commissioner of Police refusing to release a person, arrested under the Act, on bail.

Bhimraj Bania v. *Emperor* (1) followed.

The proper procedure in such a case, if the Executive have acted in excess of the special powers vested in them, is an application under section 491 of the Code.

The officer who fixes the amount of the personal bond has to see that the sum is reasonable in the circumstances, and not excessive, and it is sufficient, as far as the person under arrest is concerned, that he is willing to execute a bond to that amount.

It would be an abuse of power, if on such warrant directing the release of the person arrested under the Act on a bond with sureties to attend before the Commissioner of Police, the Deputy Commissioner of Police, dealing with the matter, entered into an enquiry whether such person was good for the sum mentioned in the warrant, or if he refused to accept substantial sureties on the ground that they were not capable of exercising control over such person.

Queen-Empress v. *Rahim Bakhsh* (2), *Adam Sheikh* v. *Emperor* (3) referred to.

* Criminal Miscellaneous No. 75 of 1926.

(1) (1923) I. L. R. 51 Calc. 460. (2) (1898) I. L. R. 20 All. 206.

(3) (1908) I. L. R. 35 Calc. 400.

Application under section 491 was refused, as the petition did not show that the Deputy Commissioner had refused to enquire into the sufficiency of the sureties, or had been satisfied with their sufficiency but had rejected them.

On the 26th April 1926 the petitioner was arrested under section 54 of the Criminal Procedure Code by an officer of the Criminal Investigation Department. On the 7th May he was served with a warrant, under section 4 of the Goondas Act (Beng. I of 1923), signed by the Chief Secretary to the Government of Bengal. The directions contained in the warrant as to the release of the petitioner on bail are set out in the judgment of the High Court.

The petitioner stated in his application to the High Court that he first tendered, as sureties, a merchant and a householder of substantial means who were refused, and that he thereupon tendered two other persons of substance, but the Deputy Commissioner did not accept them. In the ninth paragraph of his petition he stated as follows :—

The Deputy Commissioner, Criminal Investigation Department, before whom these four sureties were produced, said that the four sureties are not fit to keep the said accused under control, and is not accepting those sureties, and is not releasing the petitioner on bail.

Mr. *A. N. Chaudhuri* (with him Babu *Satindra Nath Mukerjee* and Babu *Radhika Lal Sinha*), for the petitioner. The Deputy Commissioner dealt with the petitioner's application for bail illegally. He refused to release the petitioner on his bond because he was not good for Rs. 10,000. Instead of examining the sureties tendered to determine their sufficiency, he refused them on the wholly irrelevant standpoint that they were unable to keep the petitioner under control.

The Advocate-General (*Mr. B. L. Mitter*) (with him *Mr. Khundkar*), for the Crown. The High Court has no power to interfere in revision. The warrant was

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issued by the Chief Secretary who is not a Criminal Court subordinate to the High Court: *Bhimraj Bania* v. *Emperor* (1). The petitioner should have gone up to him for any remedy he desired. He did not tender his bond in the terms of the warrant. The petition does not state sufficient grounds for interference under section 491 of the Code.

RANKIN J. The petitioner in this case, while in custody under section 54 of the Criminal Procedure Code, was served, on the 7th of this month, with a warrant under section 4 of the Goondas Act, signed by the Chief Secretary to the Government of Bengal. The warrant was in the form which had been duly notified under the Goondas Act in the *Calcutta Gazette* by virtue of section 4 of the Act, and it required the Deputy Commissioner of Police, Calcutta, to arrest the petitioner: it was provided by the form of the warrant that, if the petitioner should give bail himself in the sum of ten thousand rupees, with two sureties each in the sum of five thousand rupees, to attend before the Commissioner of Police, Calcutta, and to continue to attend, he may be released. That part of the warrant follows without variation the form which is the second form in the fifth Schedule to the Criminal Procedure Code. It is a form which is drawn up with reference to section 76 of the Code. The terms of section 76 are in these words: "Any "Court issuing a warrant for the arrest of any person "may in its discretion direct by endorsement on the "warrant that, if such person executes a bond "with sufficient sureties for his attendance before "the Court at a specified time and thereafter, until "otherwise directed by the Court, the officer to whom "the warrant is directed shall take such security and

(1) (1923) I. L. R. 51 Calc 460.

