

Ram Pargas Vs. Emperor

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Court : Allahabad

Decided On : Sep-02-1947

Reported in : AIR1948All129

Appellant : Ram Pargas

Respondent : Emperor

Judgement :

Malik, J.

1. This application has been moved on behalf of Ram Pargas under Section 491, Criminal P.C., read with Sections 339 and 561A of the same Code for the stay of the order, passed by the learned Sub-Divisional Magistrate of Karchana, on 29-5-1946, directing him to present himself before the authorities of the Rewa State and for quashing all the proceedings relating to his arrest. The applicant has further prayed that he be released from any obligation to surrender to the bail bonds executed under the orders of the said Sub-Divisional Magistrate.

2. The applicant is a resident of village Daron, police station Karchana, in the district of Allahabad. He was arrested in his village on 28-2-1946, by the Station Officer of Sohagi in the Rewa State and was handed over for custody to the Station Officer of Karchana.

3. At the time of his arrest on 28th February the Station Officer of Sohagi was not in possession of any warrant of arrest. On 6-3-1946, an application was moved before the Sub-Divisional Magistrate, Karehana, praying for the release of the applicant on bail. The Sub-Divisional Magistrate called for a report from the police and fixed 8th March for hearing. On 8-3-1946, another application was moved on behalf of the applicant before the Sub-Divisional Magistrate and the legality of his arrest was questioned inter alia on the ground that there was no warrant for his arrest and that the offence which he was said to have committed was not extraditable. On that date without going into the question of the legality of his arrest, the Magistrate granted him bail.

4. A bailable warrant under Section 7, Extradition Act (15 [XV] of 1903) to arrest the applicant, Ram Pargas, was issued on 2-4-1946. It was signed by Mr. Sher Singh Mathur for the Political Agent in Bundelkhand and it bears his seal. It was mentioned in this warrant that the accused was alleged to have, committed an offence punishable under Rule 81, Defence of India Rules.

5. On 24-4-1946, the warrant was produced before the Sub-Divisional Magistrate and on 6-5-1946 the accused moved another application before the same Magistrate questioning the legality of his arrest. On 12-5-1946, the Sub-Divisional Magistrate directed the sureties to produce the applicant, before the Rewa State authorities, on 25-5-1946. The accused thereupon moved this Court on 22-5-1946, in the manner as stated by us above.

6. Notice was issued by Mulla J. on 22-5-1946, and when the case came up before him after service of notice on 8-7-1946, he considered that it was necessary to give an opportunity to the Rewa State authorities to answer the affidavit filed by the applicant in support of his application. He, therefore, directed that a copy of the affidavit may be sent to the State authorities. He further indicated in his order that it would be necessary to consider whether a warrant issued under Section 7, Extradition Act, which was not signed by the Political Agent himself but by some one else on his behalf could be deemed to be a legal warrant. The case (was?) referred to a Bench on 16-10-1946. On the case coming up before a Bench on 14-2-1947, the learned Government Advocate found it

necessary to ask for a further adjournment to enable him to enquire whether the Political Agent of the Rewa State had authority to delegate any of his functions to any officer subordinate to him. The case has now come up before this Bench for final disposal and we have heard learned Counsel at some length.

7. It is admitted by the learned Deputy Government Advocate that there is nothing to show that the Political Agent had power to delegate any of his functions to any officer subordinate to him. He has, however, urged that there is implied authority to delegate such functions to his subordinates on occasions when the Political Agent, for some reason or other, is not able to perform them himself.

8. Under Section 7, Extradition Act:

Where an extradition offence has been committed or is supposed to have been committed by a person, not being a European British subject, in the territories of any State not being a Foreign State, and such person escapes into or is in British India, and the Political Agent in or for such State issues a warrant, addressed to the District Magistrate of any district in which such person is believed to be for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant and may give directions accordingly.

9. From the quotation given above it would appear that a person who has committed an extradition offence in an Indian State is liable to be arrested in British India on a warrant issued by the Political Agent under Section 7. Extradition Act.

10. The offences punishable under Rule 81, Defence of India Rules, have been made extraditable offences under the Government of India, External Affairs Department Notification No. 126-X, dated 6-8-1940, issued in the Gazette of India, part 1, p. 1123, dated 10-8-1940, and a reciprocal agreement has been accepted by the Rewa Government by the letter issued by the Political Minister, Rewa State, No. 3837-A/47 Ex. dated 9-2-1940. If therefore, the warrant was issued by the Political Agent only then could the applicant be extradited from out of British India into the Rewa territory? From the affidavit filed by Mr. Mathur it appears that the

Political Agent had authorised him by an order in writing dated 27-12-1945, to sign warrants on his behalf.

11. Our attention has been drawn to Section 3, Sub-section (40), General Clauses Act (10 [x] of 1897), which provides as follows:

'Political Agent' shall include (a) the principal officer representing the Crown in any territory or place beyond the limits of British India, and (b) any officer appointed to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force-relating to foreign jurisdiction.

By the Government of India (Adaptation of Indian Laws) Order 1937, the word 'Crown' was substituted for the word 'Government' in. Clause (a) and the words 'of the Government of India or of any Local Government' and 'by the Government of India or the Local Government' were omitted from Clause (b). It was urged that this omission no longer made it necessary that the officer should be appointed by the Government of India or the Local Government and that the appointment could be made by the Political Agent himself. We are not prepared to accept this argument. The words were omitted because the position of the Indian States vis-a-vis the Government of India was changed and the Indian States had dealings with the Crown representative through the Political Department (see Government of India Act, 1935, : 26 Geo. V, chap. 2). The word 'appointed,' therefore, in Clause (b) of Sub-section (40) would necessarily mean 'appointed by the proper authority,' and it appears to us that the only person who can appoint an officer to exercise all or any of the powers of a Political Agent, would be the person, who can appoint a Political Agent. In the absence of any power of delegation given to the 1 Political Agent, we do not think he can be considered to have the right to delegate his functions to any of his subordinates.

12. Reliance is next placed on Section 19, General Clauses Act, which reads as follows:

In any Central Act or Regulation made after the-commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or

superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

We find that under this section a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office. This would again bring us back to the consideration of the same question whether Mr. Mathur was lawfully performing the duty of the Political Agent when he was issuing the warrant. We have again, therefore, to go back to the same question whether the Political Agent had the authority to delegate his power of issuing warrants to his subordinates. We are, therefore, of the opinion that neither; Sub-section (40) of Section 3 nor Section 19, General Clauses Act, can help the Crown.

13. It is the valuable right of a citizen that, he should not be sent out to a foreign jurisdiction without the law relating to extradition being strictly complied with and we must, therefore give a strict interpretation to the provisions of the Extradition Act. Learned Counsel for the Crown has urged that it was not necessary for the Political Agent to sign the warrant and that we should not apply the analogy of Section 75, Criminal P.C., Even if we were to accept his argument, for the validity of the warrant it was necessary that it should have been issued by the Political Agent. The facts are now before us and they show that the Political Agent never applied his mind to this particular warrant and under the general order given by him the warrant was issued by one of his subordinates. The warrant does not, therefore, comply with the provisions [of Section 7, Extradition Act, and is illegal. We, therefore, allow this application and set aside the order passed by the learned Sub-Divisional Magistrate.