

[Criminal Miscellaneous Petition No. 985 of 1938 made under section 491 of the Code of Criminal Procedure by the arrested persons then came on for hearing before BURN and STODART JJ. on 7th November 1938 when their Lordships delivered the following

JUDGMENT :—

The Full Bench have decided that PANDRANG Row J.'s order of the 26th October issuing the writ *nisi* in this case was passed without jurisdiction and was consequently null and void. We are therefore proceeding, as directed by his Lordship the Chief Justice, to dispose of the application made under section 491, Criminal Procedure Code (Criminal Miscellaneous Petition No. 985 of 1938).]

APPELLATE CRIMINAL.

Before Mr. Justice Burn and Mr. Justice Stodart.

IN THE MATTER OF C. P. MATTHEN AND THREE
OTHERS, PETITIONERS.*

1938,
November 7.

Indian Extradition Act (XV for 1903), sec. 7—Extradition warrant issued by Resident for Madras States under—Persons arrested pursuant to—Application under sec. 491 of Criminal Procedure Code (Act V of 1898) by—Questions for determination in—Legality of warrant—Compliance by Resident with rules 4 and 5 of rules framed under sec. 22 of Extradition Act—Presumption as to.

The Chief Presidency Magistrate, Madras, arrested the petitioners, resident in Madras, pursuant to warrants issued by the Resident for the Madras States under section 7 of the Indian Extradition Act of 1903 directing him to arrest the

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petitioners. The warrants were all in the same form and they ran as follows: "Whereas . . . director of the Travancore National and Quilon Bank, Ltd., which is now under liquidation, who is now reported to be residing at . . . 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 . . . and surrender him to the Frontier Police Station, Travancore State, for production before the District Magistrate, Trivandrum." When the petitioners were produced before the Chief Presidency Magistrate, Madras, an application was made to him on their behalf for making a reference under section 8A of the Act. While he was considering that application, his proceedings were interrupted by the service upon him of a stay order made by a learned Judge of the High Court directing him to keep the petitioners in custody and not to send them away. Thereupon he remanded three of the petitioners to the Penitentiary and the fourth to the General Hospital. On an application made by the petitioners under section 491 of the Criminal Procedure Code contending that they had been illegally or improperly detained in custody and that therefore they should be brought up before the High Court in order that they might be released,

held: (i) The only point that was material was whether the custody in which the petitioners were was illegal or improper. The Chief Presidency Magistrate's custody of them was clearly legal and proper *prima facie*.

Under section 7 of the Indian Extradition Act the Magistrate had no option but to execute the warrants. He was obliged to order the arrest of the petitioners for whom the warrants had been issued and his custody of them was perfectly legal and proper. The fact that the petitioners had been in British India at the time at which the offences with which they were charged were said to have been committed, if proved, would be a good defence to the charges, but it was not relevant to the question whether the custody in which they were being detained was legal or illegal.

(ii) There was no illegality or impropriety connected with the issue of the warrants in question.

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The procedure before the Political Agent prescribed by rules 4 and 5 of the rules made under the Indian Extradition Act in cases falling under Chapter III thereof takes the place of the preliminary enquiry and other proceedings provided in Chapter II of the Act in the case of criminals whose extradition to Foreign States is required. Since those rules have by virtue of section 22 (3) of the Act the force of law, it must be presumed that the Political Agent had complied with the rules before issuing the warrants in question. The said warrants did not show that the rules had not been complied with.

K. Bhashyam Ayyangar for *V. T. Rangaswami Ayyangar* for petitioners.

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The JUDGMENT of the Court was delivered by BURN J.—This is an application under section 491 of the Criminal Procedure Code on behalf of four persons who have been arrested on warrants issued by the Resident, Madras States. Section 491 (1) empowers this High Court, whenever it thinks fit, to direct (a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law and (b) that persons illegally or improperly detained in public or private custody within such limits be set at liberty. The contention on behalf of the four prisoners is that they have been illegally or improperly detained in custody and that therefore they should be brought up before this Court in order that they may be released. This application was made on 21st October 1938 and was supported by an affidavit sworn by Poulouse Matthen, son of one of the prisoners, in these terms :

“ I, Poulouse Matthen, son of Mr. C. P. Matthen, aged 21, residing at ‘ Marble Hall ’, 25, Sterling Road, Nungambakkam, Madras, do make oath and say as follows :—

(i) I am the first petitioner herein, and the second petitioner is the son of Mr. K. C. Mammen Mappillai.

