Supreme Court of India
State Of West Bengal vs Jugal Kishore More & Anr on 10 January, 1969
Equivalent citations: 1969 AIR 1171, 1969 SCR (3) 320
Author: S C.
Bench: Shah, J.C.

PETITIONER:
STATE OF WEST BENGAL

Vs.

RESPONDENT:
JUGAL KISHORE MORE & ANR.

DATE OF JUDGMENT:
10/01/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1969 AIR 1171 1969 SCR (3) 320
1969 SCC (1) 440

ACT:
Extradition-Nature of-Fugitive Offenders Act (44 & 45 Vict c. 69 of 1881)-Inapplicability in Republic of India, if bar to obtain extradition of fugitive offenders from another Commonwealth country-Extradition Act (34 of 1962), effect of.

HEADNOTE:
After this Court held in State of Madras v. C. G. Menon, [1955] 1 S.C.R. 280 that the Fugitive Offenders Act, 1881, was inconsistent with Art. 14 of the Constitution and was on that account unenforceable after 26th January 1950, the Government of India, Ministry of External Affairs issued a notification on May 21, 1955 indicating the procedure for securing the presence of a fugitive offender in India from the United Kingdom and other Commonwealth countries. Under the Notification, the Magistrate concerned is to issue a warrant of arrest of the fugitive offender under the Criminal Procedure Code, 1898, and the warrant is to be sent to the Government of India, Ministry of External Affairs through the concerned State Government. Thereafter, the Ministry is to address the appropriate authority in the

Commonwealth country through the High Commissioner for India for the surrender of the fugitive offender.

In 1962, the Indian Extradition Act was passed, but as Hong Kong was not included in the First Schedule, that Act could not be resorted for the surrender of the respondent who was a fugitive offender residing in Hong Kong. Action was therefore taken in the present case, pursuant to the notification. The Chief Presidency Magistrate Calcutta issued a warrant under the Criminal Procedure Code for the arrest of the respondent and the warrant was forwarded by the Government of West Bengal to the Ministry of External Affairs, Government of India. The Ministry forwarded the warrant to the High Commissioner for India, Hong Kong, who in his turn requested the Colonial Secretary, Hong Kong, for an order extraditing the respondent under the Fugitive Offenders Act 1881 (44 & 45 Vict Ch. 69). The Central Magistrate, Hong Kong, endorsed the warrant and directed the Hong Kong police to arrest the respondent referring to the Republic of India as a British possession to which the Fugitive Offenders Act was applicable.

On the questions : (1) Whether the Chief Presidency Magistrate had no power to issue the warrant as it would have extraterrestrial operation; (2) Whether the Fugitive Offenders Act, having ceased to be part of the law of India, could be resorted to for obtaining extradition of fugitive offenders; (3) Whether the instructions of the Government of India for obtaining extradition are an invasion upon the authority of courts; and (4) Whether the Extradition Act, 1962, operates as a bar to the requisition made by the Ministry of External Affairs for the extradition of the ,respondent,

HELD : (1) The Courts of the country which make a requisition for surrender proceed upon prima facie proof of the offence and leave it to the State to make a requisition upon the other State, in which the offender has taken refuge. Under s. 82 of the Criminal Procedure Code, when a warrant is issued by a Magistrate in India, it can be executed anywhere

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in India and has no extra-territorial operation. By making a requisition to another State, in pursuance of such a warrant, for assistance in securing the presence of the offender, the warrant is not invested with extraterritorial operation. If the other State requested Agrees to lend its aid to arrest the fugitive, the arrest is made by the issue of an independent warrant or endorsement or authentication of the warrant of the court which issued it. By such endorsement or authentication the State expresses its willingness to lend its assistance in implementation of treaties or international commitments to secure the arrest of the offender. The offender arrested pursuant to the warrant or endorsement is brought before the Court of the country to which requisition is made and that court holds

enquiry to determine whether the, offender may be extradited. [326 F327B]

Courts in India have no authority to sit in judgment over the order passed by the Hong Kong Magistrate. He acted in accor dance with the municipal law of Hong Kong and agreed to surrender the offender : his action cannot be challenged in this Court even if it is wrong. The invalidity of the arrest in Hong Kong, if any, cannot affect the jurisdiction of Indian Courts to try the respondent if and when he is brought here. [334]

Emperor v. Vinayak Damodar Savarkar, I.L.R. 35 Bom. 225, approved.

(2)But, in fact the Colonial Secretary of Hong Kong was, according 0 the law applicable in Hong Kong, competent to give effect to the warrant issued by the Chief Presidency Magistrate, Calcutta and the Central Magistrate, Hong Kong had jurisdiction under the Fugitive Offenders Act to direct that the respondent may be surrendered to India. Whatever may he the position in India after it has become a Republic the United Kingdom and several Colonies have treated the Fugitive Offenders Act is applicable for the purpose of honouring the requisition made by the republic of India. Merely because, for the purpose of the extradition procedure, in a statute passed before the attainment of independence by the former colonies and dependencies, certain territories continue to be referred as 'British Possessions' the 'statute does not become inapplicable to those territories. The expression 'British Possessions' in the old statutes merely survives as an artificial mode of reference. Though it is not consistent with the political realities, it does not imply political dependence of the Governments of the territories referred to. The order of surrender passed by the Magistrate in Hong Kong was valid according to. the law in force in Hong Kong. [338 H; 337G]

Re. Government of India and Mubarak Ali Ahmed, [1952] 1 All E.R., 1960, Re. Kweshi Armah [1966] 2 All E.R. 1006, Zacharia v. Republic of Cyprus, [1962] 2 All. E.R. 438 and Halsbury's Laws of England 3rd edn. Vol. 5 Art. 987, p. 433, referred to.

