

## REVISIONAL CRIMINAL

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*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice King*

SANDAL SINGH *v.* DISTRICT MAGISTRATE  
OF DEHRA DUN\*

1933  
October, 26

*Extradition Act (XV of 1903), section 7—Warrant issued by Political Agent of a State for arrest in British India—Alleged offence not committed within the State—Warrant and arrest illegal—Habeas Corpus proceedings—Criminal Procedure Code, section 491—Applicable although the arrested person may have been released on bail—No revision from such arrest—Criminal Procedure Code, sections 435, 439.*

A servant of the Sirmoor State in the Punjab was stationed at Dehra Dun; he was in charge of an office there and his duties were to receive and collect the income from certain tea gardens belonging to the State and to render accounts at the headquarters of the State. It was alleged that he received certain sums at Dehra Dun as also at some places within the State and sent an account, upon examination of which it was found that he had misappropriated certain sums and had falsified the accounts. Thereupon the Political Agent of the State issued a warrant, under section 7 of the Extradition Act, 1903, to the District Magistrate of Dehra Dun for the arrest of the servant. The District Magistrate forwarded it to the Superintendent of Police for action, and the person was arrested and subsequently let out on bail. *Held—*

One of the conditions precedent for the issue of a legal warrant under section 7 of the Extradition Act, 1903, is that the offence must have been committed or must be supposed to have been committed by the accused in the territories of the State. In the present case *prima facie* it seemed that the misappropriation, if any, and the falsification of accounts, if any, must have taken place at Dehra Dun and not within the State territory. Hence, the warrant and the consequent arrest were illegal.

The High Court has no jurisdiction, in the exercise of its revisional powers, to interfere with an arrest made by, or under the direction of, the District Magistrate in pursuance of a warrant issued under section 7 of the Extradition Act, although the warrant may have been illegally issued and the arrest is

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\*Criminal Revision No. 425 of 1933, from an order of T. J. C. Acton, District Magistrate and Superintendent of Dehra Dun, dated the 14th of May, 1933.

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consequently illegal. Under that section the District Magistrate is bound to act in pursuance of the warrant, and he is not authorised to inquire into the legality or propriety of the warrant or to refuse to execute it if in his opinion it has been wrongly issued; he can only, if he thinks fit, release the person on bail after the arrest. The District Magistrate, when he orders the execution of the warrant, is doing a mere executive act and is not acting in his judicial capacity or as a court of criminal jurisdiction. Such an act does not come within the scope of sections 435 and 439 of the Criminal Procedure Code.

There is jurisdiction under section 491 of the Criminal Procedure Code to interfere in a case of an arrest under an illegal warrant; and the mere fact that after the arrest the person was temporarily released on bail pending further inquiry does not oust the jurisdiction of the High Court under this section.

In the present case the High Court, acting under section 491 of the Criminal Procedure Code, quashed the proceedings relating to the arrest in pursuance of the illegal warrant and cancelled the bail bond.

Dr. K. N. Katju and Messrs. A. P. Pandey, I. C. Mukerji and K. N. Pandey, for the applicant.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

SULAIMAN, C. J., and KING, J.:—This is an application from an order of the District Magistrate, Dehra Dun, directing the arrest of the applicant by the Superintendent of Police, and an order of the Sub-Divisional Magistrate requiring securities from him and ultimately releasing him on bail.

The proceedings arose out of the issue of a warrant by the Political Agent of the Punjab States under the Extradition Act (Act XV of 1903). The warrant was issued on the 8th of May, 1933, and it stated that an offence under section 409/477A of the Indian Penal Code was committed or was supposed to have been committed within the limits of the Sirmoor State by the applicant Sandal Singh. It was addressed to the District Magistrate of Dehra Dun, who was directed to arrest him and deliver him to the Sirmoor State authorities.

On receipt of this warrant the District Magistrate forwarded it to the Superintendent of Police, presumably for taking necessary action. But the applicant was not arrested till the 27th of June, 1933, when, on furnishing security, he was released on bail the next day. In the meantime he had made an application to the High Court in revision praying that all the proceedings be quashed. A learned Judge of this Court ordered notices to issue and also directed that the extradition proceedings be stayed. When the case came up before another Judge of this Court he referred it to a Bench inasmuch as some important questions of law arose in it.

The first question is whether the High Court has any jurisdiction on the revisional side to interfere with the execution of the warrant by the District Magistrate. Under section 435 of the Criminal Procedure Code the High Court can call for and examine the record of any proceeding before any inferior criminal court situate within the limits of its jurisdiction. And then, under section 439, when the record of any such proceeding has been called for by the High Court or has been reported for orders or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any powers conferred on a court of appeal or certain other specified powers. It would, therefore, be clear that the High Court would not have jurisdiction to interfere with the order of a District Magistrate if it was not an order made in any proceeding before an inferior criminal court. The High Court would have no power to interfere with orders passed by a District Magistrate in his executive capacity.