(ii) I state that the present application has been filed for the issue of a writ of *habeas corpus* in respect of (1) my father,

Mr. C. P. Matthen, (2) the second petitioner's father, Mr. K. C. Mammen Mappillai, (3) Mr. K. M. Eapen, and (4) Mr. K. V. Varghese, who have been served last evening with an extradition warrant from Travancore, charging them with certain offences under the Penal Code, and I state that in pursuance of such a warrant, they have been arrested and are now in the custody of the Chief Presidency Magistrate, Madras, and are to be taken to Travancore by the Shencottah Passenger leaving Egmore Station at 11 a.m.

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(iii) I state that the warrant issued apparently for a criminal offence, as that would be the only medium through which such a course could be taken, is really for a political offence and I am advised that for a political offence no warrant could be issued for extradition from British India where the arrested persons have been living.

(iv) I state that the purpose for which the warrant appears to have been issued is alleged offences under the Penal Code, Travancore, in connection with the winding up proceedings relating to the Travancore National and Quilon Bank Limited, of which my father was the Managing Director and Mr. Mappillai was the Chairman, Board of Directors.

(v) I state that this alleged purpose is only a make-believe inasmuch as it has been openly proclaimed in the Travancore State Press Communication issued that the Travancore National Bank is aiding the Travancore State Congress and in fact a circular had been issued in the State itself to that effect.

(vi) Further, I state that on 25th April 1938 a circular was issued under the authority of the Commissioner of Police, Travancore, that Mr. C. P. Matthen is a political to be watched inside and outside the State. Moreover, Mr. Mammen Mappillai is the proprietor of the Malayalam paper, 'Manorama', which had been forfeited for publishing articles of a political nature, and the press has been forfeited, the licence having been cancelled.

(vii) I state that the abovesaid circumstances would abundantly prove that the warrant of extradition is only with a view to bring the four arrested persons within the State limits so that they may be charged for alleged political offences and exposed to all kinds of humiliation and disgrace besides personal ill-treatment such as to endanger health and safety.

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(viii) I state that the political conditions in the Travancore State are such that no one charged or alleged to be concerned in any political offence is safe and that anything may happen to them.

(ix) I state that the alleged charge that they have wrongly dealt with a sum of one crore of rupees is obviously untenable and unfounded, and they have absolutely no idea of evading law and they will subject themselves to their examination as soon as normal conditions of peace are restored especially as they are sought to be politically involved.

(x) I state that Mr. K. C. Mammen Mappillai is aged sixty-five and is having serious trouble with piles and is not at all in a fit position to stand travel and was under treatment when he was suddenly arrested.

(xi) I state that the issue of a warrant and the arrest are not justifiable nor are they done in the interest of public justice but with a view to clap them in jail for political offences and the Travancore Government are bent upon bringing them to trouble by securing their physical presence within the State.

(xii) I state that in the Madras High Court in connection with the proceedings relating to the Bank it had been found by VENKATARAMANA RAO J. that a major portion of the assets as ascertained by the liquidators is good and that the consideration of re-starting the Bank is worthy of attention.

(xiii) I state that the arrest and detention of the four persons in custody are contrary to law and it is necessary that they should, in the interests of their personal safety and health, be ordered to be brought before this Honourable Court for orders.

(xiv) It is, therefore, just and necessary that this Honourable Court should be pleased to order the issue of a writ directing that Messrs. C. P. Matthen, K. C. Mammen Mappillai, K. M. Eapen and K. V. Verghese, now within the limits of this Honourable Court, arrested by the Chief Presidency Magistrate, Egmore, under an extradition warrant issued by the Travancore State and kept under his custody at Egmore, be ordered to be brought up to this Honourable Court for being dealt with according to law and directing them to be set at liberty and that such other orders be passed as

may be necessary in the interests of justice, as, otherwise, the petitioner will be put to considerable loss and hardship.

