

## H.K. Lodhi Vs L. Shyam Lal

**Court:** Allahabad High Court

**Date of Decision:** Aug. 9, 1949

**Acts Referred:** Criminal Procedure Code, 1898 (CrPC) â€” Section 438, 439  
Extradition Act, 1903 â€” Section 15, 7, 7(2), 8A

**Citation:** AIR 1950 All 100

**Hon'ble Judges:** Bhargava, J; Agarwala, J

**Bench:** Division Bench

**Advocate:** Ishaq Ahmed, for the Appellant; Gopal Behari, for the Respondent

**Final Decision:** Dismissed

### Judgement

Agarwala, J.

These are two applications in revision by one H.K. Lodhi against Shyam Lal. The facts briefly stated are these.

2. The Political Agent in Bhopal issued two warrants on 8th February 1946 for the arrest of the opposite party and addressed one of them to the

District Magistrate of Mathura and another to the District Magistrate of Agra. The warrants stated that the opposite party had committed or is

supposed to have committed, within the limits of Bhopal, an offence against the laws of the said State and that the offence charged against the

opposite party is one which, if committed in British India, would have constituted an offence u/s 420, Penal Code and that the opposite party

should, therefore, be arrested u/s 7, Foreign Jurisdiction and Extradition Act, 1903, and removed to Bhopal to be delivered to the Chief Justice,

High Court, Bhopal. In pursuance of this warrant, the opposite party was arrested at Mathura on 24th September 1946. An application for his

being released on bail was made and he was released on bail by an order of the Magistrate the same day. While he was on bail he was again

arrested at Agra on 19th October 1946 in compliance with the second warrant of arrest which had been addressed to the District Magistrate of

Agra. Later, the District Magistrate of Agra also released him on bail.

3. On 15th January 1947 the opposite party applied u/s 8A, Extradition Act, 1903, to the District Magistrate of Mathura praying that a

recommendation be made to the Central Government to cancel the warrant issued by the Political Agent. On 20th January 1947, the District

Magistrate of Mathura issued notice to the applicant to appear before him on 20th February 1947 to show cause why the request of the opposite

party be not granted. On the 20th February 1947 when the applicant had shown cause, the learned District Magistrate ordered that Mr. T.R.

Barkar would investigate in detail and report by 15th June 1947. Against this order dated 20th February 1947, Revision No. 258 of 1947 has

been filed in this Court by the applicant and his contention is that the learned Magistrate had a jurisdiction to order investigation into the case.

4. While the application of the opposite party made u/s 8A of the said Act was pending before the District Magistrate of Mathura, the opposite

party moved an application before the Additional District Magistrate, Agra, on 20th January 1947 praying that the warrant issued to the District

Magistrate of Agra be held to be null and void as the opposite party had already been arrested in pursuance of the warrant issued to the District

Magistrate of Mathura, and praying further that the proceedings may be stayed meanwhile. Later he appears to have added a prayer u/s 8A also.

5. The Additional District Magistrate of Agra rejected the opposite party's application, and directed the sureties to surrender the opposite party to

the authorities at Bhopal. The opposite party thereupon made an application to the learned Sessions Judge of Agra praying that the proceeding

before the Additional District Magistrate Agra, be quashed and till the decision of the application the said proceedings may be stayed. By an order

dated 28th January 1947, the learned Sessions Judge, Agra, stayed the proceedings pending before the learned Additional District Magistrate,

Agra, for two months by which time he expected that the District Magistrate of Mathura would be able to decide the matter pending before him.

Against this order of the learned Sessions Judge, the other Revision No. 259 of 1947 has been filed in this Court, and the main ground taken in

that revision application is that the order of the District Magistrate of Agra for taking steps for the surrender of the opposite party to the Bhopal

Court in pursuance of the warrant issued by the Political Agent in Bhopal, ""being purely of an executive and not judicial nature,"" the learned

Sessions Judge had no jurisdiction to entertain the application of the opposite party and to order the stay of the proceedings pending before the

District Magistrate of Agra.

6. Nobody on behalf of the applicant has appeared in support of the two revision applications before us. Mr. Gopal Behari appearing for the

opposite party has urged that no revision lies to this Court against the order of the District Magistrate of Mathura, or the order of the Sessions

Judge of Agra. He has cited before us the case of Sandal Singh Vs. Dist. Magistrate and Superintendent . He has next urged that even if this Court

has jurisdiction to interfere with the orders of the Courts below on its revisional side, it should not do so, as the orders were justified in law.

7. The first question we have to decide is whether this Court has jurisdiction to entertain the two revision applications. u/s 435, Criminal P. C., this

Court can call for and examine the record of any proceeding before any inferior criminal Court situate within the local limits of its jurisdiction; and

then u/s 439, Criminal P. C., when the record of any such proceeding has been called for by this Court or has been reported for orders or which

otherwise comes to its knowledge, this Court may, in its discretion, exercise any powers conferred on a Court of appeal or certain other specified

powers.