(3) This Court, by holding in C. G. Menon's case that since India became a Republic the Fugitive Offenders Act could not be enforced in his country, presented the Government of India with a problem which had to be resolved by devising a machinery for securing the presence of fenders who, were fugitives from justice. The notification was issued only in the nature of advice about the procedure to be followed and was not in any manner intended as an affront to the Courts or to impose any executive will upon the courts in judicial matters. [339 E-F]

In the present case, the Chief Presidency Magistrate, Calcutta, had power to issue the warrant for the arrest of the respondent because there was prima facie evidence against him. If the warrant was to be success-

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fully executed a against the. Respondent, who was not in India, the assistance of the executive government had to be obtained. Therefore, the issue of the warrant and the procedure followed in transmitting it were not illegal and not even irregular.
(4)Extradition is the surrender by one State to another of a person desiredto be dealt with for crimes of which he had been accused or convicted. Such a surrender is a political act done in pursuance of a treaty or an ad hoc arrangement, and founded upon the principle that it is in the interest of all civilised communities that criminals should not go unpunished. While the law relating to extradition between independent States is based on treaties, whether an offender should be handed over pursuant to a requisition is determined by the domestic law of the State on which the requisition is made. Therefore, the fact that the Extradition Act, 1962, could not be availed of for securing the presence of the respondent for trial in India, did not operate as a bar to the requisition made by the Ministry of External Affairs, Government of India, if they were able to puksuade the Colonial Secretary, Hong Kong, to deliver the respondent for trial in this country. if the Colonial Secretary was willing to do so, it cannot be said that the warrant issued by the Chief Presidency Magistrate, Calcutta, for the arrest of the respondent with the aid of the requisition for securing his presence from Hong Kong in India, was illegal. [325 H; 340 C-F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 14 of 1968.

Appeal by special leave from the judgment and order dated April 20, 1967 of the Calcutta High Court in Criminal Revision No. 502 of 1966.

B. Sen and P. K. Chakravarti, for the appellants. A. S. R. Chari, B. P. Maheshwari and Sobhag Mal Jain, for respondent No. 1.

The Judgment of the Court was delivered by Shah J. In the course of investigation of offences under ss. 420, 467, 471 and 120 B.I.P. Code the Officer in charge of the investigation submitted an application before the Chief Presidency Magistrate, Calcutta, for an order that a warrant for the arrest of Jugal Kishore More and certain other named persons be issued and that the warrant be, forwarded with the relevant records and evidence to the Ministry of External Affairs, Government of India, for securing extradition of More who was then believed to be in Hong Kong. It was stated in the application that More and others "were parties to a criminal conspiracy in Calcutta between May 1961 and December 1962 to defraud the Government of India in respect of India's foreign exchange", and their presence was required for trial.

The Chief Presidency Magistrate held an enquiry and recorded an order on July 19, 1965, that on the materials placed before him, a prima facie case was made out of a criminal conspiracy, 32 3 was "hatched in Calcutta" within his jurisdiction, and More was one of the conspirators. He accordingly directed that a nonbailable warrant in Form 11 Sch. V of the Code of Criminal Procedure be issued for the arrest of More, and that the warrant be sent to the Secretary Home (Political) Department, Government of West Bengal, with a request to take all necessary steps to ensure execution of the warrant. A copy of the warrant was sent to the Commissioner of Police, Calcutta, for information. In the warrant More was described as Manager, Premko Traders of 7, Wyndhan Street and 28, King's Road, Hong Kong. The Chief Presidency Magistrate forwarded to the Government of West Bengal, the warrant with attested copies of the evidence recorded at the enquiry and photostat copies of documents tendered by the prosecution in evidence "in accordance with the procedure laid down in Government of India, Ministry of External Affairs, letter No. K/52/ 6131/41 dated 21st May, 1955". The warrant was forwarded by the Government of West Bengal to the Ministry of External Affairs, Government of India. The Ministry of External Affairs forwarded the warrant to the High Commissioner for India, Hong Kong, who in his turn, requested the Colonial Secretary, Hong Kong, for an order extraditing More under the Fugitive Offenders Act, 1881, (44 and 45 Vict., c. 69), to India for trial for offences described in the warrant. The Central Magistrate, Hong Kong, endorsed the warrant and directed the Hong Kong Police, "pursuant to section 13 of Part 11 and section 26 of Part IV of the Fugitive Offenders Act, 1881", to arrest More. The order recited :

> "WHEREAS I have perused this warrant for the apprehension of Jugal Kishore More, . . . accused of an offence punishable by law in Calcutta, Republic of India, which warrant purports to be signed by the Chief Presidency Magistrate, Calcutta, and 'is sealed with the seal of the Court of the said Magistrate, and is attested by S. K. Chatterjee,.Under Secretary in the Ministry of External Affairs of the Republic of India and sealed with the seal of the said Ministry;
>
> AND WHEREAS I am satisfied that this warrant was issued by a person having lawful authority to issue the same;
>
> AND WHEREAS it has been represented to me that the said Jugal Kishore More . . . is suspected of being in the Colony;
>
> AND WHEREAS Order in Council S.R. and 0. No. 28 of 1918 by virtue of which Part 11 of the Fugitive Offenders Act, 1881, was made to apply to a group of British Possessions and Protective States including Hong Kong and British India, appears to remain in full force and effect so far as the law of Hong Kong is concerned. Now therefore under section 13 of the Fugitive Offenders Act, 1881, I hereby endorse this Warrant and authorise and command you in Her Majesty's name, forthwith to execute this Warant in the Colony to apprehend the said Jugal Kishore More, . . . wherever he may be found in the Colony and to bring him before a Magistrate of the said Colony to be further dealt with according to law."

More was arrested on November 24, 1965. By order dated April 4, 1966, the Central Magistrate, Hong Kong, over-ruled the objection raised on behalf of More that the Court had no jurisdiction to proceed in the matter under the Fugitive Offenders Act, 1881, since the Republic of India was no longer a "British Possession".

