

In Re: Rana Birpal Singh**Criminal Application No. 999 of 1948**

Court: Bombay High Court**Date of Decision:** Sept. 13, 1948**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) â€” Section 491(3)#India (Adaptation of Existing Indian Laws) Order, 1947 â€” Article 3

Citation: (1949) 51 BOMLR 108**Hon'ble Judges:** Weston, J; Chainani, J**Bench:** Division Bench

Judgement

Weston, J.

This is an application u/s 491 of the Code of Criminal Procedure 1898, made on behalf of Rana Birpal Singh who is now

under detention in the Central Mental Hospital, Yeravda. Birpal Singh was the Ruler of Bhajji, one of the Simla Hill States, for a number of years

up to the year 1940, and it is claimed that thereafter he continued He jure to be the Ruler of that State. In September 1940 he was detained in the

Ripon Hospital, Simla, under warrant bearing the signature of an Additional Secretary to the Government of India, issued under the Bengal State

Prisoners Regulation, 1818. Since that time he has remained under detention. In the year 1941 he was removed from Simla to the Mental Hospital

at Lahore under a further warrant issued under the same Regulation, and in that year an Ordinance was promulgated to remove doubts as to the

validity of the detention in Mental Hospitals of persons on warrants issued under the Bengal State Prisoners Regulation. In the year 1943 a habeas

corpus application was preferred to the Lahore High Court by or on behalf of Birpal Singh, but the High Court and the Federal Court in appeal

declined to interfere. In consequence of certain observations made by the Lahore High Court as to the desirability of transferring Birpal Singh to a

more congenial climate, he was transferred to the Central Mental Hospital, Yeravda, by warrant dated January 21, 1946, also under the Bengal

State Prisoners Regulation, 1818, and addressed to the Superintendent of that Hospital. Since then he has remained there, and his present

detention is claimed on behalf of the Government to be justified by the warrant of January 21, 1946. We understand that prior to August 15, 1947,

two applications were preferred to this Court by Birpal Singh himself which were summarily rejected.

2. It is now urged on behalf of Birpal Singh that by reason of the constitutional changes which took place in August 1947 the warrant under which

he is being detained has ceased to have effect and that his detention is now illegal.

3. The warrant of January 21, 1946, is in the following terms :

Whereas the Governor-General in Council, for good and sufficient reasons, being reasons connected with the discharge of the functions of the

Crown in its relations with Indian States, has seen fit to determine that Birpal Singh, ex-Rana of Bhajji, shall be placed under personal restraint at

the Central Mental Hospital, Yervada, Poona, you are hereby required and commanded, in pursuance of that determination, to receive the person

abovenamed into your custody, and to deal with him in accordance with the orders of the Government and the provisions of the Bengal State

Prisoners Regulation, 1818.

4. u/s 1, which is the preamble, of the Bengal State Prisoners Regulation, 1818, as it stood when the warrant with which we are concerned was

issued, the very exceptional powers of detention provided by the Regulation were exercisable,

For reasons of State, embracing the due maintenance of the alliances formed by the British Government with foreign powers, the preservation of

tranquility in territories of Native Princes entitled to its protection and the security of the British dominions from foreign hostility and from internal

commotion.

5. Section 2 sets out that the detention, or personal restraint as it is termed, shall be by warrant of commitment issued by the Government to the

officer in whose custody such person is to be placed, and provides that the warrant shall be in one of the forms, set out in the Appendix to this

Regulation, which is appropriate to the case. Two forms of warrant are set out in the Appendix. The first reads as follows:

Forms of commitment for reasons connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with

Indian States.

To the (here insert the officer's designation).

Whereas the (Governor-General in Council) (Governor-General) (omit the inappropriate words) for good and sufficient reasons being reasons

connected with (defence, external affairs, and the discharge of the functions of the Crown in its relations with Indian States) (omit any inappropriate

words) has seen fit to determine that (here insert the State prisoner's name) shall be placed under personal restraint at (here insert the name of the

place) you are hereby required and commanded in pursuance of that determination to receive the person above named into your custody and to

deal with him in accordance with the orders of the Government and the provisions of the Bengal State Prisoners Regulation, 1818.

The second form of warrant is to be used when the "good and sufficient reasons" are reasons connected with the maintenance of the public order,

and issue of this form of warrant could also be made by or under the order of the Governor of a Province.

6. The warrant of January 21, 1946, was in the first form, and the basis of the warrant was the third of the "good and sufficient reasons" which

could justify such a warrant being issued, namely reasons connected with the discharge of the functions of the Crown in its relations with Indian

States.

