

Bhaiji Manor Vs. Emperor

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Court : Mumbai

Decided On : Oct-06-1933

Reported in : 148Ind.Cas.268

Judge : Broomfield and; Divatia, JJ.

Appellant : Bhaiji Manor

Respondent : Emperor

Judgement :

Broomfield, J.

1. The facts giving rise to this reference areas follows. Four accused persons have been-committed to the Court of the Sessions Judge of Kaira by the Resident First Class Magistrate of Borsad for trial under Section 302, Indian Penal Code. The offence is alleged to have been committed within the, limits of a village in the territory of the Baroda State. Therefore, a certificate from the Political Agent was necessary under Section 188 of the Criminal Procedure Code before an inquiry into the charge could be made in British India. What purported to be a certificate under Section 188 was produced in the proceeding before the Magistrate and was in this form:

Dated Baroda, April 22,1933.

Whereas the persons named in the margin are

1. Ram Manor | charged with having
2. Bhairji Manor. committed an offence
3. Asha Rama. punishable under Section 302
4. Natha Mathur. of the Indian Penal

All of Vadeli under Borsad. | Code at Baroda under Bhadrans of the Baroda State in the month of January, 1933, I hereby certify in accordance with the provisions of Section 188 of the Criminal Procedure Code (Act V of 1898), that the said charge should be inquired into in British India.

(Sd) C.W.L. HARVEY.

For the Agent to the Governor General for the Gujrat States and Resident at Baroda.

2. The document bears the Resident's seal. The learned Sessions Judge, being of opinion that this was not a sufficient certificate to meet the requirements of Section 188 and that it is necessary that there should be a certificate signed by the Political Agent himself, has referred the matter to this Court with a recommendation that the order of commitment should be quashed and that a fresh inquiry should be directed after the necessary certificate signed by the Agent to the Governor-General himself has been obtained. We may say that we agree so far with the learned Sessions Judge that the form of the certificate does not appear to be altogether appropriate. Section 188 requires that the Political Agent should certify that in his opinion the charge ought to be inquired into in British India. It is the Political Agent who must certify and not some one else for him. On the other hand, as was pointed out in *Rulya Singh v. Crown* 96 Ind. Cas. 398 : 7 Lah. 468 : 27 Cri. L.J. 942 : A.I.R. 1926 Lah. 609 : 27 P.L.R. 708 a case in which precisely the same point arose, the section does not mention the word 'certificate' at all and there is no direction for the signing of a certificate by any particular person. If the certificate were to be in this form: 'The Political Agent (or the Agent to the

Governor-General], as the case may be) hereby certifies that the charge ought to be inquired into in British India,' and the certificate were signed 'By order' by some officer whose designation was stated, we are of opinion that it might be accepted as sufficient evidence of the fact that the Political Agent had certified as required by Section 188. This particular certificate, however, does not purport to say that the Political Agent certifies anything. It merely says that the officer who has signed the document certifies what is necessary and that he does so for the Agent to the Governor-General. There is nothing in the Code, or so far as we are aware, in any other law in force which would authorize the First Assistant Resident or any other officer under the Political Agent to give the required certificate for the Political Agent.

3. But as the document is merely required as evidence of the fact that the Political Agent has certified as required by the section, there is no objection to the document being signed by some officer other than the Political Agent, provided it is done under the orders or with the authority of the latter. In the present case, as in the Lahore case to which I have referred, there is evidence aliunde that the Political Agent had himself authorized the inquiry into this case in British India. On the same date on which the certificate was signed, i.e., April 22, 1933, the same officer, signing as Secretary to the Agent to the Governor-General for the Gujrat States and Resident at Baroda, addressed a letter to the District Magistrate of Kaira in which he stated:

I am directed to refer to this office endorsement No. 3 73 dated March 10, 1933, regarding the trial of accused Rama Manor and three others, and to forward herewith a certificate under Section 188 of the Criminal Procedure Code for holding their trial in British India

4. That shows that the certificate was forwarded under the orders of the Agent to the Governor General, i.e., the Political Agent, himself. The endorsement No. 3573 dated March 10, 1933, referred to in this letter, was an endorsement forwarding to the District Magistrate of Kaira a copy of a letter of the same date addressed to the Minister of the Baroda State by Capt. C.W.L. Harvey, First Assistant Resident at Baroda. In this letter it was stated:

The Resident suggests, therefore, that the interests of justice and the convenience of the witnesses would be better served by the trial being held in British India. Accordingly I am to inquire whether the Baroda Government have any objection to the issue of a certificate by the Resident under Section 188 of the Criminal Procedure Code for holding the trial of the accused in British India.

5. That shows that the Political Agent had not only authorized but had himself suggested that this was a fit case to be inquired into in British India, and that it ought to be inquired into there. Under the circumstances we follow *Rulya Singh v. Crown* 96 Ind. Cas. 398 : 7 Lah. 468 : 27 Cri. L.J. 942 : A.I.R. 1926 Lah. 609 : 27 P.L.R. 708 and refuse to interfere with the commitment in this case.

6. We direct that the record be returned to the learned Sessions Judge.

Divatia, J.

7. I agree. All that the first proviso to Section 188 requires is that it should be made known that the Political Agent is of opinion that the case should be tried in British India. No particular form of certificate being, therefore, required, one has to see in each case whether the Political Agent has expressed, his opinion that the case should be tried in British India. It is not necessary that that the opinion, if it is in a written form, should be signed by the Political Agent himself. It would be sufficient if that opinion is communicated by some one who is duly authorized by the Political Agent to do so, In this case, we are satisfied that the opinion as well as the covering letter of the same date in which the Political Agent has directed his Secretary to send the certificate to the District Magistrate at Kaira sufficiently complies with the provisions of Section 188 of the Criminal Procedure code, and that being so, the order of committal is not invalid.

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