On May 16, 1966, Hanuman Prasad-father of More moved in the High Court of Calcutta a petition under S. 439 of the Code of Criminal Procedure and Art. 227 of the Constitution for an order quashing the warrant of arrest issued against More and all proceedings taken pursuant thereto and restraining the Chief Presidency Magistrate and the Union of India from taking any further steps pursuant to the said warrant of arrest and causing More to be extradited from Hong Kong to India. The petition was heard before a Division Bench of the High Court. A. Roy, J., held that the warrant issued by the Chief Presidency Magistrate was not illegal and the procedure followed for securing extradition of More was not irregular. In his view the assumption made by the Central Magistrate, Hong Kong, that for the purpose of the Fugitive Offenders Act, India was a "British possession" was irrelevant since that was only a view expressed by him according to the municipal law of Hong Kong, and by acceding to the requisition for extradition and surrender made upon that country by the Government of India in exercise of sovereign rights the status of the Republic of India was not affected.

In the view of Gupta, J., the warrant issued by the Chief Presidency Magistrate and the steps taken pursuant to the warrant were without jurisdiction, that the request made to the Hong Kong Government by the Government of India was also without authority in the absence of a notified order under S. 3 of the Extradition Act, 1962, and the High Court could not ignore the "laws of the land, even to support a gesture of comity to another nation," that what was done by the Hong Kong authorities pursuant to the request made for the surrender of More was "not an instance of international comity but was regarded as the legal obligation under the Fugitive Offenders Act under which the Central Magistrate, Hong Kong, regarded India as a Colony or Possession of the British Commonwealth". The case was then posted for hearing before R. Mukherji, J. The learned Judge held that the. Chief Presidency Magistrate had no power to issue the warrant of arrest in the manner, he had done,-a manner which in his view was "unknown to the Code of Criminal Procedure", since the Fugitive Offenders Act, 18 8 1, had ceased, on the coming into force of the Constitution, to be part of the law of India and could not on that account be resorted to for obtaining extradition if offenders from another country; that the instructions issued by the Government of India by letter No. 3516-J dated June 14, 1955, laying down the procedure to the followed by the courts for securing extradition 'of offenders from the Commonwealth countries should have been ignored by the Chief Presidency Magistrate, and that the Extradition Act 34 of 1962 did not authorise the Chief Presidency Magistrate to issue a warrant and to send it to the Secretary, Home (Political) Department, Government of West Bengal; that there "was no legal basis for the requisition made by the Central Government to Hong Kong" for extradition or surrender of More or for the issue of the warrant by the Chief' Presidency Magistrate; and that the demand made by the Government of India to the Government of Hong Kong by making a requisition to Hong Kong for the arrest of More "was not a political act beyond the purview of law and judicial scrutiny" and being inconsistent with the law was liable to be rectified. He observed that the Central Government had the power under s. 3 of the Extradition Act, 1962, to issue a notification for including Hong Kong in

the list of countries from which offenders may be extradited, but since the Government had not issued any notification under that clause in exercise of the executive power, the Government could not attempt in violation of the statutory procedure seek extradition which the law of India did not permit. The learned Judge accordingly ordered that the warrant of arrest dated July 30, 1965, issued by the Chief Presidency Magistrate, Calcutta, against More and all subsequent proceedings taken by the Chief Presidency Magistrate and the other respondents be quashed. The State of West Bengal has appealed to this Court with special leave.

Extradition is the surrender by one State to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justiciable in the courts of the other State. Surrender of a person within the State to another-

State-whether a citizen or an alien-is a political act done in pursuance of a treaty or an arrangement ad hoc. It is founded on the broad principle that it is in the interest of civilized communities that crimes should not go unpunished, and on that account it is recoginised as a part of the comity of nations that one State should ordinarily afford to another State assistance towards bringing offenders to justice. The law relating to extradition between independent States is based on treaties. But the law has operation national as well as international It governs international relationship between the sovereign States which is secured by treaty obligations. But whether an offender should be handed over pursuant to a requisition is determined by the domestic law of the State on which the requisition is made. Though extradition is granted in implementation of the international commitments of the State, the procedure to be followed by the Courts in deciding whether extradition should be 'granted and on what terms, is determined by the municipal law. As observed in Wheaten's International Law, Vol. 1, 6th Edn., p. 213 :

> "'The constitutional doctrine in England is that the Crown may make treaties with foreign States for the extradition of criminals, but those treaties can only be carried into effect by Act of Parliament, for the executive has no power, without statutory authority, to seize an alien here and deliver him to a foreign power."

Sanction behind an order of extradition is therefore the international commitment of the State under which the Court functions, but Courts jealously seek to protect the right of the individual by insisting upon strict compliance with the conditions precedent to surrender. The Courts of the country which make a requisition for surrender deal with the prima facie proof of the offence and leave it to the State to make a requisition upon the other ,State in which the offender has taken refuge. Requisition for surrender is not the function of the Courts but of the State. A warrant issued by a Court for an offence committed in a country from its very nature has no extra-territorial operation. It is only a command by the Court in the name of the sovereign to its officer to arrest an offender and to bring him before the Court. By making a requisition in pursuance of a warrant issued by a ,Court of a State to another State for assistance in securing the presence of the offender, the warrant is not invested with extra-territorial operation. If the other State requested agrees to lend its aid to arrest the fugitive the arrest is made either by the issue ,of an independent warrant or endorsement or authentication of 'the warrant of the Court which issued it. By endorsement or authentication of a warrant the country in which an offender has taken refuge signifies its

willingness to lend its assistance, in implementation of the treaties or international commitments and to secure the arrest of the offender. The offender arrested pursuant to the warrant or endorsement is brought before the Court of the country to which the requisition is made, and the Court holds an inquiry to determine whether the offender may be extradited. International commitment or treaty will be effective only if the Court of a country in which the offender is arrested after enquiry is of the view that the offender should be surrendered.