8. It is clear that this Court can have jurisdiction to interfere with an order of an inferior criminal Court only if the order is passed in any

proceeding". The word "proceeding" in Section 435 Cr. P. C., undoubtedly refers to a "judicial proceeding" because the ""proceeding"" has to be

the proceeding of a "Court". Judicial proceeding has been defined in the Code as including ""any proceeding in the course of which evidence is or

may be legally taken on oath."" The definition is clearly not exhaustive. An enquiry is judicial if the object of it is to determine a jurial relation

between one person and another, or a group of persons, or between him and the community generally.

9. It is, therefore, not every proceeding before a Magistrate that can be called a judicial proceeding because he may also be called upon to

perform certain executive or ministerial functions. The test in ordinary cases to distinguish a judicial proceeding from an executive proceeding is to

see if the Magistrate is deciding upon the rights of the parties so as to bind them by his order, and whether in doing so, he is authorised to take

evidence on oath. The test laid down here is not exclusive or exhaustive, but works well in ordinary cases. Was the District Magistrate in passing

the order under revision acting executively or judicially?

10. The Indian Extradition Act, XV of 1903, deals with the surrender of fugitive criminals in case of foreign States and the States other than foreign

States. Chapter II deals with the surrender of fugitive criminals in case of foreign States, and chap. III with the surrender of fugitive criminals, in

case of States other than foreign States. u/s 7 in chap. III it is provided:

Section 7 (1). Where an extradition offence has been committed or is supposed to have been committed by a person, not being a European

British subject in the territories of any State not being a foreign State and such person escapes into or is in British India, and the Political Agent in

or for such State issues a warrant, addressed to the District Magistrate of any district in which such person is believed to be, (or if such person is

believed to be in any Presidency town to the Chief Presidency Magistrate of such town) for his arrest and delivery at a place and to a person or

authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant and may give directions accordingly.

(2) A warrant issued as mentioned in Sub-section (1) shall be executed in the manner provided by the law for the time being in force with reference

to the execution of warrants and the accused person, when arrested shall be produced before the District Magistrate or Chief Presidency

Magistrate, as the case may be, who shall record any statement made by him; such accused person shall then, unless released in accordance with

the provisions of this Act, be forwarded to the place and delivered to the person or authority indicated in the warrant.

(3) The provisions of the Code of Criminal Procedure for the time being in force in relation to proclamation and attachment in the case of persons

absconding shall, with any necessary modifications, apply where any warrant has been received by a District Magistrate (or Chief Presidency

Magistrate) under this section as if the warrant had been issued by himself,

11. Section 8A of the said Act provides that when an accused person arrested in accordance with the provisions of Section 7 is produced before

the District Magistrate or the Chief Presidency Magistrate, as the case may be, and the statement, if any, of the accused person has been

recorded, such Magistrate may, if he thinks fit, before proceeding further report the case to the Central Government, and pending the receipt of

orders on such report, may detain such accused person in custody or release him on his executing a bond with sufficient sureties for his attendance

when required.

12. Section 15 provides that the Central Government may, by order, stay any proceedings taken under this Chapter and may direct any warrant

issued under this Chapter to be cancelled, and the person for whose arrest such warrant has been issued to be discharged.

13. When a Magistrate receives a warrant u/s 7, he has to order its execution in the first instance. But before he does that, he has got to see

whether on the face of it, the warrant satisfies the requirements mentioned in Section 7, namely, (1) that the offence mentioned in the warrant is an

extradition offence, (2) that such an offence has been committed or is supposed to have been committed in the territories of a State not being a

foreign State and (3) that the accused is not a European British subject. If the Magistrate is satisfied about these matters, he has simply to make an

order that the warrant be executed.

14. When, however, the accused has been arrested and produced before the District Magistrate or the Chief Presidency Magistrate, as the case

may be, such a Magistrate is directed to record any statement made by the accused. At this stage, the accused may (a) point out to the Magistrate

that the warrant does not, on its very face fulfil the requirements of Section 7, as have been mentioned already; (b) allege that he is not the person

directed to be arrested under the warrant; (c) point out that the warrant has not been executed according to law, and (d) apply u/s 8A and pray

that a report may be made to the Central Government for the cancellation of the warrant and that he may be released under the provisions of

Section 15.

15. If the Magistrate is satisfied upon rereading the warrant that upon its very face it does not comply with the conditions mentioned in Section 7

(1), it would be his duty to return the warrant unexecuted and release the accused. This must be so, because the very foundation for the authority

of the Magistrate to have the warrant executed depends upon the fulfilment of the conditions required by Section 7. The provision in Sub-section

(2) of Section 7 to the effect that the accused person, after his arrest and after his statement has been recorded shall, unless released in accordance

with the provisions of this Act, be forwarded to the place and delivered to the person or authority indicated in the warrant, presupposes that the

warrant issued was as mentioned in Sub-section (1) of Section 7. If the foundation for the execution of the warrant did not exist, the arrest was

without jurisdiction and the Magistrate is bound, upon Being apprised of his own mistake, to undo the wrong done by his action.