The provisions of section 7 of the Extradition Act show that the warrant is to be issued to the District Magistrate of the district in which the accused is believed to be and the District Magistrate is bound to act in pursuance of such warrant and may give directions accordingly. He is required to get the accused arrested and take down his statement and if he thinks

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fit he may release the accused on bail under section 8A and report the case to the Local Government. There does not appear to be any provision in the Extradition Act which would authorise the District Magistrate himself to inquire into the legality, much less the propriety, of the warrant and then to refuse to execute it on the ground that in his opinion the warrant had been wrongly issued.

Section 7(2) also directs that the warrant shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants. Similarly, sub-section (3) makes the provisions of the Code of Criminal Procedure applicable to proclamations and attachments in the case of an accused who is absconding. Obviously, therefore, the provisions of chapter VI of the Code of Criminal Procedure relating to the execution of warrants are applicable to such a case. Now section 83 says that when a warrant is to be executed outside the local limits of the jurisdiction of the court issuing the same, such court may, instead of directing such a warrant to a police officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police in a Presidency Town within the local limits of whose jurisdiction it is to be executed. It is clear that the District Superintendent of Police has just as much authority as the District Magistrate to cause such a warrant to be executed. It cannot for a moment be contended that the act of the police officer ordering the execution of such a warrant would be either a judicial act or a proceeding in an inferior criminal court. It would, therefore, follow that when a Magistrate does the same thing, namely orders the execution of the warrant, it cannot be said that he is acting in his judicial capacity or that he is for the time being a court of inferior criminal jurisdiction. It is quite clear that a Magistrate's order that a warrant be executed is a mere executive act which he is bound to perform as

required by section 7 of the Extradition Act; the only discretion open to him is not to deliver over the accused to the State authorities, but to report the case to the Local Government if, after taking down his statement, he is satisfied that there is sufficient ground for not handing over the accused to the State authorities.

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The endorsement of the District Magistrate on the warrant forwarding it to the Superintendent of Police or the arrest made under the directions of the Superintendent of Police would therefore not be any proceeding of an inferior criminal court and would merely be an executive act, and we would therefore not have jurisdiction to interfere with the proceeding on the revisional side. It also seems that if the Superintendent of Police, in the case of a bailable warrant, or a Magistrate, when reporting the case to the Local Government, allows the accused to be released on bail, he is not even then acting judicially.

In the case of *Gulli Sahu v. Emperor* (1), JENKINS, C. J., and TEUNON, J., after examining the provisions of section 7 of the Extradition Act, came to the conclusion that the District Magistrate's sole function is to execute the warrant, and in so doing he performs, in accordance with his legal duty, an executive act which the High Court has no power to interfere with in the exercise of its revisional powers. This view was, however, dissented from by a Bench of the Bombay High Court in the case of *Mabel Ferris v. Emperor* (2), where the learned Judges came to the conclusion that the intention of the legislature in referring the extradition warrant to the District Magistrate for orders is that the Magistrate should judicially consider the matter and decide whether the warrant can be executed according to law. The Bench accordingly came to the conclusion that if the warrant was without jurisdiction or there was some other illegality to be found on the face of the

(1) (1914) I.L.R. 42 Cal., 793.

(2) (1928) I.L.R., 53 Bom., 149.

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warrant the Magistrate, in the exercise of his judicial powers, would not be justified in issuing an order for its execution and that any order judicially made in this way by the Magistrate would be subject to the revisional powers of the High Court. The learned Judges, however, based their decision in that case also on the provisions of section 491 of the Code of Criminal Procedure. In our opinion the view taken by the Calcutta High Court in the case quoted above is, for the reasons stated by us, sound. There is nothing to indicate in the Act or in the provisions of the Code of Criminal Procedure relating to the execution of warrants that the proceeding can be regarded as a judicial proceeding or proceeding of an inferior criminal court. The application on the revisional side must therefore fail.

We have, however, no doubt that when an accused person prays for time to allow him an opportunity to move the High Court under section 491 of the Criminal Procedure Code a Magistrate would favourably consider such an application.

But section 491(1) empowers the High Court, whenever it thinks fit, to direct first, among other things, 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 that a person illegally or improperly detained in public or private custody within such limits be set at liberty. This section is very widely worded and entitles us to inquire into the question whether the applicant was illegally or improperly detained in public or private custody and, if we are satisfied that he was so detained, to order that he be set at liberty. The mere fact that after his arrest he was temporarily released on bail pending further inquiry does not oust the jurisdiction of the High Court under this section.