The functions which the Courts in the two countries perform are therefore different. The Court within whose jurisdiction the offence is committed decides whether there is prima facie evidence on which a requisition may be made to another country for surrender of the, offender. When the State to which a requisition is made agrees consistently with its international commitments to lend its aid the requisition is transmitted to the Police authorities, and the Courts of that country consider, according to their own laws whether the offender should be suffendered-the enquiry is in the absence of express provisions to the contrary relating to the prima facie evidence of the commission of the offence which is extraditable, the offence not being a political offence nor that the requisition being a subterfuge to secure custody for trial for a political offence.

Prior to January 26, 1950, there was in force in India the Indian Extradition Act 15 of 1903, which as the preamble ex- pressly enacted was intended to provide for the more convenient administration of the Extradition Acts of 1870 and 1873, and the Foreign Jurisdiction Act of 1881-both enacted by the British Parliament. The Act enacted machinery in Ch. II for the surrender of fugitive criminals in case of Foreign States i.e., States to which the Extradition Act of 1870 and 1873 applied and in Ch. II for surrender of fugitive offenders- in case of "His Majesty's Dominions". The Extradition Acts of 1870 and 1873 sought to give effect to arrangements made with foreign States with respect to the surrender to such States of any fugitive criminals Her Majesty may by Order in Council, direct and to prescribe the procedure for extraditing fugitive offenders to such foreign states.

As observed in Halsbury's Laws of England Vol. 16, 3rd Edn., para 1161 at p. 567 :

> "When a treaty has been made with a foreign State and the Extradition Acts have been applied by Order in Council, one of Her Majesty's principal Secretaries of State may, upon a requisition made to him by some person recognized by him as a diplomatic representative of that foreign State, by order under his hand and seal, signify to a police magistrate that such a requisition has been made-and require him to issue his warrant for the apprehension of the fugitive criminal if the criminal is in or is suspected of being in, the United Kingdom."

The warrant may then be issued by a police magistrate on receipt of the order of the Secretary of State and upon such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England.

The procedure for extradition of fugitive offenders from "British possessions" was less complicated. When the Extradition Act was applied by Order in Council unless it was otherwise provided by such Order, the Act extended to every "British possesSion" in the same manner as if throughout the Act

the "British possession" were substituted for the United Kingdom, but with certain modifications in procedure.

Under Part I of the Fugitive Offenders Act 1881 a warrant issued in one part of the Crown's Dominion for apprehension of a fugitive offender, could be endorsed for execution in another Dominion. After the fugitive was apprehended he was brought before the Magistrate who heard the case in the same manner and had the same jurisdiction and powers as if the fugitive was charged with an offence committed within the Magistrate's jurisdiction. If the Magistrate was satisfied, after expiry of 15 days from the date on which the fugitive was committed to prison, he could make an order for surrender of the fugitive on the warrant issued by the Secretary of State or an appropriate officer. There was also provision for "inter-colonial backing of warrants" within groups of "British possessions" to which Part I of the Fugitive Offenders Act, 1881 has been applied by Order in Council. In such groups a more rapid procedure for the return of fugitive offenders between possessions of the same group was in force. Where in a "British possession", of a group to which Part II of the Act applied, a warrant was issued for the apprehension of a person accused of an offence punishable in that possession and such term is or was suspected of being, in or on the way to another British possession of the same group, a magistrate in the last- mentioned possession, if satisfied that the warrant was issued by a person having lawful authority to issue the same, was bound to endorse such warrant, and the warrant so endorsed was sufficient authority to apprehend, within the jurisdiction of the endorsing magistrate the person named in the warrant and to bring him before the endorsing magistrate or some other magistrate in the same possession. If the magistrate before whom a person apprehended was brought was satisfied that the war-rant was duly authenticated and was issued by a person having lawful authority to issue it, and the identity of the prisoner was established he could order the prisoner to be returned to the British possession in which the warrant was issued and for that purpose to deliver into the custody of the persons to whom the warrant was addressed or of any one or more of them, ,and to be held in custody and conveyed to that possession, there to be dealt with according to law as if he had been there apprehended. This was in brief the procedure prior to January 26, 1950. The President of India adapted the Extradition Act 1903, in certain particulars. The Fugitive Offenders Act, 1881 and the Extradition Act, 1870, in their application to India were however not repealed by the Indian Parliament and to the extent they were consistent with the constitutional scheme they remained applicable. In order to maintain the continued application of laws of the British Parliament, notwithstanding India becoming a Republic, the British Parliament enacted the India (Consequential Provision) Act 1949 which by S. 1 provided :

> "(1) On and after the date of India's becoming a republic, all existing law, that is to say, all law which, whether being a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever, is in force on that date or has been passed or made before that date and comes into force thereafter, shall, until provision to the contrary is made by the authority having power to alter that law and subject to the provisions of sub-s. (3) of this section, have the same operation in relation to India, and to persons and things in any way belonging to or connected with India, as it would have had if India had not become a republic. (3)His Majesty may by Order in Council make provision for such satisfaction of any existing law to

which this Act extends as may appear to him to be necessary or expedient in view of India's becoming a republic while remaining a member of the Commonwealth, and sub-s. (1) of this section shall have effect in relation to any such law as modified by such an order in so far as the contrary intention appears in the order. An Order in Council under this section-

(a)may be made either before or after India becomes a republic, and may be revoked or varied by a subsequent Order in Council', and

(b)shall be subject to annulment in pursuance of a resolution of either House of Parliament."

