

A.C. Tops Vs. Emperor

A.C. Tops Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/851719

Court : Kolkata

Decided On : Apr-12-1918

Reported in : AIR1919Cal509,(1919)ILR46Cal52,50Ind.Cas.17

Judge : Chaudhuri, J.

Appellant : A.C. Tops

Respondent : Emperor

Judgement :

Chaudhuri, J.

1. I have clearly no jurisdiction in this matter so far as Section 491 of the Criminal Procedure Code is concerned. The applicant was not arrested within the jurisdiction of this Court nor has he been detained within the jurisdiction of this Court. An enquiry was directed into his case by the Government of India under Section 3 of the Extradition Act. That enquiry has now been held by the Magistrate empowered to hold the enquiry, and the Magistrate has made his report to the Government of India under Sub-clause (6) of that section and his report is now under the consideration of the Government of India. Section 11 of the English Extradition Act of 1870 provides that a fugitive criminal may apply for a writ of Habeas Corpus if the Magistrate commits him to prison. There is no such provision in our Extradition Act and Sub-clauses (6) and (7) have provided a special procedure. The question therefore arises as to whether this Court has still power

to issue a writ having regard to the sub-clauses above-mentioned. The matter came up for consideration in this Court in the case of Rudolf Stallmann (1911) I.L.R. 39 Calc. 164 in which two learned Judges held that, without express repeal, the right to issue such a writ possessed by this Court cannot be said to have been taken away. The question before me is whether upon the report which has been made by the Magistrate, who is entitled to enquire, his order, so far as it relates to the detention of the fugitive pending the consideration of the Government, can be said to be illegal. I do not think it is. There is nothing in the application from which such a deduction can be drawn. The procedure of the Magistrate has been questioned, and I have been asked to deal with the evidence upon which the Magistrate has made his report, it being said that the conclusions he has arrived at are wrong. I do not see that he has erred in his procedure and I do not think that I can question the report he has made. It is within his rights to make such a report as he thinks justified by the evidence taken by him. The evidence upon which the Magistrate has acted appears to be strong, but having regard to the fact that the matter is now under the consideration of the Government, I ought not to discuss the evidence at any length which may prejudice the applicant. I do not think that even assuming that I had the power of issuing such a writ, as is asked for, outside the local jurisdiction of this Court, this is a fit case in which that power ought to be exercised. I therefore refuse the Rule which has been asked for and dismiss the application.

2. The applicant asked for permission to make his application personally. On my sending for the Advocate-General and the Legal Remembrancer they have, with the assent of the Government, produced the applicant before me. I had no power to enforce his attendance under Section 491 of the Criminal Procedure Code, as the case was not covered by that section. The enquiry and order made by the Magistrate being apparently within his jurisdiction, I was not prepared to issue a writ for the production of the applicant before me, without first hearing what the Crown Officers had to say about the detention. It would not have been right to do so as it was *prima facie* a lawful order. The applicant was produced without demur and every opportunity has been given to him to place his case fully before the Court. He has been supplied with copies of all documents, and has been heard at great length. He has dealt with all the grounds in his petition, most of which were

dealt with by the learned Chief Justice and Mr. Justice Woodroffe on the application he had made to them. I do not see any reason for taking a different view from them. I may say I accept generally the correctness of the decision of the two learned Judges I have referred to. The petitioner is remanded to custody.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com