

Rahmat Ali Vs. Emperor

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Court : Kolkata

Decided On : May-22-1919

Reported in : 53Ind.Cas.147

Judge : Walmsley and ;Syed Shatmsul Huda, JJ.

Appellant : Rahmat Ali

Respondent : Emperor

Judgement :

Walmsley, J.

1. This Rule raises an interesting question. It was obtained on behalf of one Rahmat Ali, who says that he is a British subject residing at Tilinipara in the district of Hooghly. The necessary facts are as follows:

2. On April 4th a Jamadar of the French Police came to the Sub-Divisional Magistrate of Serampur with a 'delegation' from the Juge d' Instruction at Chandernagore. The 'delegation' directed the Jamadar, or Adjutant de Police, to proceed to Telinipara and, with the assistance of the British Police, to arrest Rahmat Ali on a charge of theft. The Magistrate directed the Sub-Inspector of Bhadreswar to assist in arresting Rahmat Ali, and on April 5 the petitioner was arrested and next day he was produced before the Magistrate who remanded him to custody, and ordered a letter to be written to the Bengal Government asking for

an extradition warrant. On April 7th the Magistrate wrote a letter to the Bengal Government reporting that the Police had arrested one Rah mat Ali on the requisition of the French authorities at Chandernagore, and saying that the man would be handed over to the French authorities on receipt of the formal sanction of Government to his extradition. On April 8th the Administrator of Chandernagore wrote to the Govern-ment of Bengal enclosing a warrant of arrest, issued by the Hugu d' Instruction against Rah mat Ali and two others, and asking for their extradition.

3. On April 14th the Bengal Government sent a copy of the Administrator's letter with the warrant to the District Magistrate of Hooghly, directing him to take the necessary steps for arresting Rahmat Ali and making him over to the authorities at French Chandernagore under proper escort. This letter was forwarded to the Sub-Divisional Magistrate of Serampore on April 17th. By that time the petitioner had again been remanded to custody, and the date fixed for his production was April 23th. On April 22nd this Rule was issued by us, and in the meantime the petitioner was released on bail under the orders of the Sessions Judge.

4. The present position then is that the petitioner has been arrested but released on bail, and that the Government of Bengal has directed the Magistrate of Hooghly to make over the petitioner to the French authorities.

5. It was urged before us that the procedure Was not in accordance with the provisions of Act XV of 1903, in particular because there was no enquiry held by the Magistrate of Serampore.

6. Cause has been shown by the Sub-Divisional Magistrate in a letter, and by Mr. Orr, verbally, on behalf of the Crown.

7. Unfortunately, they do not take up the same line of reasoning. The learned Magistrate contends that his procedure is in accordance with Sections 3 and 4 of the Act, while Mr. Orr says that those sections are not applicable to the circumstances.

8. It will be convenient to deal first with Mr. Orr's arguments, for, if he is right, it will not be necessary to consider the Magistrate's explanation. His argument is based on the first five paragraphs of part I of Mr. Muddiman's book on 'The Law of Extradition from and to British India.' It is as follows:---A Foreign State as defined by the Indian Extradition Act means a State to which for the time being, the Extradition Acts 1870 and 1873 apply Those Acts may be made applicable, by an order in Council, to any State with which an arrangement has been made with respect to the surrender to such State of any fugitive criminals. Such an arrangement was made with France by the Treaty of 1876, and an Order of Council, dated May 16th, 1878, made the Extradition Acts applicable to France. France is, therefore, a Foreign State. But it is argued that the East Indian possessions of France are-not a Foreign State because a Treaty was made: in regard to them in 1815, and in the Treaty of 1876 there was a Clause excluding them from the operation of the later Treaty. The saving Clause is the last Clause of Article XVI of the Treaty. Mr. Orr urges, in accordance with Mr. Muddiman's view, that the effect of that Clause is to place the French possessions in British India entirely outside the-Treaty of 1876. The same view is expressed by Sir Francis Piggot at page 187 of his work on Extradition, where he says: In the Treaty with France, the arrangement established in the East Indian possessions of the two countries by the-Treaty of 1815 is preserved.' I think that an examination of the Treaty of 1876 shows that view to be correct. Article 1 sets out that the High Contracting Parties make an engagement; then follows an exception for native born and naturalised citizens, then an enumeration of extraditable offences, then a stipulation as to the fugitive being tried for the offence in respect of which he has; bean surrendered, and then a saving as to political offences. Beginning with Article VI is a series of articles as to the manner in which the extradition shall take place, first on the part of the French Government in France, and then in the dominions of Her Brittanic Majesty, other than the Colonies or Foreign Possessions of Her Majesty. Then Article XVI deals with the manner of proceeding in the Colonies and Foreign Possessions of the two High Contracting Parties, and Consuls and Governors are substituted for Ambassadors and Ministers, but the methods are to be, as nearly as possible, according to the provisions set out in the earlier articles. The last Clause of that article, however, runs: 'The foregoing stipulations shall not

in any way affect the arrangements established in the East Indian possessions of the two countries by the IXth Article of the Treaty of the 7th March 1815.'

9. We have been asked to hold that the meaning of this Clause is nothing more than that the reference to the Chief Consular Officer shall not apply in the case of the East Indian Possessions of the two countries. Such a construction is opposed to the plain meaning of the words, and I have no doubt that by that last Clause in Article XVI the East Indian Possessions of the two countries are entirely excluded from the Treaty arrangements of 1876.

10. That being so, the provisions of Chapter II of the Extradition Act have no application here, and we have to turn to Chapter III. Sections 7, 8, 8A contemplate States where there is a Political Agent and therefore cannot apply to French Chandernagore. The ninth section, however, is general, it directs that a requisition from a non-Foreign State shall be dealt with in the same manner as a requisition from a Foreign State. This direction seems to obliterate the difference between Foreign and non-Foreign States, but Section 18 lays down that nothing in this chapter shall derogate from the provisions of any Treaty for the extradition of offenders, and the procedure provided by any such Treaty shall be followed in any case to which it applies, and the provisions of this Act shall be modified accordingly. The question then is whether Article IX of the Treaty of 1815 is of such a nature as to exclude the East Indian Possessions from the scope of Section 9. It is true that the Article has none of the detail to be found in the Treaty of 1876, but that I have no doubts is to be explained by the fact that the two Governments did not intend the procedure to be elaborate; the words are 'shall be delivered up' on the part of the British Government, 'shall be delivered up on demand being made' upon the part of the French Government. I think these words clearly mean that the procedure was to be summary. A comparison of the words in the Treaty of 1815 with the words used in the Treaty of 1802 concluded between Great Britain and France confirms this view, for in the Treaty of 1802 provision is made for a preliminary enquiry on the part of the authorities of the country where the fugitive is residing, and this fact warrants the inference that the omission to provide for such an enquiry in the Treaty of 1815 was intentional. The reasons for a difference in procedure are too obvious to need mentioning. In my opinion,

therefore, the procedure that has been adopted in the present instance is in accordance with the terms of the Treaty of 1815. In this view it is unnecessary to deal with the explanation furnished by the Magistrate.

11. An argument was advanced that even if we hold that extradition proceedings with Chandernagore are governed by the Treaty of 185, the subject has a right at common law to a preliminary enquiry before surrender. I think this view is fallacious. Extradition under any condition is an invasion of the common law right, and when there is a treaty, followed by a Statute recognising the Treaty, the procedure must be in accordance with the Treaty and Statute and no further condition can be imposed by the Courts.

12. I think, therefore, that the Bale should be discharged.

Shmsuel. Huda, J.

13. I agree.

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