In 1954 this Court was called_upon to decide a case relating to extradition to Singapore, a British Colony, of a person alleged to be a fugitive offender The State of Madras v. C. G. Menon and Another(1). In that case Menon and his wife were apprehended and produced before the Chief Presidency Magistrate, Madras, pursuant to warrants of arrest issued under the provisions of the Fugitive Offenders Act, 1881. Arrests were made in pursuance of requisition made by the Colonial Secretary of Singapore requesting the assistance of the Government of India to arrest and return to the Colony of Singapore Menons under warrants issued by the Police Magistrate of Singapore. Menons pleaded that the Fugitive Offenders Act, 1881, under which the action was sought to be taken against them was repugnant to the Constitution of India and was void and unenforceable. The Chief Presidency Magistrate. referred two questions of law for decision of the High Court of Madras (1) Whether the Fugitive Offenders Act, 1881, applies to India after 26th January, 1950, when India became a Sovereign Democratic Republic; and (2)Whether, even if it applied, it or any of its provisions, particularly Part II thereof, is repugnant to the Constitution of India and is therefore void and or inoperative.

The High Court held that the Fugitive Offenders Act was in- consistent with the fundamental right of equal protection of the laws guaranteed by Art. 14 of the Constitution and was void to that extent and unenforceable against the petitioners. In appeal brought to this Court it was observed :

"It is plain from the..... provisions of the Fugitive Offenders Act as well as from the Order in Council that British Possessions which were contiguous to one another and between whom there was frequent inter- communication were treated for purposes of the Fugitive Offenders Act as one integrated territory and a summary procedure was adopted for the purpose of extraditing persons who had committed offences in these integrated territories. As the laws prevailing in those possessions were substantially the same, the requirement that no fugitive will be surren- dered unless a prima facie case was made against him was dispensed with. Under the Indian Extradition

(1)[1955] 1 S.C.R. 280.

Act, 1903, also a similar requirement is insisted upon before a person can be extradited.

> The situation completely changed when India became a Sovereign Democratic Republic. After the achievement of independence and the coming into force of the new Constitution by no stretch of imagination could India be described as a British Possession and it could not be grouped by an Order in Council amongst those Possessions. Truly speaking, it became a foreign territory so far as other British Possessions are concerned and the extradition of persons taking asylum in India, having committed offences in British Possessions, could only be dealt with by an arrangement between the Sovereign Democratic Republic of India and the British Government and given effect to by appropriate legislation. The Union Parliament has not so far enacted any law on the subject and it was not suggested that any arrangement has been arrived at between these two Governments. The Indian Extradition Act, 1903, has been adapted but the Fugitive Offenders Act, 1881, which was an Act of the British Parliament has been left severely alone. The provisions of that Act could only be made applicable to India by incorporating them with appropriate changes into an Act of the Indian Parliament and by enacting an Indian Fugitive Offenders Act. In the absence of any legislation on those lines it seems difficult to hold that section 12 or section 14 of the Fugitive Offenders Act has force in India by reason of the provisions of article 372 of the Constitution. The whole basis for the applicability of Part II of the Fugitive Offenders Act has gone : India is no longer a British Possession and no Order in Council can be made to group it with other British Possessions..... The political background and shape of things when Part II of the Fugitive Offenders Act, 1881, was enacted and envisaged by that Act having completely changed, it is not possible without radical legislative changes to adapt that Act to the changed conditions. That being so, in our opinion, the tentative view expressed by the Presidency Magistrate was right.

After this judgment was delivered, the Government of India, Ministry of External Affairs, issued a notification on May 21, 1955, to all State Governments of Part A, B, C & D States. It was stated in the notification that :

> ". . . in a certain case of extradition of an offender, the Supreme Court of India recently ruled that in the changed circumstances, the English Fugitive Offenders Act, 1881, is no longer applicable to India. There can therefore, be no question of issuing a warrant of arrest, addressed to a foreign police or a foreign court, in respect of persons who are residing outside India except in accordance with the Code of Criminal Procedure, 1898.
>
> 2.In the circumstances, to obtain a fugitive offender from the United Kingdom and other Commonwealth countries, the following procedure may be adopted as long as the new Indian Extradition law is not enacted and the Commonwealth countries continue to honour our requests for the surrender of the fugitive offenders notwithstanding decisions of the Supreme Court;

(a)The Magistrate concerned will issue a warrant 'for the arrest of the fugitive offender to Police officials ,of India in the usual form prescribed under the Code of 'Criminal Procedure, 1898.

(b)The warrant for arrest, accompanied by all such, documents as would enable a prima facie case to be established against the accused will be submitted by the Magistrate to the Government of India in the Ministry of External Affairs, through the State Government concerned.

3.This Ministry, in consultation with the Ministries ,of Home Affairs, and Law, will make a requisition for the surrender of a fugitive offender in the form of a letter, requesting the Secretary of State (in the case of dominions, the appropriate authority in the dominion) to get the warrant endorsed in accordance with law. This letter will be addressed to the Secretary of State, (or other appropriate authority in case of Dominions) through the High Commissioner for India in the United Kingdom/Dominion concerned and will be accompanied by the warrant issued by the Magistrate at (a) of para 2 above and other documents received therewith."

The Chief Presidency Magistrate Calcutta made out the warrant for the arrest of More pursuant to that notification and sent the warrant to the Secretary, Home (Political) Department, Government of West Bengal. Validity of the steps taken in accordance with the notification by the Chief Presidency Magistrate is questioned in this appeal. To complete the narrative, it is necessary to refer to the Extradition Act 34 of 1962. The Parliament has enacted Act of 1962 to consolidate and amend the law relating to' extraction of fugitive criminals. It makes provisions by Ch. II for extradition of fugitive criminals to foreign States and to commonwealth countries to which Ch. HI does not apply Chapter III deals with the return of fugitive criminals to commonwealth countries with extradition arrangements. By s. 12 it is provided "(1) This Chapter shah apply only to any such commonwealth country to which, by reason of an extradition arrangement entered into with that country, it may seem expedient to the Central Government to apply the same.