16. Again, if the Magistrate is satisfied that the accused was not the person directed to be arrested or that his arrest was not made in accordance

with law, it will be his duty to release the accused.

17. Even though the warrant on the face of it complies with the conditions laid down in Section 7, the accused may be released in accordance with

the provisions provided in Section 8A and 15 of the Act.

18. Where after arrest, the accused applies for any one of the reliefs mentioned above, the Magistrate is called upon to decide the points raised

before him "judicially" and in cases (b), (c) and (d) mentioned above, may have to take evidence on oath. The enquiry the Magistrate is called

upon to make certainly deals with the rural relations between the parties concerned. Whatever may be said about the order of the District

Magistrate at the first stage of the matter directing the execution of the warrant, it is quite clear that the order of the District Magistrate at the

second stage when the accused is brought before him under arrest and when he is required to decide matters raised by the accused, is a judicial

order and, as such, open to revision by this Court.

19. In the case of *Gulli Sahu v. Emperor* 41 Cal. 400 : AIR 1914 Cal 22: 14 CriLJ 73 the Calcutta High Court interfered in the exercise of its

revisional jurisdiction when the warrant did not fulfil the requirements of Section 7, Extradition Act.

20. In the case of *Gulli Sahu Vs. Emperor*, it was held that where the warrant fulfilled the requirements of Section 7, its execution by the Magistrate

was an executive act, and the High Court could not interfere in revision with the proceedings of the Magistrate and the order to surrender the

fugitive criminal. The objection of the accused in that case was that on the merits he had not committed any offence and no warrant should have

been issued against him. No application was made by him u/s 8 A of the Act which was introduced in the Extradition Act by the Indian Extradition

(Amendment) Act, 1913 (I [1] of 1913). The case is, therefore, distinguishable from the facts of the present case.

21. In the case of *In Re: Bai Aisha*, the Bombay High Court differed from the view taken by the Calcutta High Court in *Gulli Sahu Vs. Emperor*,

and held that since the District Magistrate had to determine whether the warrant could be executed according to law, he acted judicially and the

High Court had power to interfere with his order.

22. In the case of *Sandal Singh Vs. Dist. Magistrate and Superintendent*, this Court was called upon to revise an order of the District Magistrate

directing the execution of the warrant received by him from the Political Agent. When the warrant had been received in that case, it was for-

warded by the District Magistrate to the Supt. of Police for taking necessary action. The applicant was arrested and released on bail on furnishing

security. He did not take any further proceedings before the District Magistrate but straightway made an application to the High Court in revision

praying that all the proceedings before the District Magistrate be quashed. In those circumstances, this Court held that the order of the District

Magistrate directing the execution of the warrant was merely an executive order. The ground of the decision was that a warrant may be executed

even by the Supdt. of Police or the Commissioner of Police, and since the act of the police officer ordering the execution of such a warrant could

not be said to be a judicial act the act of the District Magistrate in ordering the execution of the warrant received by him could not also be said to

be a judicial act. In the case before us, the order in revision is not an order of the District Magistrate directing the execution of the warrant, but an

order u/s 8-A directing an enquiry to be made whether the matter should be reported to the Central Government or not.

23. We are, therefore, of opinion that the Revn. No. 258 of 1947 directed against the order of the District Magistrate of Mathura dated 20th

February 1947 is maintainable.

24. The proceedings before the District Magistrate of Agra, that the warrant could not be executed after the opposite party had already been

arrested and released on bail for the same offence by the District Magistrate of Mathura and that a report be made to the Central Government u/s

8A for the cancellation of the warrant, called for a judicial decision by the Court and, as such, the proceedings before the Magistrate were judicial

proceedings. That being so, the learned Sessions Judge had jurisdiction to entertain an application in revision for the purpose of making a

recommendation to this Court. The application of the opposite party made to the learned Sessions Judge did not, in express terms, purport to be a

revision application but could be fairly treated as such. On this application having been made the learned Sessions Judge had jurisdiction to order

the stay of the proceeding pending before the District Magistrate and this is what he did. But where he erred, however, was that he did not refer

the matter to this Court.

25. The next question is whether the orders of the Court below in both the revisions were justified. So far as the order of the District Magistrate of

Mathura is concerned, we think it was perfectly justified. When an application was made to him u/s 8A of the Act, he had jurisdiction to make an

order directing an enquiry into the allegations made by the accused and then to consider whether he would report the matter to the Central

Government or not.

26. So far as the order of the learned Sessions Judge is concerned, we think that that order too was justified in the circumstances of the case.

When proceedings for extradition were being already taken in the Court of the District Magistrate, Mathura, there was no occasion for the District

Magistrate of Agra to have the accused arrested twice over and to order that he should be handed over to the Political Agent or the Chief Justice

of Bhopal in compliance with the warrant of arrest, in spite of the fact that proceedings u/s 8A were pending in the Court of the District Magistrate,

Mathura. The learned Sessions Judge rightly entertained the revision and passed the said order. As we have already pointed out, the only mistake

that he committed was that he did not refer the matter to this Court but himself disposed it of finally.

27. We see no force in these revisions and; dismiss them.