

CRIMINAL REVISION.

Before Mr. Justice Cuspersz and Mr. Justice Sharfuddin.

RUDOLF STALLMANN

v.

EMPEROR.*

1911

May 24.

Extradition—Jurisdiction of High Court to revise proceedings of Magistrates under the Extradition Act—High Courts Act, 1861 (24 and 25 Vict. c. 104) s. 15—Extradition Act (XV of 1903) ss 3 and 4.

The High Court has no jurisdiction, under s. 15 of the Charter Act, to revise the proceedings of a Magistrate acting under ss. 3 and 4 of the Extradition Act.

In re Mohant Deva Dass (1) referred to.

On the 23rd April, 1911, an application was made by Mr. Ellis, Superintendent of the Criminal Investigation Department, under section 4 (1) of the Extradition Act (XV of 1903), to Babu Sukumar Halidar, a first-class Magistrate at Alipore, for a warrant of arrest against the petitioner, alleging that a telegram had been received from Cape Town in South Africa, through the Aden Government, addressed to the police at Calcutta, that one Rudolf Stallmann *alias* Von Konig was wanted by the Berlin police for obtaining money under false pretences, that he had left Beira under the name of Von Kerner by the steamer "Caspian" for Calcutta, that the Consul General for Germany at Simla had received a wire from his Government requesting him to apply to the Government of India for the petitioner's arrest, that the Government of India had, through the Bengal Government, directed that steps be taken to comply with the demand of the Consul General, and that the Bengal Government had instructed the Commissioner of Police to take the necessary action in the matter. With the complaint Mr. Ellis filed a copy of a telegram from the Imperial Chancellor of Germany requesting

* Criminal Motion, No. 577 of 1911, against the order of J. A. L. Swan, District Magistrate of Alipore, dated May 20, 1911.

(1) (1898) I. L. R. 38 Calc. 550.

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that the petitioner might be detained in custody with the property found on him in accordance with the terms of the Extradition Treaty between England and Germany, dated the 14th May, 1872. On the next day the Magistrate ordered the issue of a warrant, under section 4 (1) of the Extradition Act, which charged the petitioner with the offence of obtaining money under false pretences at Berlin. The petitioner was arrested on the 26th at Diamond Harbour, taken to Calcutta, and kept in the Lall Bazar police station with his luggage. On the 27th the luggage was searched and the police took charge of the same. He was then produced before Babu Sukumar Haldar, who released him on his personal recognizance in the sum of Rs. 2,000. On the 29th the petitioner filed an application for the return of his property before the same Magistrate who fixed the 2nd May for the hearing of the matter. On the latter date the District Magistrate of Alipore withdrew the case to his own Court and dismissed the application. On the 8th a letter was addressed by the Secretary to the Government of Bengal, Judicial Department, to the District Magistrate of Alipore intimating that a requisition had been made to the Government of India for the surrender of the petitioner for forgery and dishonestly inducing the delivery of property by cheating, and directing the Magistrate, under section 3 (1), of the Extradition Act, to inquire into the case. The Magistrate thereupon issued a warrant for the arrest of the petitioner under section 3 (2) of the Act. On the next day the petitioner was produced before him, and he ordered the latter to furnish personal recognizance in the sum of Rs. 2,000 and bail of two sureties to the amount of Rs. 5,000 each. On the 12th the High Court, on motion, reduced the amount of the security. The petitioner on appearing before the Magistrate on the 20th was re-arrested on a fresh warrant under section 3 (2) of the Act, and evidence recorded in the inquiry. He then moved the High Court for a Rule to quash the proceedings on the grounds that neither Babu Sukumar Haldar nor the District Magistrate had power to issue warrants under sections 3 and 4 of the Extradition Act; that the District Magis-

trate was not competent to withdraw the case to his own file, nor to initiate proceedings against him on the 8th May, nor to draw up fresh proceedings on the 20th; that the latter had improperly admitted evidence; and that there was no evidence to authorize his further detention, nor proof of the commission of any extraditable offence.

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*Mr Jackson* (with him *Mr. Stephen, Mr. K. N. Chaudhuri* and *Mr. Chippendale*), for the petitioner. Under section 4 (1) of the Extradition Act (XV of 1903), a fugitive criminal must be within the local limits of the jurisdiction of the Magistrate who is authorized to issue a warrant. The petitioner was arrested in the Bay of Bengal, which is not within the jurisdiction of *Mr. Haldar*. Section 3 (1) does not empower the Government to direct a Magistrate to arrest a person outside the limits of his jurisdiction and to inquire into his case. The powers of holding an inquiry under section 3 (1) and of issuing a warrant under section 4 are conferred on Magistrates within whose local jurisdiction the criminal is at the time. The petitioner was in attendance in Court, as an accused, at the time of his re-arrest. To say that in such a case he was arrested within the jurisdiction of the Court, is a farce. The District Magistrate had no authority to draw up a fresh proceeding under section 3 (1) of the Act on the 20th May. The letter from the Secretary to the Government of India, dated 10th May, 1911, to such Magistrate was not an order under section 3 (1), as it purports only to ratify and confirm the order of the 8th May. The Magistrate improperly admitted in evidence the records of the Berlin Court, as they were not duly authenticated and certified under sections 78 and 46 of the Evidence Act. There is no evidence that the petitioner committed any extraditable offence. The evidence as disclosed in the Berlin depositions do not constitute forgery and delivery of the bill by false pretences.

