

(1939) 09 AHC CK 0025

Allahabad High Court

Case No: None

Israr Husain

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Sept. 15, 1939**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 491
- Extradition Act, 1962 - Section 7
- Penal Code, 1860 (IPC) - Section 409

Citation: AIR 1939 All 730 : (1939) 9 AWR 737**Hon'ble Judges:** Mulla, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mulla, J.

This is an application u/s 491, Criminal P.C., by one Israr Husain who has been arrested by the District Magistrate of Basti under a warrant issued by the Political Agent of Bhopal in accordance with Section 7, Extradition Act, (Act No. 15 of 1903). The applicant was until 11th May 1938 in the service of the Bhopal State as a Nazir and it appears that the State has preferred a charge against him u/s 409, I.P.C., which is the law of that State also. An offence u/s 409, I.P.C., is an extraditable offence within the meaning of Section 7, Extradition Act, inasmuch it is one of the offences mentioned in Schedule 1 to the Act. It is not alleged that the applicant is not a person against whom a warrant can be issued u/s 7, Extradition Act. Nor is there any allegation that there is any formal defect in the warrant itself. The whole basis of the present application is the allegation that the Political Agent before issuing the warrant in question did not observe the procedure laid down in the rules framed by the Governor-General in Council u/s 22, Extradition Act. It is contended

that the failure to follow that procedure which was mandatory renders the warrant illegal and invalid and hence this Court can in the exercise of its powers u/s 491, Criminal P.C., hold that the applicant is being detained in unlawful custody and can set him at liberty. I have carefully considered this contention but I find no force in it. It is true that there is no material before this Court to show that the Political Agent followed the necessary procedure before issuing the warrant in question but that does not by any means lead to the conclusion that the procedure was not followed at all. It is quite impossible for this Court to hold merely on the basis of the applicant's allegation that the procedure required under the rules was not followed by the Political Agent before issuing the warrant in question. Again, I am strongly of the opinion that the powers of this Court, u/s 491, Criminal P.C., are limited and they do not authorize this Court to enter as it were upon an enquiry into the conduct of the Political Agent. What the applicant wants this Court to do is to investigate into the proceedings of the Political Agent, but in my opinion this Court has no power to make any such investigation u/s 491, Criminal P.C., All that this Court is concerned with while exercising its power u/s 491, Criminal P.C., is to see that the authority under which a person is being detained is on the face of it legal and valid. If there are any formal defects in the warrant under which the applicant is arrested this Court can certainly take notice of them and can upon that basis hold that the warrant is on the face of it invalid. It would necessarily follow in that event that the detention of the applicant was unlawful, but in my view this is the limit beyond which this Court cannot go in the exercise of its power u/s 491, Criminal P.C. I find that the view which I have taken is supported by several decisions of other Courts, for example, AIR 1931 394 (Oudh) , Jamna v. Emperor A.I.R.(1926) Sind 126 and Giyan Chand v. Emperor (1909) 3 P.R. 1909 Cr. The learned Counsel for the applicant has relied upon the decision of a Bench of this Court in [Sandal Singh Vs. Dist. Magistrate and Superintendent](#) . In that case it was held that the power of the High Court however to interfere u/s 491, Criminal P.C., remains untouched by the Extradition Act, and the High Court is entitled to enquire into the question whether a person arrested under an extradition warrant was illegally or improperly detained in public or private custody, and if the High Court is satisfied that he was so detained, to order that he be set at liberty.

2. A close examination of the decision will show that the point which arose for consideration in that case was that one of the three conditions precedent for the issue of a legal warrant u/s 7, Extradition Act, had not been fulfilled and this Court decided that it had the power to hold that in the absence of that condition precedent the Political Agent had no authority to issue a warrant u/s 7, Extradition Act. I do not find any conflict at all between that decision and the view which I have taken in the present case. There was no question raised in that case that the Political Agent had not followed the rules and in consequence thereof the warrant issued by him was invalid. It does not afford any authority for the proposition that this Court can enter upon an enquiry into the conduct of the Political Agent before issuing a

warrant of arrest u/s 7, Extradition Act. The result therefore is that I see no reason to interfere and dismiss this application. The stay order is discharged and the District Magistrate of Basti can now proceed to execute the warrant in accordance with the law.