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(Signed) C. M. Poulouse.

Solemnly affirmed at Royapettah this 21st day of October 1938 and signed his name in my presence.

(Signed) A. V. Ramalingam Ayyar,
Diwan Bahadur."

No attempt has been made before us to prove the allegations made in this affidavit to the effect that these proceedings have been taken for the extradition of these four prisoners for a political offence. There is nothing in this affidavit to indicate that the prisoners are being illegally or improperly detained in custody. In a further affidavit sworn on the 26th October, the same deponent stated as follows:—

"I, Poulouse Matthen, son of C. P. Matthen, aged 21 years, residing at 'Marble Hall', 25, Sterling Road, Nungambakkam, Madras, do make oath and say as follows:

(i) I am the petitioner herein and I have filed the application praying for the issue of a writ of *habeas corpus* in respect of (1) my father C. P. Matthen, (2) Mr. K. C. Mammen Mappillai, (3) Mr. K. M. Eapen, and (4) K. V. Verghese.

(ii) I state that the aforesaid four persons were arrested on the night of 20th October 1938 by the police at the instance of the Chief Presidency Magistrate, Madras, to whom an extradition warrant has been issued by the Resident, Travancore State, directing that they be apprehended and handed over to the Frontier Police of Trivandrum for production before the District Magistrate, Trivandrum. The warrants were not, however, even shown to the arrested persons, and the substance thereof was ascertained only next morning in the office of the Chief Presidency Magistrate.

(iii) I state that the extradition warrant issued by the Resident purported to state, in so far as I have been able to gather, that charges have been laid as against them for having committed offences of breach of trust by bankers, falsification of accounts, cheating and abetment thereof as Directors of

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the Travancore National and Quilon Bank Ltd. now in liquidation.

(iv) I state that the fourth person is not at all a Director of the Bank and the offences with which they are charged are made to appear as if they have been committed in Travancore.

(v) I state that the Travancore National Bank was no doubt incorporated in Travancore in 1912 and the Quilon Bank in 1919 but the latter went into voluntary liquidation and both the Banks were amalgamated in September 1937 under the name and style of the Travancore National and Quilon Bank Ltd., till it went into liquidation.

(vi) I state that even though it was incorporated in Travancore State, Madras was the central place of business and the branches were all controlled from Madras only where all the Bank accounts were kept. In fact in the application now pending in this Honourable Court for reconstruction of the Bank it was observed by VENKATARAMANA RAO J. as follows : 'The policy of the Bank was directed from the central office (at Madras)' as aforesaid and from the affidavit filed by Mr. K. M. Eapen, the centre of administrative control was in Madras, all the branches including the branches in Travancore and other States have to send their statements of accounts and other returns to the central office at Madras and they have to take orders from the central office for all matters connected with the business in their respective branches. All the information regarding the assets and liabilities of all the branches was available at Madras and only those books which were statutorily required to be kept under the Travancore Companies Regulation were kept at the Registered office at Quilon.

(vii) I further state that of the eighty branches of the Bank, forty branches existed in the Madras Presidency, eighteen in the Travancore State and the remaining were situated in Bombay, Ceylon, and other places. The bulk of the business was in the Madras Presidency and about one and a half crores of rupees represents the assets outside the Travancore State.

(viii) I state that the liquidation and winding up proceedings had been filed in this Honourable Court and Official Liquidators having been appointed, their first report shows that about eighty-eight per cent of the assets is good.

(ix) I state that under those circumstances no offence of any of the kinds above referred to, such as, criminal breach of trust, falsification of accounts, or cheating, could have been committed by the aforesaid four persons in the Travancore State and the warrant is illegal. They have ever since the beginning of 1937 come over to Madras and have been permanently staying with their families at Madras only with a view to have direct supervision over all the branches, and for discharging their functions in connection with other institutions as well.

