

REVISIONAL CRIMINAL.

Before Mr. Justice Martineau.

RADHA KISHEN—*Petitioner,*

versus

THE CROWN—*Respondent.*

Criminal Revision No. 1579 of 1919.

Jurisdictum arrest of an Indian subject in railway land in the Gwalior State under a warrant issued by the District Magistrate of Montgomery for a non-extraditable offence committed in British India Government of India Notification No. 534-I. B., dated 8th February 1907.

Petitioner was arrested at the Railway Station at Gwalior by the Railway Police in pursuance of a telegram sent by the District Magistrate of Montgomery in the Punjab for an offence under section 161, Indian Penal Code, alleged to have been committed in the Montgomery District.

Held, that the arrest was illegal as it could not be said that the Gwalior State had ceded to the British Government jurisdiction over railway lands in respect of offences not committed in those lands and having no connection with the railway administration, regard being had to the words in paragraph 3 of the Notification No. 534-I. B. of 8th February 1907, *viz.*, "have ceded to the British Government full jurisdiction, or all the jurisdiction they had or the jurisdiction necessary for the administration of Railways and of Civil and Criminal Justice in connection therewith."

Muhammad Yusuf-ud-Din v. Queen-Empress (1), *followed.*

Revision from the order of A. Campbell, Esquire, Sessions Judge, Montgomery, at Lahore, dated the 24th October 1919.

In this case proceedings were started against Radha Kishen, Petitioner, late Naib-Tahsildar, Montgomery under section 161, Indian Penal Code, for the offence of taking illegal gratifications in the Montgomery District in his capacity of a public servant. He absconded and took refuge in the Gwalior State. He was proclaimed an offender under section 187, Criminal Procedure Code and warrants were issued for

(1) (1897) I.L.R. 25 Cal. 20 : 6 P.R., (Cr.) 1897 P.C.

his arrest. On the 24th August 1919, the District Magistrate, Montgomery, telegraphed to the Sub-Inspector of Railway Police of Gwalior asking him to arrest Radha Kishen and stating that a warrant was following. The latter was arrested at the Gwalior Railway Station, and was released on bail by the Railway Magistrate, Jhansi, on his furnishing security. On Radha Kishen failing to appear at Montgomery before a Magistrate the security furnished on his behalf was declared forfeited by the District Magistrate. Radha Kishen, without appearing himself filed a revision application in the Court of Mr. A. Campbell, I. O. S., Sessions Judge, Montgomery, contending that his arrest was illegal. The Sessions Judge dismissed the petition, on the ground that the Magistrate, who had granted bail was not under the jurisdiction of the High Court. Against this order the petitioner presented the present application for revision to this Court.

S. K. MUKERJI, for Petitioner.

D. C. RALLI, for Respondent.

MARTINEAU, J.—On the 24th August last the District Magistrate of Montgomery telegraphed to the Sub-Inspector of the Gwalior Railway Police, asking him to arrest the petitioner Radha Kishen (apparently on a charge of an offence under section 161, Indian Penal Code), and stating that a warrant was following. In pursuance of that telegram Radha Kishen was arrested at Gwalior Railway Station on the 26th August. He was taken to Jhansi and released on bail by the Railway Magistrate. He applied to the Sessions Court for revision of the order issued by the District Magistrate of Montgomery for his arrest in Gwalior State, contending that he could not be legally arrested in the railway lands at Gwalior for a non-extraditable offence. His application was rejected by the Sessions Judge and he has now applied to this Court.

It is urged on behalf of the Crown that as the petitioner has gone back to Gwalior State and has broken his bond he is not entitled to apply to this Court, but I cannot agree that his not surrender-

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ing himself deprives him of the right to question the legality of his arrest.

Whether he could be lawfully arrested in the railway lands at Gwalior by the order of the District Magistrate of Montgomery depends upon the extent to which jurisdiction in those lands has been ceded by the Maharaja Scindia of Gwalior to the British Government. The contention on behalf of the petitioner is that jurisdiction was ceded only for the purpose of the administration of railways and of civil and criminal justice in connection therewith within the railway lands. The question could best be settled by the correspondence that passed between the Gwalior State and the Government of India, but that correspondence is not before me and the only material for coming to a decision on the point is paragraph 3 of Government of India Notification No. 534-I.B., dated the 8th February 1907, which runs as follows:—"And whereas the rulers or administrators of the other States mentioned in the second column of the schedule hereto annexed have ceded to the British Government full jurisdiction, or all the jurisdiction they had or the jurisdiction necessary for the administration of railways and of civil and criminal justice in connection therewith, within the lands which lie within their respective territories, or which lie within the parts of their respective territories mentioned or referred to in the third column of the said schedule, and are occupied, or may be hereafter occupied by the Railways mentioned opposite their names, respectively, in the first column of the said schedule (including the lands occupied by stations and out-buildings and for other purposes connected with the railway); and whereas the Governor-General in Council now has full jurisdiction within those lands."

Muhammad Yusuf-ud-Din v. Queen-Empress (1) was a case where a person had been arrested in the railway lands of Hyderabad State on a charge of an offence committed in British India, and unconnected with the railway administration. The grant of civil and criminal jurisdiction to the British Government contained in the correspondence between the Nizam's Minister and

(1) (1897) I. L. R. 25 Cal. 20, P. C.

the Resident at Hyderabad was expressed to be " along the line of railway as is the case on other lines running through Independent States. " It was held by the Privy Council that the arrest was illegal notwithstanding the notification of the Government of India, which recited that His Highness the Nizam of Hyderabad had granted to the British Government full jurisdiction in the railway lands.

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In the present case, reading the words " full jurisdiction " in the notification No. 534-I. B. of the 8th February 1907, with the words " or all the jurisdiction they had or the jurisdiction necessary for the administration of railways and of civil and criminal justice in connection therewith," I think it cannot be said that the Gwalior State ceded jurisdiction over the railway lands in respect of offences not committed on those lands and having no connection with the railway administration, and I hold that the arrest of the petitioner at Gwalior Railway Station was illegal. I accordingly accept the application and set aside the order of the District Magistrate of Montgomery.

A. N. C.

Revision accepted.