7. There can be no doubt that this was a legal and valid warrant at the time it was issued, and in any event by reason of the decision of the Federal

Court A.I.R.(1922) F.C. 2 no exception could now be taken to its initial validity. But equally there can be no doubt that from August 15, 1947,

the basis of the warrant, the reasons connected with the discharge of the functions of the Crown in its relations with Indian States, has ceased to

have any existence. For this it is (sufficient to refer to Section 7 of the Indian Independence Act without setting it out at length. While certain

relations between the Dominion of India and the Indian States have come into being after August 15, 1947, those relations are in no way a

continuation or delegation of the former relations of the Crown with Indian States. Paramountcy lapsed. It was not transferred to the Dominion.

8. On August 14, 1947, the Governor-General, in exercise of the powers conferred by Section 9(7) of the Indian Independence Act, made an

order styled : The India (Adaptation of Existing Indian Laws) Order, 1947. It is convenient to set out here certain articles of that Order, namely

Articles 3, 7 and 12. Article 3 reads as follows :

As from the appointed day, all existing Indian laws shall until repealed or altered or amended by a competent legislature or other competent

authority, in their application to the Dominion of India and any part or parts thereof, be subject to the adaptations directed in this Order.

Article 7 is as follows :

Any reference in an existing Indian law to the exercise of the functions of the Crown in its relation with Indian States (including any provision the

operation of which depends on the exercise of such functions) shall be omitted, and references in any such law to the Crown Representative shall

be omitted or construed as reference to the Central Government as the context may require.

Article 12 provides :

The provisions of this Order shall not render invalid anything duly done before the appointed day under an existing Indian law, and anything so

done for British India or for parts thereof including territories thereafter included in the Dominion of India shall, as from the appointed day and until

altered, varied or undone, have effect as if it had been done after the appointed day for the whole of the Dominion of India or as the case may be,

for such territories thereof as aforesaid, by a competent authority and under and in accordance with the provisions then applicable to the case.

No adaptation of the Bengal State Prisoners Regulation, 1818, was made in express terms by this Order.

9. On August 26, 1947, the Governor-General in exercise of the same powers u/s 9 of the Independence Act made a further Order, styled : The

Bengal State Prisoners Regulation (Adaptation) Order, 1947. This Order is expressed to have effect from August 15, 1947. The material

alterations made are that for the words in Section 1 of the Regulation set out earlier in this judgment beginning with ""for reasons of State"" and

ending with ""internal commotion"" were substituted the words ""for reasons of State connected with defence, external affairs or relations with

acceding States or with the maintenance of public order,"" and for the words ""the discharge of the functions of the Crown in its relations with Indian

States"" wherever they occurred including in the Appendix were substituted the words ""relations with Acceding States.

10. Article 3 of this Order states that the provisions of this Order shall have effect notwithstanding anything to the contrary contained in the India

(Adaptation of Existing Indian Laws) Order, 1947, and this seems to me to have been made to avoid any difficulty of interpretation by reason of

the fact that by Article 7 of the earlier Order all references in existing Indian laws to the exercise of the functions of the Crown in its relation with

Indian States have been directed to be omitted. No provision is made in the later Order for the continuing validity of warrants issued under the

Bengal State Prisoners Regulation, 1818, prior to August 15, 1947. It is convenient to tabulate the reasons of State by which detention under the

Regulation was justified before and after the adaptation by the Order of August 26, 1947.

Reasons of State before the Adaptation. Reasons of State after the Adaptation.

Connected with defence. Connected with defence.

Connected with external affairs. Connected with external affairs.

Connected with the discharge of the Connected with relations with acceding

functions of the Crown in its

relation with Indian States.

Connected with the maintenance of public Connected with the maintenance of public

order. order.

Three of the four sets of reasons have remained unaffected. The third set of reasons under the Regulation as it stood prior to August 15, 1947,

namely, reasons connected with the discharge of the functions of the Crown in its relations with Indian States, has been replaced by reasons

connected with relations with acceding States.

11. If the warrant in the present instance had been issued under any of the three reasons which are common to the Regulation as it stood before

and after August 15, 1947, it might be claimed that the warrant remained valid by virtue of Article 12 of the Indian (Adaptation of Existing Indian

Laws) Order, 1947, notwithstanding the constitutional changes and the adaptations made to the Regulation.