(2)every such application shall be by notified order, and the Central Government may, by the same or any subsequent notified order, direct that this Chapter and Chapters 1, IV and V shall, in relation to any such commonwealth country, apply subject to such modifications, exceptions, conditions and qualifications as it may think fit to specify in the order for the purpose of implementing the arrangement."

Section 13 provides that the fugitive criminals from common- wealth countries may be apprehended and returned. Chapter IV deals with the surrender or return of accused or convicted persons from foreign States or commonwealth countries. By s. 19 it was provided that-

(1)A requisition for the surrender of a person accused or convicted of an extradition offence committed in India and who is or is suspected to be, in any foreign State or a commonwealth country to which Chapter III does not apply, may be made by the Central Government-

(a)to a diplomatic representative of that State or country at Delhi; or

(b)to the Government of that State or country throughthe diplomatic representative of India in that State or country;

and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of India with that State or country.

(2)A warrant issued by a magistrate in India for the apprehension of any person who is, or is suspected to be, in any Commonwealth country to which Chapter III applies shall be in such form as may be 'prescribed.

8 Sup CI/69-3 BY cl. (a) of s. 2 the expression "commonwealth country" means 'a commonwealth country specified in the First Schedule, and such other commonwealth country as may be added to that Schedule by the Central Government by notification in the Official Gazette, and includes every constituent part, colony or dependency of any, commonwealth country so specified or added :". But in the Schedule to the Act "Hong Kong" is not specified as one of the commonwealth country and no notification ,has been issued by the Government of India under S. 2(a) adding to the First Schedule "Hong Kong' as a commonwealth country. It is common ground between the parties that the provisions of the Extradition Act, 1962, could not be resorted to for making the requisition for surrender of the fugitive offender from Hong Kong, and no attempt was made in that behalf. Validity of the action taken by the Chief Presidency Magis- trate must therefore, be adjudged in the light of the action taken pursuant to the notification issued by the Government of India on May 21, 1955. Counsel for the respondent More urged that the warrant issued by the Chief Presidency Magistrate was intended to be and could in its very nature be a legal warrant enforceable within India : it had no extra-territorial operation, and could not be enforced outside India, and when the Central Magistrate Hong Kong, purported to endorse that warrant for enforcement within Hong Kong he had no authority to do so. But this Court has no authority to sit in judgment over the order passed by the Hong Kong Central Magistrate. The Magistrate acted in accordance with the municipal law of Hong Kong and agreed to the surrender of the offender : his action cannot be challenged in this Court.

It may also be pointed out that Form II of the warrant prescribed in Sch. V of the Code of Criminal Procedure only issues a direction under the authority of the Magistrate to a Police Officer to arrest a named person and to produce him before the Court. It does not state that the warrant shall be executed in any designated place or area. By s. 82 of the Code of Criminal Procedure a warrant of arrest may be executed at any place in India. That provision does not impose any restriction upon the power of the Police Officer. The section only declares in that every warrant issued by any Magistrate in India may be executed at any place in India, execution of the warrant is not restricted to the local limits of the jurisdiction of the Magistrate issuing the warrant or of the Court to which he is subordinate. In Emperor v. Vinayak Damodar Savarkar and Ors. (1) the Bombay High Court considered the question whether a person who was brought to the country and was charged before a Magis-

(1) I.L.R. 35 Bom. 225.

trate with an offence under the Indian Penal Code was entitled to challenge the manner in which he was brought into the country from a foreign country. Savarkar was charged with conspiracy under ss. 121, 121A, 122 and 123 of the Indian Penal Code. He was arrested in the United Kingdom and brought to India after arrest. under the Fugitive Offenders Act, 1881. When the ship in which he was being brought to India was near French territory Savarkar escaped from police custody and set foot on French territory at Marseilles. He was arrested by the police officers without reference to the French police authorities and brought to India. It was contended at the trial of Savarkar that he was not liable to be tried in India, since arrest by the Indian police officers in a foreign territory was without jurisdiction. Scott, C.J., who delivered the principal judgment of the Court rejected the contention. He observed :

> "Where a man is in the country and is charged before a Magistrate with an offence under the Penal Code it will not avail him to say that he was brought there illegally from a foreign country."

It is true that Savarkar was produced before the Court and be raised an objection about the validity of the trial on the plea that he was illegally brought to India after unlawful arrest in foreign territory. In the present case we are concerned with a stage anterior to that. The respondent More though arrested in a foreign country lawfully, by the, order of the Central Magistrate, Hong Kong, had not been surrendered and the invalidity of the warrant issued by the Chief Presidency Magistrate is set up as a ground for refusing to obtain extradition of the offender. But on the principle of Vinayak Damodar Savarkar's case(1) the contention about the invalidity of the arrest cannot affect the jurisdiction of the Courts in India to try More if and when he is brought here. The Indian Extradition Act 15 of 1903 which was enacted to provide for the more convenient administration of the English Extradition Act, 1870 & 1873 and the Fugitive Offenders Act. 1881, remained in operation. But after January 26, 1950, India is no longer a "British Possession." In C. G. Menon's case (2) it was decided by this Court that application of ss. 12 and 14 of the Fugitive Offenders Act, 1881, for surrendering an offender to a Commonwealth country in pursuance of a requisition under the Fugitive Offenders Act, 1881, is inconsistent with the political status of India. It is somewhat unfortunate that the Court hearing that case was not invited to say anything about the operation of the India (Consequential Provision) Act, 1949. But C. G. Menon's case(2) was a reverse case, in that, the Colonial Secretary of Singapore had made a requisition for (1) I.L.R. 35 Bom. 225. (2) [1955] 1 S.C.R. 280.