All the High Courts seem to be agreed that there is jurisdiction under section 491 to interfere in a case of an arrest under an illegal warrant. In the Calcutta

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case the learned Judges remarked that the power of the Court to interfere under section 491 was untouched, for it was a power not created by the Extradition Act or exercisable by way of revision. Similarly, in the Bombay case quoted above it was held by both the Judges that the High Court would also have power, on proper proceedings being taken, to interfere under section 491 of the Code of Criminal Procedure.

It is, therefore, necessary to examine the question whether the Political Agent had authority to issue the warrant in this particular case so as to justify the arrest of the applicant. The case against the accused seems to be that he was the manager of certain tea gardens belonging to the State in the districts of Dehra Dun and Almora. He was in charge of an office at Dehra Dun where the income from the estates used to be received and accounts maintained. It appears that it was the duty of the accused to send copies of the accounts daily and monthly and also to render accounts at the headquarters of the State. But there is no suggestion that he had to maintain accounts at any place within the territorial limits of the State. According to the affidavit filed by the Assistant Secretary to His Highness the Maharaja, when the accounts of 1930-1932, submitted by the accused, were duly audited, some items were found to have been misappropriated and the accounts were discovered to have been falsified, on which some legal steps were taken against him. It is the case of the State that in all about Rs.17,000 comprising several items were embezzled by the accused and to avoid detection he falsified the accounts. But all that is said is that he misappropriated some of the amounts received by him not only at Dehra Dun, as deposed to by him, but also at Nahan and Paonta in Sirmoor State, and that some of the amounts received by him at other places were misappropriated and that he falsified the accounts that were rendered to the accounts office at Nahan, and further that it was the duty of the applicant Sandal

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Singh to render accounts at Nahau. But there is no clear allegation that the accused committed the offence of misappropriation at Nahau or Paonta. All that is said is that he misappropriated some amounts which had been received by him at these places. Again it is not suggested that he falsified accounts at any place within the limits of the State, but all that is alleged is that he falsified accounts which he rendered to the accounts office at Nahau. Further, any omission to render accounts at Nahau would not be a criminal offence of misappropriation or falsification of accounts. The affidavit filed on behalf of the accused goes to show that it was his duty to receive the income at Dehra Dun, to credit it in the treasury maintained there, to keep proper accounts of all receipts and disbursements and to remit the balance in hand to the State treasury. *Prima facie* it would seem that the misappropriation, if any, and the falsification of accounts, if any, must have taken place at Dehra Dun within the British territory and not within the limits of the State territory.

In particular, it is suggested on behalf of the State that the accused received on the 15th of March, 1932, a sum of Rs.39-7-0 from some banker as price of tea, either supplied or to be supplied, which he kept in his pocket and did not credit to the State account. Obviously if he received such amount as price of the tea sold it was his duty to credit it when he returned to Dehra Dun and to enter it in the accounts kept there. The omission to credit this amount in the Dehra Dun treasury or to make an entry in respect of it in the account books would be an offence committed at Dehra Dun only.

In spite of the fact that the State authorities got an opportunity to file an affidavit in reply to the affidavit filed by the applicant, we have no materials before us which would go to suggest even a *prima facie* case that any alleged offence has been committed within the territorial limits of the Sirmoor State. The Agent-General has declined to supply any information as to

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the nature of the complaint against the accused because it is not the practice of his office to supply such information. In the absence of anything to show that the offence was committed at any place within the State there can be only one conclusion, that the warrant had not been legally issued. Under section 7 of the Extradition Act there are three conditions precedent for the issue of a legal warrant: (1) the offence must be an extradition offence, that is, one of those given in the first schedule of the Extradition Act, (2) the accused must not be a European British subject, and (3) the offence must have been committed or must be supposed to have been committed by the accused in the territories of the State. Without all these three conditions being fulfilled the Political Agent would have no authority to issue a warrant for the arrest of any person who has either escaped into or is in British India, and the arrest of such a person in pursuance of such a warrant would be equally illegal.

In the absence of any materials to show that the accused is alleged to have committed any offence within the Sirmoor territory and in the face of the affidavit filed by the accused giving a detailed statement of the facts which go to suggest that the offences must have been committed, if at all, within the British territory, we cannot but hold that the warrant for his arrest is not legal.

We accordingly order that the proceedings relating to the arrest of the accused in pursuance of this illegal warrant be quashed, that the bail bond furnished by him be cancelled and that he be released from any obligation to surrender.