Parbhu Vs. Emperor

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Court : Privy Council

Decided On : Jan-26-1944

Judge : Lords Macmillan, Wright, Porter, Clauson &Amp; Sir George Rankin.

Appeal No. : Privy Council Appeal No. 27 of 1943 (From Lahore)

Appellant : Parbhu

Respondent : Emperor

Advocate for Pet/Ap. : S.P. Khambatta, for Appellant; G.D. Roberts, W. Wallach and B. Mackenna, for the Crown. Solicitors for Appellant, Hy.S.L. Polak and Co.; Solicitors for the Crown, Solicitor, India Office.

Judgement :

Lord Macmillan:

At the conclusion of the arguments in this case on 26th January 1944, their Lordships announced that they would humbly advise His Majesty that the appeal be dismissed. They now state their reasons for this advice. On 15th August, 1942, the Sessions Judge of Rohtak in British India found the appellant guilty on a charge of murdering his uncle Nanhu. The appellant was sentenced to death and on appeal to the High Court of Lahore the conviction and the sentence were confirmed. On a petition to His Majesty in Council special leave to appeal in forma pauperis was granted to the appellant. The validity of the conviction was challenged before their Lordships on two grounds, viz., (1) that the appellant had

been illegally arrested; and (2) that the Court which tried him had no jurisdiction to do so.

1. For the appreciation of this point a short narrative of the facts is necessary. The appellant is not a British subject, but is a native of the State of Jind in which he resided. The murder with which he was charged was committed in a train while it was running between two stations on the Southern Punjab Railway within the State of Jind. By an agreement entered into between the British Government and the State of Jind in 1900 the Rajah ceded to the British Government

"full and exclusive power and jurisdiction of every kind over the lands in the said State which are or may hereafter be occupied by the Southern Punjab Railway .... and over all persons and things whatsoever within the said lands" (Aitchisons's "Treaties," Edn. 5 Vol. I. 282, No. 51).

The body of the deceased was discovered on 15th October 1941, in a train at Kinana station in Jind State by a constable of the British Indian Railway Police. At Jind, the next, station, he reported his discovery to a Sub-Inspector of the British Indian Railway Police. The latter undertook the investigation of the matter and prepared a first information report. The body was taken next day to Rohtak within British India for post mortem examination. On 18th October the Sub-Inspector arrested the appellant at a place in the State of Jind outside the railway. He produced the appellant on the same day before the District Magistrate of Jind who remanded the appellant to the custody of the police of the State of Jind, by whom the appellant was temporarily transferred to the British Indian Railway Police for investigation. On the following day a Sub-Inspector of the Jind Police joined the investigation. On 22nd October the Sub-Inspector of the Railway Police conveyed the appellant to Rohtak. A confession by the appellant was recorded by the Magistrate there who thereafter remanded the appellant to the judicial lock-up. On 14th January 1942, the appellant, described as now confined in the judicial lock-up, Jind, was formally extradited and sanction given by the Nizamat Jind for him to be handed over to the authorities of Rohtak District. This was duly effected and the appellant was brought to trial and convicted at Rohtak as already stated.

The contention of the appellant was that his arrest, having been effected in Jind territory by a British Indian officer, was illegal and that the illegality of his arrest vitiated the whole subsequent proceedings. Their Lordships reject this contention. They assume that the arrest was open to objection as an infringement of the sovereignty of Jind, although the Jind authorities, so far from resenting what had been done or regarding their rights as having been flouted, co-operated most readily with the British Indian police in bringing the appellant to justice. There was no suggestion of anything like kidnapping. In their Lordships' view, the validity of the trial and conviction of the appellant was not affected by any irregularity in his arrest. When the appellant was presented for trial at Rohtak he had been validly surrendered to the Court there by the Jind authorities and so far as that Court was concerned everything was regular and in order. In (1829) 9 B. and; C.: 446, (1) the accused, a British subject charged with a crime committed in this country, had absconded to Belgium and was arrested there by a British police officer and brought back to England. On objection being taken at the trial to the validity of the arrest, Lord Tenterden C.J. said at p. 448 :

"The question therefore is this, whether if a person charged with a crime is found in this country it is the duty of the Court to take care that such a party shall be amenable to justice or whether we are to consider the circumstances under which she was brought here. I thought, I still continue to think, that we cannot inquire into them."