surrender of the offender for trial for offences of criminal breach of trust in Singapore. Whether having regard to the political status of India since January 26, 1950, the Fugitive Offenders Act, 1881, insofar as it purported to treat India as a "British Possession" imposed an obligation to. deliver offenders in pursuance of the India (Consequential Provision) Act 1949. is a question on which it is not necessary to express an opinion. By the declaration of the status of India as a Republic, India has not ceased to be a part of the Commonwealth and the United Kingdom and several Colonies have treated the Fugitive Offenders Act, 1881, as applicable to them for the purpose of honouring the requisition made by the Republic of India from time to time. In Re. Government of India and Mubarak Ali Ahmed(1) an attempt to resist in the High Court in England the requisition by the

Republic of India to surrender an offender who had committed offences in India and had fled justice failed. Mubarak Ali a native of Pakistan was being tried in the Courts in India on charges of forgery and fraud. He broke his bail and fled to Pakistan and thereafter to England. He was arrested on a pro-' visional warrant issued by the London Metropolitan Magistrate on the application of the Government of India. After hearing legal submissions the Metropolitan Magistrate made an order under s. 5 of the Fugitive Offenders Act, 1881, for Mubarak Ali's detention in custody pending his return to India to answer the charges, made against him. Mubarak Ali then filed a petition for a writ of habeas corpus before the Queen's Bench of the High Court. It was held that the Fugitive-Offenders Act, 1881, was in force between India and Great Britain on January 26,,1950, when India become a republic and it was continued to apply by virtue of S. 1 (1) of the India (Consequential Provision) Act, 1949, and, therefore, the Magistrate had jurisdiction to make the order for the applicant's return. Pursuant to the requisitions made by the Government of India,, Mubarak Ali was surrendered by the British Government. Mubarak Ali was then brought to India and was tried and convicted. One of the offences for which he was tried resulted in his conviction and an appeal was brought' to this Court in Mobarik Ali Ahmed v, The State of Bombay(2) There are other cases as well, in which orders were made by the British Courts complying with the requisitions made by the Governments of Republics within the Commonwealth, for extradition of offenders under the Fugitive Offenders Act, 1881. An offender from Ghana was ordered to be extradited Pursuant to the Ghana (Consequential Provision) Act, 1960, even after Ghana became are public Re.Kwesi Armah(3). On July 1,1960, Ghana while remaining by virtue of the Ghana (Consequential (1) [1952] 1 All E.R. 1060.

(3)[1966] 2 All E.R. 1006.(2) [1958] S.C.R. 328. 3 37 Provision) Act, 1960, a member of the Comon wealth became a Republic. Kwesi Armah who was a Minister in Ghana fled the, country in 1966 and took refuge in the United Kingdom. He was arrested under a provisional warrant issued under the Fugitive Offenders Act, 1881. The Metropolitan Magistrate being satisfied that the Act of 1881 still applied to Ghana and that a prima facie case had been made out against the applicant in respect of two alleged contravention of the Ghana Criminal Code, 1960, by corruption and extortion when he was a public officer,commited Kwesi Armah to prison pending his return to Ghana to undergo trial. A petition for a writ of habeas corpus before the Queen'& Bench Division of the High Court was refused. Edmund Davies, J., was of the view that the Act of 1881 applied to the Republic of Ghana, in its new form, just as it did before the coup d'etat of February 1966. The case was then carried to the House of Lords; Armah v. Government of Ghana and Another(1). The questions decided by the House of Lords have no relevance in this case. But it was not even argued that a fugitive offender from a republic which was a member of the Commonwealth could not be extradited under the Fugitive Offenders Act, 1881.

There is yet another recent judgment of the House of Lords dealing with repatriation of a citizen of the Republic of Cyprus Zacharia v. Republic of Cyprus and Anr. (2) Warrants were issued against Zacharia on charges before the, Courts in Cyprus of offences of abduction, demanding money with menaces and murder. Under the orders issued by a Bow Street Magistrate under s. 5 of the Fugitive Offenders Act, 1881, Zacharia was committed to prison pending his return to Cyprus. An application for a writ of habeas corpus on the ground that the offences alleged against him were political and that the application for the return of the fugitive was made out of motive for revenge was rejected by

the Queen's Bench Division and it was ordered that Zacharia be repatriated. The order was confirmed in appeal to the House of Lords.

Merely because for the purpose of the extradition procedure, in a statute passed before the attainment of independence by the former Colonies and dependencies, certain territories continue to be referred to as "British Possessions" the statute does not become inapplicable to those territories. The expression "British Possession" in the old statutes merely survives an artificial mode of reference, undoubtedly not consistent with political realities, but does not imply for the purpose of the statute or otherwise political dependence. of the Government of the territories referred to. It is not for the Courts of India to take umbrage at expressions used in statutes of other countries and to refuse to give effect to Indian laws which govern the problems arising before them.

(1) [1966] 3 All E.R. 177.

(2) [1962] 2 All E.R. 438.

It is interesting to note that by express enactment the Fugitive. Offenders Act, 1881, remains 'in force as a part of the Republic of Ireland : see Ireland Act, 1949 (12, 13 and 14 Geo. 6 c. 41). In Halsbury's Laws of England, 3rd Edn., Vol. 5 Art. 987, p. 433-in dealing with the expression "Her Majesty's Dominions" in old statutes, it is observed :

> "The term 'Her Majesty's dominions, means all the territories under the sovereignty of the Crown, and the territorial waters adjacent thereto. In special cases it may include territories under the protection of the Crown and mandated and trust territories.
>
> References to Her Majesty's dominions contained in statutes passed before India became a republic are still to be construed as including India; it is usual to name India separately from Her Majesty's dominions in statutes passed since India became a republic."

