

Rudolf Stallmann Vs. Emperor

Rudolf Stallmann Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/854401

Court : Kolkata

Decided On : May-24-1911

Reported in : (1911)ILR38Cal547

Judge : Caspersz ; and Sharfuddin, JJ.

Appellant : Rudolf Stallmann

Respondent : Emperor

Judgement :

Caspersz and Sharfuddin, JJ.

1. This is an application under Section 15 of the High Courts Act, 1861, in respect of certain proceedings under the Indian Extradition Act, 1903, pending before the District. Magistrate of the 24-Pergannahs, at Alipore, against the petitioner Rudolf Stallmann alias Rudolf Von Konig, who was originally arrested on board the S.S. 'Caspian' as the steamer wafe coming up the river Hooghly on her way to the Port of Calcutta on the 26th April, 1911.

2. The proceedings are in apparent compliance with the Extradition Act, but we are invited tissue a Rule, and to call up all the papers of the case, in order to quash the proceedings on two grounds: (i) that the District Magistrate of the 24-Pergannalis has no jurisdiction in the matter, and (ii) that there is no legal evidence before the District Magistrate to justify the detention of the petitioner.

3. We have carefully considered this application since hearing learned Counsel yesterday, and, in our opinion, we have no jurisdiction in the matter.

4. Section 15 of the Charter Act gives this Court 'superintendence over all Covins which may be subject to its Appellate Jurisdiction.' The District Magistrate of the 24-Pergannahs acting under the Extradition Act is not subject to any appellate jurisdiction: he makes inquiry and reports the result to Government: his powers are specially conferred for the limited purposes of the Act. No appeal lies to this Court from the decision which any Magistrate may arrive at under the Act. On this ground alone, if for no other reason, we must decline to interfere.

5. The same view was adopted by Hill and Stevens, JJ., on the 5th January, 1898, in *In re Mohunt Deva Dass* Before Mr. Justice Hill and Mr. Justice Stevens in respect of an inquiry pending before the Magistrate of Mozufferpore under the provisions of Section 14 of Act XXI of 1879. The learned Judges observed: 'We do not think that we possess any power to control or interfere in the conduct of an enquiry under Section 14 of the Act,' and, in another passage, they say 'the competency of a Magistrate to hold an inquiry under the section depends on the authorization of the Executive Government.' Such authorization (under Section 14) was by means of 'an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.' The language of the present Act is the same in essentials. Here, we may observe that the words 'local limits' do not refer to the territorial jurisdiction of the Magistrate selected by Government to conduct the inquiry, for 'any Magistrate' may be so authorized if he be a first-class Magistrate or a Magistrate empowered by the Local Government in that behalf.

6. The petitioner is not without remedy. He may, under Section 3(6) of the Act, submit any written statement for the consideration of the Government, and if the report of the Magistrate, or the written statement of the petitioner, raises an important question of law, that question may be referred to this Court for decision. This special procedure, it seems, takes the place of that indicated in Section 491 of the Code of Criminal Procedure which gives directions of the nature of a habeas

corpus. If the Legislature; had intended that proceedings under the Extradition Act should be subject to the superintendence of this Court, it would not have provided the machinery we have just mentioned.

7. It may be added that the proceedings against the petitioner may be stayed under Section 5(2) of the Act by the Government, and not by this Court.

8. We have also examined for ourselves the procedure tinder the English Statute, but it would serve no useful purpose to fortify our conclusion by discussing it. The application is refused.

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