

Abul Hasan and anr. Vs. Rex

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Court : Allahabad

Decided On : Dec-22-1949

Reported in : AIR1952All365

Judge : V. Bhargava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 93C and 438

Appeal No. : Criminal Ref. Nos. 988 and 989 of 1949

Appellant : Abul Hasan and anr.

Respondent : Rex

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : F.V. David, Adv.

Judgement :

ORDER

V. Bhargava, J.

1. This is a reference by the learned Sessions Judge of Shahjahanpur arising out of proceedings for the extradition of three persons, Abul Hasan, Abdul Ali and Muhammad Khan.

2. A warrant for the arrest of these persons was received from a Court in Bhopal by the Sub-Divisional Magistrate of Shahjahanpur in April 1949. The Sub-Divisional Magistrate recommended to the Provincial Government the extradition of these three persons to the Bhopal State and pending the orders of Government, committed them to jail. Revision applications against this order of the Sub-Divisional Magistrate were filed before the learned Sessions Judge of Shahjahanpur who has made this reference thereon.

3. Before dealing with this reference, I have to take notice of the fact that in making this reference the learned Sessions Judge has not done his duty at all. He has mentioned four points that arose for decision in connection with the revision applications before him. Instead of exercising his mind and coming to any decision on those points, the learned Sessions Judge merely stated those points and referred them to this Court for clarification. The learned Sessions Judge, in dealing with the revision applications, was required to make a reference to the High Court under Section 438, Criminal P. C. and a reference under that section should contain the recommendations of the learned Sessions Judge. It was for the learned Sessions Judge to go into all the questions that were raised before him and send the reference to this Court with his own recommendations as to the decision on each point.

4. However, now as the case is before this Court, orders have to be passed which will dispose of the revision applications which were presented before the learned Sessions Judge.

5. It appears that since the orders were passed by the learned Sub-Divisional Magistrate of Shahjahanpur, the position with regard to the Bhopal State has undergone a drastic change. In April 1949, Bhopal was a State under a ruling prince. On 1-6-1949, the Central Government assumed the administration of Bhopal under a Notification issued in exercise of the powers conferred by Sections 3 and 4 of the Extra Provincial Jurisdiction Act, 1947 (Act XLVII of 1949). Under this notification, the whole administration of the State of Bhopal was assumed by the Central Government and under Clause (4) of that notification the Central Government directed that:

'all Judges, Magistrates and other officers who immediately before the commencement of this Order, were exercising lawful functions in Bhopal or any part thereof, shall, until other provision is made by the Chief Commissioner, continue to exercise their respective functions in the same manner and to the same extent as they were doing before the commencement of this order.'

The effect of this provision in the notification was that the Courts of the Magistrates and Judges constituted in the Bhopal State were continued under the authority of the Central Government. They were, therefore, Courts of the type contemplated by Section 930, Criminal P. C. Under Sub-section (1) of this section it is laid down :

'Where a Court has received for service or execution a summons to, or a warrant for the arrest of an accused person, issued by a Court established or continued by the authority of the Central Government or the Crown Representative in any part of India outside British India, it shall cause the same to be served or executed as if it were a summons or warrant received by it from a Court in British India for service or execution within the local limits of its jurisdiction.'

In the present case the Court which sent the warrant for service to the Sub-Divisional Magistrate of Shahjahanpur has been continued under the authority of the Central Government and consequently under Sub-section (1) of Section 930, Criminal P. C., the Sub-Divisional Magistrate had to execute it as if it were a summons or a warrant received by him from the Court in the Indian Union. No question of extradition, therefore, arises. Sub-section (2) of Section 930, Criminal P. C., makes it clearer still. It lays down :

'93C(2). Where any warrant of arrest has been so executed the person arrested shall so far as possible be dealt with in accordance with the procedure prescribed by Sections 85 and 86 (Criminal P. C.)'

In this case, therefore, the Sub-divisional Magistrate is now required to deal with these three persons in accordance with the procedure prescribed by Sections 85 and 86 (Criminal P. C.) There is, therefore, no need for any extradition proceedings. Let the record be returned to the learned Sessions Judge of Shahjahanpur for being transmitted to the Sub-Divisional Magistrate,

Shahjahanpur, to take action accordingly.

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