

**In Re: Krishnarao Ramchandra**

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**Court :** Mumbai

**Decided On :** May-17-1933

**Reported in :** AIR1933Bom409; (1933)35BOMLR845

**Judge :** Baker and Broomfield, JJ.

**Appeal No. :** Criminal Application for Revision No. 71 of 1933

**Appellant :** In Re: Krishnarao Ramchandra

**Judgement :**

**Baker, J.**

1. This is an application by one Krishnarao Ramchandra Haldipur of Karwar for revision of the order passed by the District Magistrate, Kanara, on December 17, 1932, under Section 4(1) of the Special Powers Ordinance X of 1932 directing his brother Subrao Ramchandra Haldipur to report himself daily at 9 a.m. and 7 p. m. to the Police Sub-Inspector of Karwar, for one month from the date of the order, the same order having been directed to remain in force until further orders by the Government of Bombay, dated December 28, 1932, and praying that the said orders be set aside and the proceedings taken against his brother Subrao under Sections 87 and 88 of the Criminal Procedure Code may be quashed and for an interim stay of the criminal proceedings pending disposal of this application.

2. The facts of this application, which are somewhat unusual, are that the petitioner's brother Subrao Ramchandra Haldipur was convicted under the Ordinance in January 1932 and sentenced to one year's rigorous imprisonment and was released from the Ratnagiri prison on December 17, 1932, Subrao was a resident of Karwar. But it appears that he went straight from Ratnagiri to Goa, which is foreign territory, and has ever since remained there outside the Bombay Presidency. On December 17, 1932, the order in question directing him to report himself twice a day to the police at Karwar was issued by the District Magistrate of Kanara under Section 4(1) of the Special Powers Ordinance X of 1932. That order was never served on Subrao, who was in Goa, but it was served on January 7, 1933, on the petitioner his brother who is a resident of Karwar. Thereafter another order dated January 5, 1933, was issued by the District Magistrate, Kanara, extending the period of the previous order dated December 17, 1932, until further orders. This order was similarly served on the petitioner on behalf of his brother, against whom the order was directed, and subsequently by Act XVI of 1932, the Bombay Special (Emergency) Powers Act, the order was extended by the Governor-in-Council under Section 4(1) of the Emergency Act. Owing to the absence of Subrao in Goa it was not practicable to serve the order upon him and a charge-sheet was preferred by the Karwar police against Subrao, a copy of which is annexed to the petition, a translation of the original charge-sheet. In that charge-sheet it is stated that the offence is one under Section 14 of Bombay Act XVI of 1932 by reason of Subrao staying away and concealing himself to avoid service in foreign territory, and it was prayed that a warrant should be issued against the accused under Section 87, Criminal Procedure Code, and a proclamation also should issue and steps be taken under Section 88, Criminal Procedure Code. A warrant of arrest was issued by the First Class Magistrate of Karwar against the petitioner's brother Subrao on February 25, 1933, followed by a proclamation. The petitioner applies for the quashing of these proceedings as being without jurisdiction.

3. A preliminary objection has been taken by the Government Pleader that under Section 29 of the Bombay Special (Emergency) Powers Act XVI of 1932 the proceedings taken under the Act cannot be called in question by any Court except as provided in the Act and therefore the jurisdiction of this Court is excluded. It is

not necessary to go into the question as to whether an Act of the Provincial Legislature could in any way limit the powers of the High Court. It is sufficient to say that it has been held recently in a special bench case of this Court, Emperor v. Balkrishna Phansalkar : (1932)34BOMLR1523 , S.B. that-

the power of superintendence which the High Court enjoys over all Courts for the time being subject to its appellate jurisdiction, under Section 107 of the Government of India Act, cannot be controlled by the Governor General either under Section 71 or Section 72 of the Act, by virtue of Section 65 and the fifth schedule of the Act. The rights of superintendence which the High Court possesses under Section 107 of the Government of India Act, 1915, include not only superintendence on administrative points, but superintendence on the judicial side too. Under its power of superintendence the High Court can correct any error in a judgment of a Court subject to its appellate jurisdiction. The Special Courts under the Emergency Powers Ordinance, 1932, fall within the purview of the superintendence of the High Court, since they are subject to the appellate jurisdiction of the High Court, which has the power to hear appeals in certain cases under Section 39 of the Ordinance. The exercise of the power of superintendence under Section 107 of the Government of India Act is not the same thing as the hearing of an appeal. The High Court has a discretion to revise or set aside any conviction under its power of superintendence, but it should exercise its discretion on judicial grounds, and only interfere if considerations of justice require it to do so.

