

Raj Kumar Vs. the State

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Court : Rajasthan

Decided On : Mar-17-1950

Reported in : 1950CriLJ1206

Judge : Oak, J.C.

Appellant : Raj Kumar

Respondent : The State

Judgement :

ORDER

Oak, J.C.

1. This is an application Under Section 491, Criminal P, O,, for a direction in the nature of a writ of habeas corpus in respect to a per-son Raj Kumar, who has been detained in the Central Jail at Ajmer. An affidavit has been filed in support of this application. According to this affidavit, Raj Kumar was arrested at Ajmer on 9th September 1949 for an alleged offence Under Section 430, Penal Code, at the request of the police of Rajasthan State. Although several months have passed since the arrest, no prima facie case or warrant of arrest has been received from Rajasthan authorities. Notice of the application was issued to the learned District Magistrate, I have heard the learned Counsel for the parties.

2. According to the learned Counsel appearing for the learned District Magistrate, the history of the case is as follows: On 9th September 1949 Raj Kumar was

arrested by the polios in the State of Ajmer Under Section 54, Criminal P.C. upon suspicion with respect to an offence under S8. 420 and 468, Penal Code, committed within the State of Ajmer. After a few days information was received from Rajasthan autho. rities that the man was wanted in connection with another offence committed in Rajasthan. A note about it was accordingly endorsed on 19th September 1949. Orders were passed granting bail to Raj Kumar with respect to both these offences. But he did not take advantage of this order for bail. The result is that he continues to be detained in jail.

3. Chapter s, Indian Extradition Act deals with the surrender of .fugitive criminals in case of States other than Foreign States. If the State of Rajasthan is to be deemed to be a State other than Foreign State as contemplated by the Act, this case will be governed by . 3, Indian Extradition Act, Section 23 of the Act deals with cases, in which a person is arrested without an order from a Magistrate. In the present case, Raj Kumar was arrested on 9th September 1949 by the police without any warrant from a Magistrate. Section 33 of the Act lays down that a person so arrested shall be detained in the same manner and subject to the same restrictions as a per. son arrested on a warrant issued by such Magistrate Under Section 10. Section 10 of the Act deals with powers of Magistrates to issue warrant of arrest in certain cases. Sub-section (3) of Section 10 prescribes a limit for the time of detention of a person so arrested, Sub-section (3) states:

A person arrested on a warrant issued under this section shall not, without the special sanction of the Local Government, be detained more than two months, unless within such period the Magistrate receives an order made with reference to such person in accordance with the procedure prescribed by Section 9, or a warrant for the arrest of such person Under Section 7.

In the state of Ajmer the Chief Commissioner represents the Local Government. It was conceded on behalf of the District Magistrate that, no special sanction of the Chief Commissioner has been received as contemplated by Sub-section (3) of Section 10. Nor has any order Under Section 9 or a warrant Under Section 7 has been received. So, if Section 23 and 10 of the Act are read together, the detention of the prisoner would appear to be illegal. Raj Kumar's detention is illegal in so far

as it purports to be under the provisions of the Extradition Act.

4. But that does not end the matter. It has been conceded on behalf of the applicant that, there is against Raj Kumar another charge relating to a crime committed within the State of Ajmer. Bail was allowed with respect to this charge. I am informed that a request has been made to the Chief Commissioner for sanctioning prosecution Under Section 130(b), Penal Code. Thus the detention of the prisoner is in order as regards the charge relating to the offence within the State of Ajmer. On this view the prisoner cannot be released even on the footing that, the detention under the Extradition Act is illegal. With these observations this application Under Section 491 is dismissed.

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