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(x) I state that in any view the offences could at all be alleged to have been committed in Madras only within the jurisdiction of British Indian Courts and no offence could be said to have been committed in the Travancore State justifying issue of the extradition warrants. I state that neither the complaint nor any materials on which the charges are said to have been laid are available and, in the absence of any reference thereto, I state that the issue of the warrant itself is illegal and contrary to the statute, as there is nothing to indicate how the offences are said to have been committed in the Travancore State before demanding extradition. On account of the secrecy of the entire proceedings and rush of events I have not been able to ascertain the particulars on which the offence or offences could be said to have been committed within the jurisdiction of the Native State.

(xi) I state that the warrant itself is defective and is not in conformity with the provisions of the statute under which it purports to have been issued.

(xii) I further state that the political situation at present in Travancore is tense, and the Bank is somehow or other sought to be connected with the Travancore State Congress, as is apparent from a circular issued by the State, and my father, Mr. C. P. Matthen, was by a circular, dated 25th April 1938, declared to be a political to be watched inside and outside the State while the Malayalam paper 'Manorama' run by the second of the arrested persons was forfeited for publishing articles of a political nature, the press itself has been confiscated and the licence cancelled.

(xiii) I state that under the above circumstances it is not proper to issue the extradition warrant as, if under colour

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of such a warrant they are taken to the State limits, they would be arrested for alleged political offences and exposed to the greatest and most humiliating hardships both for their person as well as for their reputation. They have absolutely no intention to evade law and will be ready to answer any charge if lawfully made.

(xiv) I state that the issue of an extradition warrant in the light of the above state of facts is not only illegal but is also improper. In fact, the learned Advocate-General of this Honourable Court on behalf of the Official Liquidator, Quilon, had requested for a month's time to send a report as regards the condition and affairs of the Bank and time was granted till 7th November 1938 and without any report or examination of the fourth of the arrested persons who had attended Court, the criminal charges have been levelled and they were to have been removed with dramatic speed.

(xv) I further state that the second of the arrested persons, Mr. K. C. Mammen Mappillai, is aged sixty-five and is suffering from strangulated piles and is confined in the General Hospital, Madras, and the doctor has advised that he may have to remain there for some time more.

(xvi) I applied for the issue of a writ of *habeas corpus* at a time when none of us had any idea of the nature and scope of the warrants of extradition. In fact, the Official Liquidator, Quilon, has been here to find out if any information could be available from the liquidators appointed by this Honourable Court inasmuch as there were no materials available to him from the records there to bring home any offence against the arrested persons.

(xvii) I further state that owing to the strong and powerful influence of the Dewan of Travancore, who is bent on bringing the arrested persons to trouble on account of their supposed connection with the State Congress which is considered as a disloyal and subversive political organisation formed to secure the removal of the Dewan and question the supreme authority of the State, the Resident has either been persuaded or induced to believe that offences had been committed by the arrested persons without any definite or reliable particulars before him.

(xviii) I further have every reason to believe that none of the essential conditions necessary to be observed before

issuing the warrants under the Act has been complied with or even shown to have been taken into account, and that the warrants were got issued on account of the peculiar position he was placed in, in relation to the State and the governing authorities.

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(xix) It is therefore apparent that considerations other than legal or proper have weighed with the Resident in issuing the warrants and, if the true state of affairs or real and tangible particulars had been placed before him without any other consideration, the warrants would not have been issued as against the arrested persons who are respectable and law-abiding citizens holding responsible positions in life.

(xx) I further state that, if the charges relating to their connection with the Bank of which Madras was the central source should be levelled against them and tried in any Court of British India, they are ready and willing to vindicate their position and I am advised that they could be tried only in Courts of British India and not in the State for any consequences that could have ensued therefrom. I apprehend that no justice would be available to them from Courts subordinate to the State which has been apparently taking direct interest in the case.

(xxi) Further, there are ample provisions in the Penal Code of British India for punishing the offenders for all or any of the offences they are charged with and the atmosphere that has been sedulously created in the Travancore State against the arrested persons leaves no ray of hope that there will be justice meted out to them, and the Resident, being perfectly aware of all the circumstances and being in touch with the State, acted improperly in ordering the issue of the warrants for extradition.

