

(1920) 06 CAL CK 0007

Calcutta High Court

Case No: None

In Re: Celeste Cullington

APPELLANT

Vs

RESPONDENT

Date of Decision: June 8, 1920

Judgement

Buckland, J.

This is a Rule calling upon the Commissioner of Police to show cause why Celeste Cullington, the Petitioner, should not be set at liberty or otherwise dealt with according to law.

2. On the 22nd April 1920, the Administrator of Chandernagore sent to the Chief Secretary to the Government of Bengal thirteen warrants of arrest issued by the Judge instruction against the persons named in his letter and requested their extradition upon charges of cheating and extortion. Among them was the Petitioner.

3. The Under-Secretary to the Government of Bengal with his letter, dated 30th April, forwarded a translation of that letter together with two of the warrants, of which one was for the arrest of the Petitioner, to the Commissioner of Police, Calcutta and requested him to take the necessary steps for the arrest of the accused and send them when apprehended to the authorities at French Chandernagore under proper escort.

4. The Petitioner was arrested on the 17th May and after being produced before the Chief Presidency Magistrate, who does not appear to have taken any action in the matter, she was produced before Mr. Wilson, a Deputy Commissioner of Police, who endorsed, on the letter of 30th April, an order directing the Petitioner to be taken to Chandernagore.

5. On the same date she was produced before me and through her counsel applied for bail. She was released on bail on her undertaking to make an application u/s 491 of the Code of Criminal Procedure. The application was duly made in accordance

with the undertaking and is that of which I have now to dispose.

6. The case for the Petitioner is that the warrant of the Judge instruction of Chandornagore is no authority for her arrest or detention, which are illegal and that if the French authorities desire her to be surrendered to them, that may only take place in accordance with the provisions of the Indian Extradition Act, 1903, the procedure prescribed by which admittedly has not been followed.

7. Before I consider the argument addressed to me on behalf of the Commissioner of Police, it will be convenient to give a brief chronological exposition of the material portions of the statutes and treaties to which reference has been made.

8. The earliest in date is the Convention between Great Britain and France, dated the 7th March 1815 (Aitcheson's Treaties, Vol. X, p. 258) of which Clause IX is the only clause which has any bearing on this matter. Its terms are as follows: "All Europeans and others "whosoever, against whom judicial proceedings shall "be instituted, within the limits of the settlements "or factories belonging to His Most Christian Majesty, "for offences committed or debts contracted within "the said limits and who shall take refuge out of the "same shall be delivered up to the Chiefs of the said "settlements and factories; and all Europeans and "others whosoever, against whom judicial proceedings as aforesaid shall be instituted, without the "said limits and who shall take refuge within the "same, shall be delivered up by the Chiefs of the said "settlements and factories upon demand being made "of them by the British Government."

9. Next in order of date comes the Extradition Act, 1870. Section 2 provides that where an arrangement has been made with any Foreign State, with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the Act shall apply in the case of such Foreign State. u/s 18 when by the law of British Possessions provision is made for the surrender of fugitive criminals such Order in Council may either suspend the operation of the Act so far as it relates to such Foreign State, or may direct that such law shall have effect in such British Possessions as if it were a part of the Act. Section 25 says that dependencies of a Foreign State shall be deemed to be within the jurisdiction of and to be part of, such Foreign State. By the Foreign Jurisdiction and Extradition Act, 1872 (Act XI of 1872), Section 11, the procedure to be observed, when a requisition is made by the Exertive Government of a Foreign State for the extradition of an accused person, is laid down and the section concludes with the words: "This section shall not affect the "provisions of any law or treaty, for the time being in "force, as to the extradition of offenders; but the "procedure provided by any such law or treaty shall "be followed in every case to which it applies."

10. In 1876 an extradition Treaty was made between Prance and Great Britain, of which Article XVI states the manner of proceeding to be observed in the colonies and foreign possessions of the High Contracting Parties. At the end of the Article

there are the following words: "The foregoing stipulations shall not "in any way affect the arrangements established in the "East Indian Possessions of the two countries by the "IXth Article of the Treaty of the 7th March 1815."

