

**Balthasar Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/859192](http://sooperkanoon.com/859192)

**Court :** Kolkata

**Decided On :** Apr-23-1906

**Reported in :** (1906)ILR33Cal1032

**Judge :** Harington and ;Pratt, JJ.

**Appellant :** Balthasar

**Respondent :** Emperor

**Judgement :**

**Harington and Pratt, JJ.**

1. This is a rule calling on the Chief Presidency Magistrate to show cause why certain proceedings had in his Court culminating in an order, dated February 14th, holding the petitioner to bail with two sureties to appear before the Magistrate at Bangalore should not be set aside.

2. It appears that the petitioner was arrested without warrant on February 13th. On February 14th he was brought before the Presidency Magistrate charged with the offence of cheating, and the order, of which he now complains, releasing him on bail, was made on that date.

3. A warrant for his arrest on the charge of cheating was issued by the Political Agent at Mysore on February 15th. The warrant was addressed to the Chief

Presidency Magistrate by the Political Agent at Mysore under Section 7 of the Extradition Act.

4. It is contended that the Chief Presidency Magistrate's order, having been made before the warrant arrived, was illegal and that the petitioner as a European British subject is exempt from the provisions of Section 10 of the Extradition Act.

5. The offence charged against the petitioner, i.e., cheating, is one for which he would have been liable to be apprehended under the Extradition Act [see Act. XV of 1903, Section 2(b) Schedule I, and Section 7], The arrest therefore under Section 54 (7) of the Code of Criminal Procedure was lawful, though without warrant. By Section 23 of the Extradition Act any person arrested under Section 54 (7) of the Code of Criminal Procedure may be detained in the same manner and subject to the same restriction as a person arrested on a warrant issued by such Magistrate under Section 10."

6. Under Section 10, Clause 3, a person arrested under a warrant issued under Section 10 shall not 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.

7. In the present case the warrant dated February 15th was issued under Section 7 (1) and it was received by the Presidency Magistrate within two months of the arrest under Section 54.

8. If the prisoner were arrested on a warrant issued under Section 10, the provisions of the Code of Criminal Procedure relating to bail would apply to him.

9. The question is, would those provisions enable the Court to bind the prisoner to appear at any place, whether within or without its jurisdiction. I can find nothing in the Code of Criminal Procedure authorizing a Magistrate to hold a person to bail to appear before a tribunal in a State to which the Extradition Act applies. If the Code gave such a power it would seem that the Extradition Act would be unnecessary and there would be no object in transmitting the warrant at all, nor would there be

any object in the provision in Section 8(1), that when the Political Agent has directed by endorsement on the warrant that the person for whose arrest it is issued may be released on executing a bond with sufficient sureties for his attendance, before a person or authority indicated in this behalf in the warrant at a specified time and place, the Magistrate to whom the warrant is addressed, shall on such security being given, release such person from custody.

10. The Code would authorize the Magistrate to bind over the prisoner to appear before himself, and then, when the prisoner had surrendered to his bail, the Magistrate, after receiving the warrant, could proceed to execute it under Section 7, Clause (2), or, if the warrant had been duly endorsed by the Political Agent under Section 8 (1), could bind the prisoner over to appear at the time and place indicated in the warrant. In the present case the warrant has not been endorsed by the Political Agent and so Section 8 (1) does not apply.

11. As to the point that the petitioner is a European British subject, all we need say is that that fact does not appear to have been proved: if it be the case, the petitioner must prove it to the satisfaction of the Magistrate, if he desires to claim the status of a European British subject.

12. In the result we think that the arrest was lawful, but that the Magistrate had no power under the Code or under the Extradition Act (the warrant not being endorsed under Section 8) to bind over the petitioner to attend at a Court outside British India. This order must therefore be set aside, and he must proceed to execute the warrant according to law.

13. The rule is accordingly made absolute.