In 35 Bom 225, (2) the illegality of the arrest of the accused was pleaded and was held to be irrelevant. Scott, C.J., quoted from the charge to the jury of Lord Cockburn C. J., in a case of The Queen v. Nelson and Brand in which this passage occurs :

"Suppose a man to commit a crime in this country, say murder, and that before he can be apprehended he escapes into some country with which we have not an Extradition Treaty, so that we could not get him delivered up to us by the authorities, and suppose that an English police officer were to pursue the malefactor, and finding him in some place where he could lay hands upon him and from which he could easily reach the sea, got him on board a ship and brought him

to England, and the man were to be taken in the first instance before a Magistrate, the Magistrate could not refuse to commit him. If he were brought here for trial, it would not be a plea to the jurisdiction of the Court that he had escaped from justice and that by some illegal means he had been brought back. It would be said 'Nay, you are here; yon are charged with having committed a crime and you must stand your trial. We leave you to settle with the party who may have done an illegal act in bringing you into this position; settle that with him.' " (See "Charge of the Lord Chief Justice of England to the Grand Jury at the Central Criminal Court in the case of The Queen v. Nelson and Brand." Edited by Frederick Cockburn, London : William Ridgway, 1867: Pages 118-9.)

The appellant can derive no assistance from the case in 24 IA 137.(3) In that case the arrest in Hyderabad State by a British Railway constable of a British subject charged with bribery committed at Simla in British India was held to be illegal. The only question at issue was whether the arrest was lawful or not and Lord Chancellor Halsbury in delivering the judgment of their Lordships expressly stated that they had not anything to do with the consequences of the arrest being lawful or otherwise. In the course of the argument the Lord Chancellor incidentally observed, as appears from a record in the possession of the India Office :

"It may well be that the procedure taken was irregular and improper and brought a person wrongfully within the jurisdiction, but if he is there and if he has committed an offence, whatever else may be said about it, it is no answer to the offence committed within the jurisdiction that he has been brought irregularly within the jurisdiction. That has been decided more than once in our Courts. There was a case where a man was tried for murder in which it was clear that he was not properly arrested in the jurisdiction where he was found, but nevertheless he was tried, convicted and executed."

The appellant therefore fails on his first point.

2. The second point may be said to be typographical rather than legal. In the Gazette of India of 5th July 1924, there appeared a Notification by the Governor-General in Council that, for the purposes of criminal jurisdiction, within the lands occupied by the railways specified in column 1 of an annexed schedule and lying

within the States specified in col. 2 the Court mentioned in col. 3 should exercise the powers of a District Magistrate. The following is an extract from the schedule as it appeared in the Gazette :

The portion of the Southern Punjab Railway with which this case is concerned is that described in col. 1 as "Jind frontier near Uchana-Karainthi;" in col. 2 it is shown as

lying within the State of Jind; in col. 3, where the appropriate Court should be entered, there are two dots. The appellant says that these dots are meaningless and that the Governor-General in Council has failed to indicate any Court by which cases from this portion of the railway should be heard. Their Lordships have no hesitation in rejecting this contention. It is in their opinion quite clear that the two dots are typographically equivalent to "do" or "ditto", and that the words "the Deputy Commissioner Rohtak" are thereby made applicable to the portion of the railway in question, with the consequence that the Court at Rohtak had jurisdiction to try the appellant. Their Lordships so read the Notification as printed in the Gazette irrespective of certain domestic documents produced on behalf of the respondent in support of this reading which to say the least of it, are of dubious evidential value or admissibility. The appellant having thus failed, for the reasons indicated, to make good either of his two points, their Lordships advised His Majesty that the appeal be dismissed.

Appeal dismissed.