(xxii) It is therefore just and necessary that this Honourable Court should be pleased to call for all the records relating to extradition and to order the issue of a writ of *habeas corpus* directing that Messrs. C. P. Matthen, K. C. Mammen Mappillai, K. M. Eapen and K. V. Verghese, arrested by and in the custody of the Chief Presidency Magistrate, Egmore, under extradition warrants issued by the Resident, Travancore State, be ordered to be brought up and set at liberty and that such other orders may be passed in the interests of justice, as, otherwise, I will be put to serious loss and hardship."

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The only allegation in this affidavit which, we think, requires notice is that in the eleventh paragraph in which it is stated that the warrant itself is defective and is not in conformity with the provisions of the statute under which it purports to have been issued. The other allegations are, in our opinion, irrelevant for the present purpose. If it is proved, for example, that the prisoners have been in British India at the time at which the offences with which they are charged are said to have been committed, that would be a good defence to the charges. It is not, however, relevant to the question whether the custody in which they are now detained is legal or illegal. The allegations about the political situation in Travancore are also quite irrelevant.

The warrants upon which the prisoners have been arrested have been produced before us and Mr. Bhashyam Ayyangar for the prisoners has invited us to say that an examination of the warrants will show that they have been illegally or improperly issued. The warrants are all in the same form and they run as follows :

“Whereas _____ Director of the Travancore National and Quilon Bank Limited, which is now under liquidation, who is now reported to be residing at _____ 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, 477 A, 109 and 114 of the Indian Penal Code, committed in the Travancore State, you are hereby directed to apprehend the said . . . and surrender him to the frontier police station, Travancore State, for production before the District Magistrate, Trivandrum.

Herein fail not.

(Signed) _____,
Resident for the Madras States.”

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These warrants have been issued under section 7 of the Extradition Act of 1903, Travancore being a State which is not a Foreign State and the allegation being that the persons whose arrest is required are in British India. Mr. Bhashyam Ayyangar has pointed out that in Chapter II of the Extradition Act which deals with the surrender of fugitive criminals in case of Foreign States, there is provision made for a preliminary enquiry by the Magistrate in British India before extradition is ordered. The Magistrate is obliged to hold an enquiry in the same manner as if the case were one triable by the Court of Session or the High Court, he is obliged, if he thinks that a *prima facie* case is made out, to commit the criminal to prison to await the orders of the Government of India. He is obliged also to report the result of his enquiry to the Government of India and await their orders. In Chapter III, there is no such provision for an enquiry by a Magistrate in British India. It is however provided in the rules made under the Act, which by section 22, sub-section (3), have effect as if enacted by the Act, that in such cases as the present, the Political Agent (*vide* rule 4) shall in all cases before issuing the warrant under section 7 satisfy himself by preliminary enquiry that there is a *prima facie* case against the accused person. By rule 5 the Political Agent is required before issuing the warrant under section 7 to decide whether the warrant shall provide for the delivery of the accused persons to the Political Agent or to a British Officer subordinate to him with a view to his trial by the Political Agent, or to an authority of the State with a view to his trial by the State Courts. Sub-rule 2 of rule 5 requires the Political Agent to take certain matters into consideration before coming to a decision. By rule 7 the

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Political Agent is required to satisfy himself in the case of an accused person who has been made over for trial to the Court of the State that the accused person 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 person to his custody pending orders of the Governor-General in Council. It is clear therefore that this procedure before the Political Agent in cases falling under Chapter III takes the place of the preliminary enquiry and other proceedings provided in Chapter II in the case of criminals whose extradition to Foreign States is required. The warrants issued in this case do not show that the Political Agent has obeyed the rules framed for his procedure under the Act. Mr. Bhashyam Ayyangar invites us to hold that the Political Agent or some one else on his behalf should be called upon to satisfy us that everything required by the rules has been done. He even contends that the form of the warrants shows that the Political Agent has not complied with the rules. The warrant merely states that so and so stands charged with offences. Mr. Bhashyam Ayyangar suggests that this implies that the Political Agent has not made an enquiry such as is prescribed under rule 4 already alluded to. We do not think we shall be justified in making any such presumption. On the contrary, since the rules have the force of law, we think it is right to presume that the Political Agent has complied with the rules before issuing the warrants. The warrants do not in our opinion show that the rules have not been complied with.