"shall release such person from custody". Now, it is the form provided under that section that is used by the Local Government in drawing up the particular form of warrant to be used under the Goondas Act. The petitioner in the present case complains at the bar of two things. He says that while he applied for bail and tendered certain sureties as being sufficient sureties, his application for bail was illegally dealt with in two ways. First, he says that he was refused his release on the ground that he himself was not, in the opinion of the Deputy Commissioner of Police, good for Rs. 10,000; and he says, secondly, that instead of his sureties being examined to see whether they were sufficient sureties, they were considered from a wholly irrelevant and extraneous point of view, namely, from the point of view whether they were persons who were likely to keep the petitioner under control. Now, how far these two complaints of illegal abuse have been verified by the evidence is a matter to which I shall come in a moment. I want to leave no doubt that either of these two courses would be an illegal abuse of power, not merely on general principles as regards the liberty of the subject, but on the face of the Goondas Act itself, and on the face of the warrant which is notified for use under the Goondas Act and which was used in this case. The idea that there is to be an enquiry as to whether the person under arrest is good for the sum demanded by the warrant namely, ten thousand rupees, in this case, is in my opinion, an entirely topsy-turvy idea. On this warrant, the business of the officer who fixes the sum of money is to see that he fixes a reasonable sum of money, having regard to all the circumstances, and that it is not an excessive one, and it is sufficient, so far as the person under arrest is concerned, that he is willing to execute a bond in that amount. As regards

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the question whether the sureties should not be merely sufficient in the ordinary sense but should also be persons who can exercise control over the person arrested, there is a case, *Queen-Empress* v. *Rahim Bakhsh* (1). But that is an authority in favour of permitting that requirement to be made in cases where a person is to give security to keep the peace or to be of good behaviour. So far as this Court is concerned, in the case of *Adam Sheikh* v. *Emperor* (2), that law is objected to, and, even in cases under section 118 of the Criminal Procedure Code, it has been declared to be bad law to consider whether a surety is likely to have some control over the person arrested. For the present purpose, we have nothing to do with the keeping of peace or being of good behaviour. The sole question in this case is a question of giving security to attend before the Commissioner of Police, Calcutta, on a certain day and continue so to do—a mere question of security to ensure the man's appearance; and I know of no authority that would justify any person in saying that he would waive aside the mere question of the sufficiency of the surety and embark on a consideration of control over the person arrested. That would, in my judgment, be an illegal abuse of power on the face of the Goondas Act and the warrant. Now the question arises whether on this petition these matters have been made clear in such a way that this Court can interfere. On the question whether this Court can interfere in revision, the petitioner, in my judgment, is under a great difficulty. I am not convinced that the Commissioner of Police acting under this warrant is acting under the Criminal Procedure Code. The section in the Goondas Act says that for certain purposes the warrant shall be deemed to be a warrant

(1) (1898) I. L. R. 20 All. 206. (2) (1908) I. L. R. 35 Calc. 400.

issued by a Presidency Magistrate. Now, if this matter be looked at as an application for revision, the first thing is that the applicant has not been to the person who is deemed to be the Presidency Magistrate. He has not applied in this case to the Chief Secretary to the Government of Bengal. Secondly, it has been held in this Court already that the Secretary to the Government in such cases as this is not in the position of a subordinate or inferior Court. That is the decision in *Bhimraj Bania* v. *Emperor* (1) Thirdly, I find it difficult to say that the present purpose would come within either of the two purposes mentioned in section 4 of the Goondas Act. We have not got to consider here the question of the enforcement of the attendance of the person against whom the warrant is issued at such a place and at such a time. It seems to me, therefore, that this Court has to look at the proceedings not from the point of view of proceedings in a Court, but from the point of view that they are proceedings of the Executive armed with certain special powers, and the question is whether or not the powers have been exceeded so that this Court can interfere: in other words, the question must in this case be looked at as one coming within section 491 of the Criminal Procedure Code. The question is whether the petitioner is a person illegally or improperly detained in public custody. If he is, then this Court has power to issue a writ of *habeas corpus*. I now come to see whether this petition discloses grounds which would entitle this Court to interfere in the matter by a writ in the nature of *habeas corpus*, and I find, looking over the petition carefully, that, while, as a petition asking us to exercise our revisional jurisdiction, it might have been of some use to somebody, there is only one

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statement that is of the smallest use to the petitioner on any question under section 491 of the Criminal Procedure Code. There is no mention anywhere in the petition as to an enquiry having been made into whether the accused himself is good for Rs. 10,000. There is not a word of this kind in the petition from beginning to end. It is quite clear that this Court cannot act on this petition on that ground at all. Paragraph 9 of the petition says: "That the "Deputy Commissioner, Criminal Investigation Depart-"ment, before whom these four sureties were produced, "said that the said four sureties are not fit to keep the "said accused under control, and is not accepting those "sureties and is not releasing your petitioner on bail." Now, if a case could be made, or had been made, to the effect not merely that this observation had been made by the Deputy Commissioner, but that the Deputy Commissioner had refused to enquire into the sufficiency of the sureties, or had been satisfied with the sufficiency but had rejected them, it may be that on this petition a case could be made out of illegal detention. I do not think that the paragraph, by itself scanty and very difficult to be relied upon, would be sufficient to justify this Court in interfering under section 491 of the Criminal Procedure Code. The detention is illegal except when in accordance with the terms of the warrant the accused has failed to furnish the above bail. The direction to the Superintendent of the Jail authorizes him to keep the arrested man in custody until he is able to furnish the above bail. But in the present case, in my opinion, no ground has been made out for our interference. The application is accordingly rejected.

DUVAL J. I agree.

E. H. M.