In foot-note (1) on p. 433 it is stated, British India, which included the whole of India except the princely States; and the Government of India Act, 1935 as amended by s. 8 of the India and Burma (Miscellaneous. Amendments) Act, 1940, formed part of Her Majesty's dominions and was a British possession, although it was not included within the definition of "colony". The territory comprised in British India was partitioned between the Dominions of India and Pakistan (Indian Independence Act, 1947), but the law relating to the definition' of Her Majesty's dominions was not thereby changed, and it was continued in being by the India (Consequential Provision) Act, 1949 (12, 13 & 14 Geo. 6 c. 92), passed in contemplation of the adoption of a re- publican constitution by India. India is now a sovereign republic, but that by itself does not render the Fugitive Offenders Act, 1881, inapplicable to India. If the question were a live question, we would have thought it necessary to refer the case to a larger Bench for considering the true effect of the judgment in C. G. Menon's case("). But by the Extradition Act 34 of 1962 the Extradition Act, 1870 and the latter Acts and also the Fugitive Offenders Act, 1881, have been repealed and the question about extradition by

India of fugitive offenders under those Acts will not hereafter arise. We are not called upon to consider whether in exercise of the Power under the Fugitive Offenders Act a Magistrate in India may direct extradition of a fugitive offender from a "British Possession", who has taken refuge in India. It is sufficient to observe that the Colonial Secretary of Hong Kong was according to the law applicable in Hong Kong competent to give effect to the warrant issued by the Chief Presidency Magistrate, Calcutta, and the Central (1)[1955] 1 S.C.R. 280.

Magistrate, Hong Kong, had jurisdiction under the Fugitive Offender& Act, and, after holding inquiry, to direct that More be surrendered to India. The order of surrender was valid according to the law in force in Hong Kong, and we are unable to appreciate the grounds on which invalidity can be attributed to the warrant issued by the Chief Presidency Magistrate, Calcutta, for the arrest of More. That the Chief Presidency Magistrate was competent to issue a warrant for the arrest of More against whom there was prima facie evidence to show that he had committed an offence in India is not denied. If the Chief Presidency Magistrate had issued the warrant to the Commissioner of ' Police and the Commissioner of Police had approached the Ministry of External Affairs, Government of India, either through the local Government or directly with a view to secure the assistance of the Government of Hong Kong for facilitating extradition of More, no fault can be found. But Gupta, J., and Mukherjee, J., thought that the notification issued by the Government of India setting out the procedure to be followed by a Magistrate, where the offender is not in Indian territory and his extradition is to be secured, amounted to an invasion on the authority of the Courts. We do not think that any such affront is intended by issuing the notification. The Fugitive Offenders Act,, 1881, had not been expressly repealed even after January 26, 1950. It, had a limited operation: the other countries of the Commonwealth were apparently willing to honour the international commitments which arose out of the provisions of that Act. But this Court on the view that since India had become a Republic, held that the Fugitive Offenders Act could not be enforced in this country, presented to the Government of India a problem which had to be resolved by devising machinery for securing the presence of offenders who were fugitives from justice. The notification issued was only in the nature of advice about the procedure to be followed and did not in any manner seek to impose any executive will upon the Courts in matters judicial. Observations made by Mukherji, J., that the notification issued by the Central Government authorising the Chief Presidency Magistrate to issue the warrant in the manner he had done, came "nowhere near the law" and "to a Court of law it is waste paper beneath its notice" appear to proceed upon an incorrect view of the object of tile notification. The Chief Presidency Magistrate had the power to issue the warrant for the arrest of More, because there was prima facie evidence before him that More had committed certain offences which he was competent to try. The warrant was in Form II of Sch. V of the Code of Criminal Procedure. If the warrant was to be successfully executed against More who was not in India, assistance of the executive Government had to be obtained. It is not an invasion upon the authority of the Courts when they are informed that certain procedure may be followed for obtaining the assistance of the executive Department of the State in securing through diplomatic channels extradition of fugitive offenders. In pursuance of that warrant, on the endorsement made by the Central Magistrate, Hong Kong, More was arrested. The warrant was issued with the knowledge that it could not be enforced within India and undoubtedly to secure the extradition of More. Pursuant to the warrant the Ministry of External Affairs, Government of India, moved through diplomatic channels, and persuaded the Colonial Secretary of Hong Kong to arrest and deliver More. Issue of

the warrant and the procedure followed in transmitting the warrant were not illegal, not even irregular. One more argument remains to be noticed. It is true that under the Extradition Act 34 of 1962 no notification has been issued including Hong Kong in the list of the Commonwealth countries from which extradition of fugitives from justice may be secured. The provisions of the Extradition Act, 1962, cannot be availed of for securing the presence of More for trial in India. But that did not, in our judgment, operate as a bar to the requisition made by the Ministry of External Affairs, Government of India, if they were able to persuade the Colonial Secretary, Hong Kong, to deliver More for trial in this country. If the Colonial Secretary of Hong Kong was willing to hand over More for trial in this country, it cannot be said that the warrant issued by the Chief Presidency Magistrate for the arrest of More with the aid of which requisition for securing his presence from Hong Kong was to be made, was illegal.

We are unable to agree with the High Court that because of the enactment of the Extradition Act 34 of J962 the Government of India is prohibited from securing through diplomatic channels the extradition of an offender for trial of an offence committed within India. There was, in our judgment,, no illegality committed by the Chief Presidency Magistrate, Calcutta, in sending the warrant to the Secretary, Home (Political) Department, Government ,of West Bengal, for transmission to the Government of India, Ministry of External Affairs, for taking further steps for securing the presence of More in India to undergo trial. The appeal must therefore be allowed and the order passed by the High Court set aside. 'Me writ petition filed by More must be dismissed.

Y.P. Appeal allowed.