The question which we have to consider is whether the prisoners are being illegally or improperly detained in the custody of the Chief Presidency Magistrate.

This, we think, is a simple question in this case. Section 7 of the Extradition Act, sub-section 1, says that, where an extradition offence has been committed or is supposed to have been committed by a person not being a European British subject in the territories of any State not being a Foreign State and such person escapes into or is in British India and the Political Agent in or for such State issues a warrant addressed to the District Magistrate of any district in which such person is believed to be or, if such person is believed to be in any Presidency-town, to the Chief Presidency Magistrate of such town, for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant and may give directions accordingly. In the face of this provision of law, it is clear to us the Chief Presidency Magistrate has no option in the matter. When he receives the Political Agent's warrant, he is obliged to act in pursuance of it and to obey it. It has been pointed out by Mr. Bhashyam Ayyangar for the prisoners that in section 8-A there is a provision made for the accused person who is arrested making a statement to the Chief Presidency Magistrate and provision is made that the Magistrate, if he thinks fit, may, before proceeding further, report the case to the Central Government and, pending the receipt of orders on such report, may detain such accused person in custody or release him on his executing a bond with sufficient sureties for his attendance when required. In the report made by the learned Chief Presidency Magistrate to the writ *nisi* issued by PANDRANG ROW J. he has reported that the four prisoners were produced before him at 9 a.m. on 21st October 1938. He says further that Mr. V. Rajagopalachariar who appeared

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for the arrested persons wanted him to make a reference under section 8-A of the Indian Extradition Act to the Local Government (in accordance with the Adaptation of Indian Laws Order, the word "Central" must now be substituted for the word "Local" in section 8-A) and pending reference to enlarge the prisoners in custody on bail. This application was opposed by Mr. Jayarama Ayyar who appeared on behalf of the Travancore Government. While the learned Magistrate was hearing the petition, Rao Bahadur V. T. Rangaswami Ayyangar produced the order passed by PANDRANG ROW J. directing the Magistrate to keep the prisoners in his custody and not to send them away. The Magistrate therefore remanded three of the four prisoners to the Penitentiary and one who was said to be suffering from strangulated piles to the General Hospital. It is clear therefore that the learned Magistrate was interrupted by our learned brother's stay order while he was considering the desirability or otherwise of making a reference to the Government under section 8-A. The learned Magistrate expressed the view that under section 7 he had no option but to execute the warrants and that he had acted so far in strict conformity with the provision of law. In this we support the learned Magistrate. We consider that he was obliged to order the arrest of the persons for whom warrants were issued and that his custody of them is perfectly legal and proper.

The only criticisms of the warrants of which we feel obliged to take any notice are, firstly, that the warrants are not dated, and secondly, that the direction in the warrants to surrender the prisoners to the frontier police station of the Travancore State is somewhat indefinite. It is represented by Mr. Bhashyam

Ayyangar for the prisoners, and, we think it is highly probable, that there is more than one police station on the frontier between British India and the Travancore State. The warrant does not instruct the Magistrate in terms with regard to the particular frontier police station at which the prisoners should be delivered nor does it indicate the officer to whom they are to be handed over. But we have already pointed out that the learned Magistrate, when his proceedings were interrupted by the service upon him of our learned brother's stay order, was considering an application for making a reference under section 8-A of the Act, and it is quite conceivable, we think, that this is a point upon which the Magistrate might have thought it necessary to make a report to the Government. We note however that the warrants require the prisoners to be surrendered at the frontier police station for production before the District Magistrate of Trivandrum. For all practical purposes it seems to us that this indefiniteness with regard to the frontier police station is not a matter of any importance.

On the only point that is material, namely, whether the custody in which the prisoners are is illegal or improper, we are quite clear that his custody of them was legal and proper *prima facie*, and we see no reason to suppose that there is any illegality or impropriety connected with the issue of the warrants for the arrest of these prisoners. We therefore dismiss this application under section 491.

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A.S.V.
