

Narmada Prasad vs Rex on 21 January, 1950

Equivalent citations: AIR1952ALL451, AIR 1952 ALLAHABAD 451

ORDER

Wanchoo, J.

1. This is a revision by Sardar Narmada Prasad Singh in connection with a search which took place at his house on 27th October 1949.

2. The facts are that the District Magistrate of Rewa, Vindhya Pradesh, issued a search warrant under s. 96, Criminal P.C. This warrant was endorsed by the Regional Commissioner of Vindhya Pradesh. It was brought to the District Magistrate of Allahabad who, in his turn endorsed it forward to the same to the Senior Superintendent of Police, Allahabad. The warrant was for the search of the premises of the applicant in connection with an alleged offence under s. 409, Penal Code, committed by him in Vindhya Pradesh. Thereupon, the house of the applicant was searched in the presence of a magistrate of Allahabad, a deputy Superintendent of Police of these provinces and the Superintendent of Police of Vindhya Pradesh and certain documents belonging to the applicant were seized and handed over to the Superintendent of Police, Rewa. These documents have been taken to Rewa.

3. The contention, on behalf of the applicant, is that the search warrant issued by the District Magistrate of Rewa could not be served in Allahabad and the District Magistrate of Allahabad had no jurisdiction to endorse it, so that the search of his premises might be effected by the Superintendent of Police, Rewa, with the help of a magistrate and a Deputy Superintendent of Police of Allahabad. It was there prayed that it be declared that the action of the District Magistrate of Allahabad was without jurisdiction and that he should be ordered to return the documents, seized from the possession of applicant, to him.

4. The only provision under which the applicant's house could be searched and documents seized there from on a warrant issued by a court in Rewa is under Section 2, Extradition Act, No. 15 of 1903. Sub-section 2(b) of that section provides that:

"The Governor General-in-council may make rules to carry out the purposes of this Act:

2 (b) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies.

A rule has been framed under this sub-section which is as follows:

"In any proceedings against any person under the provisions of the Indian Extradition Act, 1903, or of any treaty for the extradition of offenders, the Magistrate, acting in such proceedings and any police officer authorised to arrest such person under the provisions of the said Act or of such treaty, may exercise in any place in British India in respect of any property in the possession of such person or of any other person which appears to such Magistrate or police officer to have been the subject of or to be required for proof of the offence in respect of which the proceedings are being taken, the powers respectively of a Court and of an officer in charge of a police station under the code of Criminal Procedure 1898, as if such property were property the production of which is necessary for the purposes of any investigation or trial under the said code by or before such Court or officer; and the provisions of the said Code, so far as they can be made applicable, shall apply to any summons or warrant issued in pursuance of this rule and to any search made under the authority of any warrant so issued and to the disposal of any property seized in any such search."

5. It is at once obvious from a perusal of this rule that before a Magistrate in British India can issue a search warrant or endorse a search warrant issued by a Magistrate in a State like the Vindhya Pradesh, there must be before him some proceeding against some person for extradition under the Indian Extradition Act. A Magistrate in British India gets jurisdiction only when extradition proceedings are pending before him against any person. This is clear from the words "the Magistrate, acting in such proceedings"

in the rule quoted above. If such proceedings are pending, a Magistrate in British India would have power to exercise all the powers provided in the Code of Criminal Procedure for production of property including, of course, the power to issue a search warrant. But if no such proceedings are pending, a Magistrate in British India has no jurisdiction either to issue a search warrant himself or to endorse a search warrant issued by a Magistrate of a State like the Vindhya Pradesh. It is admitted on behalf of the Crown, that no extradition proceedings against the applicant or anybody else were pending before the District Magistrate of Allahabad on 27th October 1949 in the course of which the warrant was endorsed by the District Magistrate of Allahabad. Under these circumstances, the District Magistrate of Allahabad had no jurisdiction on that date to endorse this warrant for search of the house of the applicant. The search, therefore which took place on that date was illegal and those who conducted it had no authority to remove anything from the house of the applicant.

6. I am, however, told that after 27th October 1949 a warrant was received from the Vindhya Pradesh under s. 7, Extradition Act, and the matter has been referred to the Provincial government under s. 5A. So extradition proceedings are now pending against the applicant and if the search had taken place after the receipt of the warrant under s. 7 by the District Magistrate of Allahabad the applicant could not have taken an objection to it. The question then arises as to what order should be passed under the circumstances as they exist now. There is also the further fact that the search has actually taken place already and the documents have been handed over to the Rewa Police and taken away to

Rewa. It seems to me, therefore, that as extradition proceedings are now pending and the illegal action which was taken on 27th october 1949, can now be legally taken it is not worth while interfering in revision. It would, however, be enough to indicate what, I think, should be done in the two eventualities which are likely to occur. If the Provincial Government decides to extradite the applicant, no further action would be necessary and the documents seized will remain in Rewa. If, on the other hand, the Provincial Government decides not to extradite the applicant, I trust, the District Magistrate Allahabad will use his good offices to get back the documents from Rewa and restore them to the applicant.

7. With the above remarks the revision is, hereby, dismissed.