

Mahesh Chander Vs. the State

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Court : Kerala

Decided On : Jul-17-1951

Reported in : 1952CriLJ943

Judge : Kunhi Raman, C.J. and; Sankaran, J.

Appellant : Mahesh Chander

Respondent : The State

Judgement :

Kunhi Raman, C.J.

1. This is a petition for the issue of a writ of 'habeas corpus' directing Onkar Singh 'alias' Mahesh Chander now under arrest in Alleppey and under Police custody to be released from such custody on the ground that the arrest and detention of this person are illegal and unwarranted. The learned Public Prosecutor Sri Balakrishna Iyer appears in response to the notice taken by the Advocate-General when the petition came on for hearing on 3rd July 1951. It is conceded by the Public Prosecutor that the arrest of the individual mentioned in the petition was made by a Sub-Inspector of Police of the State of Jammu and Kashmir who is not a Police Officer competent to make an arrest under Section 54 of the Criminal Procedure Code, which has been extended to this State.

The Police Officer referred to in Section 54 must be an Officer who is a member of the Police force enrolled under the Indian Police Act V of 1861. That Act has not

been extended to the State of Jammu and Kashmir and therefore a Police Officer of that State cannot be regarded as a member of the Police force coming within the category of Police Officers who are referred to in the Indian Police Act. It is also conceded by the learned Public Prosecutor that the Indian Code of Criminal Procedure has not been extended to the State of Jammu and Kashmir, in these circumstances, since the arrest was for an offence alleged to have been committed within the State of Jammu and Kashmir and consequently since the arrest made at alleppey cannot come within the purview of Section 59 of the Criminal Procedure Code, it is not warranted by, law. The reason given for the prayer in the original petition cannot therefore be disputed. The arrest not being warranted by any provision of law this is a fit case for making a direction under Section 491 of the Criminal Procedure Code, since the party concerned is within the limits of the appellate criminal jurisdiction of this Court. We accordingly direct under Section 491(1)(b), of the Criminal Procedure code that Sri Onkar Singh 'alias' Mahesh Chander who is now reported to be in Police custody at Alleppey shall be set at liberty because the detention is not proper or legal. Issue a writ in these terms to the Division First Class Magistrate of Alleppy who shall see that the order is carried out expeditiously.