*Cur. adv. vult.*

CASPERSZ AND SHARFUDDIN JJ. This is an application under section 15 of the High Courts Act, 1861, in respect

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of certain proceedings under the Indian Extradition Act, 1903, pending before the District Magistrate of the 24-Pergannahs, at Alipore, against the petitioner Rudolf Stallmann *alias* Rudolf Von Konig, who was originally arrested on board the S.S. "Caspian" as the steamer was coming up the river Hooghly on her way to the Port of Calcutta on the 26th April, 1911.

The proceedings are in apparent compliance with the Extradition Act, but we are invited to issue a Rule, and to call up all the papers of the case, in order to quash the proceedings on two grounds: (i) that the District Magistrate of the 24-Pergannahs has no jurisdiction in the matter, and (ii) that there is no legal evidence before the District Magistrate to justify the detention of the petitioner.

We have carefully considered this application since hearing learned counsel yesterday, and, in our opinion, we have no jurisdiction in the matter.

Section 15 of the Charter Act gives this Court "superintendence over all Courts which may be subject to its Appellate Jurisdiction." The District Magistrate of the 24-Pergannahs acting under the Extradition Act is not subject to any appellate jurisdiction: he makes inquiry and reports the result to Government: his powers are specially conferred for the limited purposes of the Act. No appeal lies to this Court from the decision which any Magistrate may arrive at under the Act. On this ground alone, if for no other reason, we must decline to interfere.

The same view was adopted by Hill and Stevens, JJ., on the 5th January, 1898, in *In re Mohunt Deva Dass*,\* in respect

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\* *Before Mr. Justice Hill and Mr. Justice Stevens.*

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*In re* MOHUNT DEVA DASS. §

*Mr. Jackson, Mr. Palit, Mr. L. Ghose, and Babu Digambar Chatterjee*, for the petitioner.

HILL AND STEVENS JJ. This application arises out of an inquiry pending before the Magistrate of Mozufferpore under the provisions of section 11 of Act XXI of 1879.

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of an inquiry pending before the Magistrate of Mozufferpore under the provisions of section 14 of Act XXI of 1879. The learned Judges observed: "We do not think that we possess any power to control or interfere in the conduct of an enquiry under section 14 of the Act," and, in another passage, they say "the competency of a Magistrate to hold an inquiry under the section depends on the authorization of the Executive Government." Such authorization (under section 14) was by means of "an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation." The language of the present Act is the same in essentials. Here, we may observe that the words "local limits" do not refer to the territorial jurisdiction of the Magistrate selected by Government to conduct the inquiry, for "any Magistrate" may be so authorized if he be a first-class Magistrate or a Magistrate empowered by the Local Government in that behalf.

The petitioner is not without remedy. He may, under section 3 (6) of the Act, submit any written statement for the consideration of the Government, and if the report of the Magistrate, or the written statement of the petitioner, raises an

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We are asked on various grounds, to which it is unnecessary to refer more particularly, either to transfer the inquiry from the Magistrate of Mozufferpore to some other Magistrate, and, if necessary, to request the Governor General in Council to appoint another Magistrate for that purpose, or to direct the Magistrate of Mozufferpore to re-open the inquiry and to conduct it in accordance with law: and to obviate further difficulty, we are also asked to declare by what procedure the Magistrate should be guided in the further conduct of the inquiry.

As to the first of these prayers, we think that we have no power to order the transfer of the inquiry, if for no other reason, because the competency of a Magistrate to hold an inquiry under the section depends on the authorization of the Executive Government, nor are we aware of any provision of the 1 which would empower us to request the Government to appoint another Magistrate, so as to enable us to transfer the inquiry to that Magistrate if appointed. With regard to the alternative prayer of the petition we do not think that we possess any power to control or interfere in the conduct of an inquiry held under section 14 of the Act. We accordingly refuse the application.

*Application refused.*

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important question of law, that question may be referred to this Court for decision. This special procedure, it seems, takes the place of that indicated in section 491 of the Code of Criminal Procedure which gives directions of the nature of a *habeas corpus*. If the Legislature had intended that proceedings under the Extradition Act should be subject to the superintendence of this Court, it would not have provided the machinery we have just mentioned.

It may be added that the proceedings against the petitioner may be stayed under section 5 (2) of the Act by the Government, and not by this Court.

We have also examined for ourselves the procedure under the English Statute, but it would serve no useful purpose to fortify our conclusion by discussing it. The application is refused.

E. H. M.

*Application refused.*