

APPENDIX V
(Regulation 159)

Directions to be followed in obtaining arrest of an offender who has escaped to the United Kingdom, a colony or some other British possession.

Sanction of District Magistrate to be obtained.

1. (a) After consulting , if necessary, the Public Prosecutor, the Superintendent shall submit to the District Magistrate a report on the case containing all the particulars specified in paragraph 4 except item (iv) .

(b) If the District Magistrate is satisfied-

(i) That the alleged offence falls within section 19(d) of the Indian Extradition Act, 1903.

(ii) That the accused is a fugitive as is alleged, and

(iii) That there is prima facie ground for believing that he has committed the alleged offence,

He shall sanction action under these directions.

Application for preliminary warrant

2. The Superintendent shall then take steps to obtain an ordinary warrant of arrest from a Magistrate of the First Class who has jurisdiction to try the offence, and shall report the case confidentially to the Inspector-General.

Details to be included in the preliminary warrant.

3. (a) The warrant to which paragraph 2 refers shall be drawn as if the offender were still in the Magistrate's jurisdiction and shall be addressed to a police officer nominated by the Superintendent.

(b) The Magistrate shall see that it complied with the provisions of sections 75 and 77 of the Code of Criminal Procedure and that it mentions every charge on which it is proposed to prosecute the offender.

(c) By way of showing that the warrant has been issued by an officer having lawful authority to issue it, the Magistrate shall cause to be written, below his signature upon it , the following:-

— A Magistrate of the first class and Justice of the Peace for British-India and as such having jurisdiction to issue warrants in the district of in Bengal for the apprehension of persons accused of offences and to commit such persons to trial.

Report to Home (Political) Department of Government.

4. The District Magistrate shall then without delay report the matter confidentially to the Secretary to the Government of Bengal, Home (political) Department, for necessary action. The report shall contain the following particulars:--

(i) The name and aliases, if any, of the fugitive.

(ii) A description of him sufficient for the purposes of identification, or the name and address of some person who can identify him, or both

(iii) His nationality by birth or naturalization - if information is available.

(iv) A categorical statement that a warrant has been issued as in paragraph 2.

(v) Any available information as to the date on which he absconded as to his supposed whereabouts and the means of tracing him, or as to the probable date of his arrival at his supposed destination and the steamer by which he is arriving.

(vi) The description of the offence, e.g., culpable homicide.

(vii) The date or dates on which, or the dates between which, the offence was committed.

(viii) The place where the offence was committed.

(ix) Particulars of the offence.

(x) A statement that the offence is punishable with rigorous imprisonment for twelve months or over, referring to the appropriate section of the Indian Penal Code.

(xi) A statement when the papers required for extradition may be expected to be ready

(xii) An estimate of the cost which will be incurred in the extradition.

Evidence to be recorded.

5. (a) In the meantime a Magistrate of the first class shall, without delay carefully record proof that offender has aurally absconded, and the same Magistrate shall thereafter record fully under section 512 of the Code of Criminal Procedure the evidence in regard to the commission of the offence in the same manner as evidence is recorded before committing a prisoner to the Sessions and subject always to all the rules of legal evidence.

(b) Every document received in evidence must be put in as an exhibit, which shall be numbered or lettered and shall be clearly referred to in the record of the deposition of the witness who swears to such exhibit.

(c) The depositions must contain a description of the fugitive sufficient, if possible, for his identification.

(d) The depositions must be sufficient to establish every charge on which it is proposed to prosecute the offender.

(e) Evidence must be recorded that the facts established by the depositions disclose a prima facie case of an offence punishable according to the law of British India with twelve months rigorous imprisonment or over. The evidence most readily available will normally be that of the Public Prosecutor.

(f) The Magistrate shall append to the depositions a certificate-

(i) That the offence is punishable with twelve months rigorous imprisonment or over, and

(ii) That the evidence recorded by him discloses, in his opinion, a prima facie case of such an offence according to the law of British India, the Act, and section being cited.

Final warrant

6. (a) Unless the warrant to which paragraph 3 refers was addressed to the officer who has been nominated under paragraph 9 to take delivery of the fugitive, the Magistrate who has recorded the evidence shall draw and sign a fresh warrant, addressed to such officer, in the manner prescribed in that paragraph.

(b) The Magistrate shall satisfy himself that this warrant is in accordance with the evidence and is otherwise sufficient.

(c) Such warrant shall be signed and the seal of the court shall be affixed to it in the presence of the officer who has been nominated under paragraph 9.

Preparation of copies.