12. But the warrant in the present instance was issued for reasons of State which have had no existence after August 15, 1947. It is perfectly true

that other reasons of State have taken their place in the Regulation as it now stands, but these other reasons have no legal relation at all to those

stated in the warrant. It may be that Government still consider, for any of the reasons of State provided in the Regulation as it now is that further

detention of Birpal Singh is desirable. If this is so it is for Government to effect his detention by valid warrant under the existing Regulation or other

appropriate enactment. Obviously it is not within our province to amend the warrant, nor can it possibly be said that one reason of State has

become another because of the amendment to the Regulation. I notice from the copy of the Instrument of Accession which has been filed that

Bhajji became an acceding State on September 26, 1947. It would appear, therefore, that between August 15, 1947, and September 26, 1947,

no warrant could have been issued against Birpal Singh under the Regulation for reasons of State connected with the relations with Bhajji as an

acceding State, and this is enough to destroy any argument of continuity of the present warrant beyond August 15, 1947.

13. The learned Government Pleader when opposing this application has relied upon the Sub-section (3) of Section 491 of the Code of Criminal

Procedure. The material part of this reads as follows :

Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818.

14. I am not able to accept that this proviso is a bar to our ascertaining whether a detention is in fact a detention under the Bengal State Prisoners

Regulation, 1818. If it is such a detention, then of course the proviso prevents our interference, for it is well settled that it is by reason alone of

Section 491 of the Code of Criminal Procedure that the powers of the High Courts to issue writs of the nature of habeas corpus exist. But whether

a detention is or is not a detention under the Regulation is a matter of substance, and is not concluded by the circumstance that the Regulation is

mentioned in the warrant. The Regulation provides that detention may be made for one or more of certain specific reasons, which reason or

reasons must be stated in the warrant; and if in a warrant one reason only is stated which is not a reason finding place in the Regulation, then the

detention is not a detention under the Regulation at all. That is the position here. The present detention is something entirely outside the Regulation

as it now stands, and therefore is not a detention under the Regulation, and the third proviso to Section 491 of the Code is no bar to the exercise

of our powers under the section.

15. The rule, therefore, is made absolute. Birpal Singh has now been produced before us, and he must be set at liberty.

Chainani, J.

16. I agree that the detention of Rana Birpal Singh, ex-Ruler of Bhajji, is at present unlawful. He is detained in the Mental Hospital at Poona under a

warrant dated January 21, 1946, issued by the Central Government u/s 2 of the Bengal State Prisoners Regulation, 1818. The reasons for

detention as given in the warrant are ""for reasons connected with the discharge of the functions of the Crown in its relations with Indian States."" At

the time when the warrant was issued, this was one of the grounds for which a person could be detained under the Regulation. On August 26,

1947, the Governor-General, in exercise of the powers conferred by Section 9 of the Indian Independence Act, issued the Bengal State Prisoners

Regulation (Adaptation) Order, 1947. By this Order the Bengal State Prisoners Regulation, 1818, was amended, and the words ""discharge of the

functions of the Crown in its relations with Indian States"" were deleted with retrospective effect from August 15, 1947. After August 15, 1947, it is

therefore not open to Government to detain a person for reasons connected with ""the discharge of the functions of the Crown in its relations with

Indian States."" The only reasons for which a person can now be detained are ""reasons of State connected with defence, external affairs, or

relations with acceding States or with the maintenance of public order."" The detenu in this case is admittedly not detained at present for any of

these reasons. There is also no provision in the Bengal States Prisoners Regulation (Adaptation) Order, 1947, validating the warrants issued before

August 15, 1947. There is no saving clause similar to Clause 12 of the India (Adaptation of Existing Indian Laws) Order, 1947. The warrant under

which the detenu is now being detained is, therefore, no longer valid, for such a warrant cannot be issued under the Regulation as adapted by the

Order of August 26, 1947.

17. It has been urged by the learned Government Pleader that this Court has no jurisdiction to pass orders in this matter, in view of the provisions

of Sub-section (3) of Section 491, Criminal Procedure Code. This matter was also raised before the Federal Court in AIR 1946 2 (Federal

Court) ; and it has been held by that Court that the jurisdiction of the High Court is ousted, only if the Court is satisfied that ""the detenu is a person

detained under the Regulation."" The material question for determination therefore is whether the detenu in this case can now be said to be a person

detained under the Regulation of 1818. This must obviously be answered in the negative, for the detenu is detained for reasons ""connected with the

discharge of the functions of the Crown in its relations with Indian States."" The Regulation as amended does not authorise detention for these

reasons. The detention at present cannot, therefore, be said to be a detention under the Regulation, as it stands today. We have, therefore,

jurisdiction to interfere in this case.

18. The rule is, therefore, made absolute. The detenu should be released forthwith.