4. There can, therefore, be no doubt as to this Court's jurisdiction to interfere in such matters, and this is a sufficient answer to the objection under Section 29 of the Act.

5. Turning to the facts the present case is one of a peculiar nature. The person against whom the proceedings are taken is not a resident of the Bombay Presidency. By virtue of the provisions of Section 31 of Bombay Act XVI of 1932 anything done or deemed to have been done in pursuance of any provision of the Special Powers Ordinance, 1932, shall, where the corresponding provisions of this Act have come into operation before the expiry of the said Ordinance, be deemed

to have been done in pursuance of the corresponding provision of this Act and shall have effect and the provisions of this Act shall have effect accordingly. Since the proceedings must be regarded as being taken under Act XVI of 1932, an Act which applies only to the Bombay Presidency, it is extremely doubtful whether it can be made to apply to a person who is not a resident in the Bombay Presidency, and not even in British India but resides in foreign territory. But apart from this it will be observed that the charge-sheet refers to the petitioner's brother Subrao as having committed an offence under Section 14 of the Act, which refers to disobedience of an order made under Section 4, In order that there should be an offence under Section 14 it is necessary that there should be a valid order under Section 4.

6. Now, quite apart from the question whether an order under Section 4 could validly be made against a person who is not a resident in this Presidency and therefore, not subject to the provisions of this Act, Section 4(3) requires that an order made under Sub-section (1) shall be served on the person to whom it relates in the manner provided in the Code for service of a summons. The manner provided in the Code for service of a summons is in Section 69, Criminal Procedure Code, which contemplates a personal service or where a person summoned cannot be found under Section 70 the summons may be served by leaving one of the duplicates with some adult male member of his family. But a reference to the charge will show that the whole of the proceedings are based on the assumption that the accused Subrao is avoiding service of the summons by concealing himself in foreign territory. It follows, therefore, that the prosecution themselves base their application to the Magistrate on the ground that there has been no service of the summons. If, therefore, there has been no service of the summons, that is of the order under Section 4, there has been no valid order under Section 4 of the Act because it has not been served upon the person affected by it and inasmuch as there has not been valid service there can be no disobedience of the order under Section 14.

7. The result is that the whole basis on which the present proceedings are taken falls to the ground and the proceedings under Sections 87 and 88, Criminal Procedure Code, are invalid and should be quashed. Although these proceedings

are of an interlocutory nature the High Court will interfere to quash proceedings in cases where it is clear that interference is necessary where no offence has obviously been committed : Re Kuppaswami Aiyar I.L.R. (1915) Mad. 561 and In re Shripad Chandavarkar (1927) 30 Bom. L.R. 70

8. For these reasons I am of opinion that the proceedings before the First Class Magistrate of Karwar should be quashed as being without jurisdiction,

**Broomfield, J.**

9. I agree with my learned brother. There could obviously be no offence under Section 14 of the Act unless there was, firstly, a valid order, and, secondly, a valid service of the order upon the person against whom it was directed. No order could be made either under the Act or under the Ordinance which was superseded by the Act which would bind a person outside the Bombay Presidency, or at any rate, the operation of any such order would be postponed until the person in question comes within the jurisdiction. It may be a legitimate interpretation of the rulings in the special bench case of Emperor v. Balkrishna Phansalkar : (1932)34BOMLR1523 and Emperor v. Gulabchand (1932) 35 Bom. L.R. 185 that the District Magistrate of Kanara would have power to make an order regulating the movements of a resident of that district in the event of his returning to it, or even to make an order directing him to return to the Kanara District and to regulate his movements as directed, provided the said person was within the limits of the Bombay Presidency at the time the order was made. But it cannot be held, in my opinion, that the District Magistrate has any power to make an order directing a person not at the time being a resident of the Bombay Presidency to return to it. When the applicant in this case was released he was apparently released without any condition, and he was fully entitled to go to Goa either for medical reasons, as he says, or for any other reason.

10. Even if the order was valid it could not be operative until it was validly served. In my opinion, there was no valid service under Section 69 and 70, Criminal Procedure Code. It was not impracticable to serve the applicant with the order except in the sense that the Criminal Procedure Code is not applicable to foreign

territory. But Section 70 of the Criminal Procedure Code cannot have been intended to make it indirectly applicable outside the jurisdiction. Anyhow, as my learned brother has pointed out, the nature of the charge made against the applicant and the evidence recorded by the Magistrate show that the prosecution case was that there was no service of the order on the person against whom it was made.

11. As to the objection taken by the learned Government Pleader under Section 29 of the Act, I have nothing to add to what my learned brother has said.

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