7. The District Magistrate shall cause to be prepared, as soon as possible-

(a) In triplicate, a complete copy of the record of the evidence and copies of the exhibits to which the evidence refers (or if they are lengthy, copies of the material portions only of such exhibits), and

(b) In duplicate, copies of any official certificates of, or judicial documents stating the fact of, a conviction or any other fact.

Care must be taken that the originals of such official certificates or judicial documents purport to be signed by the proper officer.

Documents to be sent by the Police Officer deputed to arrest the fugitive.

8. (a) When the copies prepared under paragraph 7 are ready, the District Magistrate shall cause three sets of the documents relating to the case to be prepared.

The first set will be for the use of the officer deputed under paragraph 9; it will contain copies of the record and of the exhibits and there shall be appended to it in original the official certificates of judicial documents to which reference is made in clause (b) of paragraph 7.

The second set will eventually be dispatched by the Home (political) Department to the Home Secretary in England or to the Head of a Colonial Government, as the case may be; and the third will be kept for reference in the Home (Political) Department; these two sets will each contain copies of the record and of the exhibits and copies of the official certificates or judicial documents to which reference is made in clause (b) of paragraph 7.

(b) The copies comprised in each set shall, for convenience of handling, be fastened together by means of a ribbon or tape, and there shall be appended to the copies in each set a certificate in the form given in Schedule A. This certificate shall be signed and the seal of the court shall be affixed to it by the Magistrate who has recorded the evidence (or, if he is not available, by another Magistrate of the first Class) in the presence, if possible, of the police officer nominated under paragraph 9. The three sets of the documents with the certificates shall be made over by the Magistrate to such police officer in a sealed cover.

Action to be taken by the Inspector-General.

9. On the receipt of a report from the Superintendent under paragraph 2, the Inspector-General shall nominate a police officer to be sent, to the place where the fugitive has fled, for the purpose of taking delivery of such fugitive.

Action to be taken by the Police officer deputed to arrest the fugitive

10. After receiving the sets of documents and the fresh warrant, if any, issued under paragraph 6, the police officer deputed under paragraph 9 shall —

(a) Appear before the Superintendent, who shall be responsible for giving him proper instructions;

(b) Take the documents to the Home (Political) Department in order that the seal of the Government of Bengal may be affixed in his presence to the tape or ribbon which fastens the copies together and to each original document; and

(c) obtain from the Home (Political) Department a letter requesting the good offices of the head of the police concerned, as well as the set of documents prepared for his use under paragraph 8 (a). This set shall be enclosed in a cover (sealed with the seal of the Government of Bengal) which he shall keep in his personal custody until he produces it before the authorities concerned.

Dispatch of witness as to identity.

11. If the Superintendent considers that it will be necessary to prove the identity of the fugitive by oral evidence, he shall apply in proper time to the Inspector-General for authority to send a witness for that purpose with the police officer deputed under paragraph 9.

Note.- The sanction of the Government of Burma to the extradition to British India of an offender who has escaped to Burma is not necessary. In obtaining surrender of accused persons in such cases the procedure described above shall be followed and the police officer to whom, the warrant is addressed shall proceed forthwith to Burma after personally obtaining the seal of Government in the Home (Political) Department on each document he takes with him. Subordinate police officers are not authorized to make telegraphic requests to the Commissioner of Police, Rangoon, or to District Superintendents of Police, Burma, in connection with the arrest or offenders. Such telegrams should be sent only by officers of or above district rank giving full details of the case. (Vide Government of Bengal Orders No.194 P.D., dated 29th April 1938 and No.1520 (27) - 2(2)P., dated 11th March 1940.)

(Part II of the Fugitive Offenders' Act, 1881, applied to British Burma.)

(SCHEDULE A)

I, the undersigned, a Magistrate of the first class for the district in Bengal and as such having authority under the Indian Extradition Act, 1903, to exercise in such district the powers conferred by the Fugitive Offenders Act, 1881, hereby certify that the written and printed matter contained in the foregoing pages is a true copy of the information of A.B., laid and sworn before me on the day of 19 and of the depositions of A.B., C.D. and E.F. in support thereof, sworn, before and taken by me on the day of 19, for the purposes of the Fugitive Offenders' Act, 1881, and of the exhibits thereto (or of all material parts of the exhibits thereto) marked, respectively, and of the following official certificates and judicial documents.

Given under my hand and seal in court this day of 19.

A Magistrate of the first class for district in Bengal and as such having authority under the Indian Extradition Act, 1903, to exercise in such district the powers conferred on a Magistrate by the Fugitive Offenders Act, 1881.