11. By an Order in Council, dated 16th May 1878, the Extradition Acts were made applicable to France.

12. In 1903 the Indian Extradition Act was passed. In the definition clause a "Foreign State" is defined as "a State to which for the time being the Extradition Acts, 1870 and 1873, apply." Chapter II, Sections 3 to 6, lay down the procedure to be followed where the Government of a Foreign State requisitions the surrender of a fugitive criminal. Chapter III, Sections 7 to 17 lay down the procedure for the surrender of fugitive criminals in the case of States other than Foreign States, while Section 18 says: "Nothing in "this Chapter shall derogate from the provisions of "any treaty for the extradition of offenders and the "procedure provided by any such treaty shall be "followed in any case to which it applies and the provisions of this Act shall be modified accordingly."

13. By an Order in Council, dated the 7th March 1904, which was issued in virtue of the powers conferred by Section 18 of the Extradition Act, 1870, Chapter II of the Extradition Act, 1903, has been declared to have effect in British India as if it were part of the Extradition Act, 1870.

14. The contention of the learned Counsel for the Commissioner of Police is that the East Indian Possessions of France, which include Chandernagore, are not a Foreign State as defined in the Indian Extradition Act. His argument is that the Order in Council, which applied the Extradition Acts to France, applied the Acts with reference to the Treaty of 1876 as a whole: that the latter portion of Clause XVI of this Treaty excludes the arrangements established by the IXth Article of the Treaty of 1815, and therefore, the Order in Council did not apply the Extradition Acts to the East Indian Possessions of France, which consequently are not a Foreign State.

15. I do not think that the latter portion of Clause XVI of the Treaty of 1876 is in any way exclusive-Rather it is a saving clause inserted for the purpose of maintaining intact the arrangements established by the IXth Article of the Treaty of 1815. This is what Sir Francis Piggott in his book on Extradition (p. 187) says with regard to it, his comment being: "In the Treaty with France the arrangement established in the East Indian Possessions of the two "countries by the Treaty of 1815 is preserved: this " provides for mutual surrender between British India "and Pondicherry and Chandernagore." If the position is subjected to analysis what does one find it to have been on the conclusion of the Treaty of 1876. There was in existence a Treaty with reference to the East Indian Possessions of France and another Treaty between the two States not limited to any particular territories. The first of these provides for the delivery up of persons against whom proceedings shall be instituted for debt in addition to the delivery up of offenders against the Criminal Law. This possibly

explains the latter portion of Clause XVI of the later Treaty, which is limited to the extradition of persons who are being proceeded against or who have been convicted of a crime, there being something which, in the case of the East Indian Possessions of France, it was deemed desirable to preserve. Another explanation may be that Article II of the Treaty of 1876 says: "Native born or naturalized subjects of either State are excepted from extradition." These two Treaties were "arrangements" such as are contemplated by Section 2 of the Extradition Act, 1870. Two years later the Order in Council was made u/s 2 of that Act. It applied not the Treaties (that is not what the section says), but the Acts and did so in the "case of the Foreign State,"--to follow the wording of the section--with which the arrangements had been made. That State was France and by Section 25 the East Indian Possessions of France are to be deemed to be part of such Foreign State, i.e., France. In my opinion the Order in Council of 1878, in applying the Extradition Acts to France, also did so to the East Indian Possessions of France. The question whether or not the Extradition Acts have been applied in the case of a Foreign State is one for the determination of which not the Treaties, but the Order in Council should be looked at and if in the face of Section 25 some dependency of that Foreign State is to be excluded from the application of the Acts, one would expect to find appropriate words in the Order in Council; but so far from it being suggested that there are any such words in the Order in Council its terms have not been placed before me.

16. It has been conceded by counsel for the Commissioner of Police that legislative sanction is requisite to give effect to the provisions of a Treaty and he has argued that the Treaty of 1815 received legislative recognition and sanction by the 18th section of the Indian Extradition Act. He was unable to contend that before that Act was passed the Treaty of 1815 had any legislative sanction. I think he might equally well have referred to Section 14 of Act XI of 1872, but this does not affect the point. With such legislative sanction as Section 18 provides, he submits that the Treaty of 1815 is self-contained and that that is all that I have to look at in determining whether the Petitioner was in lawful custody. He contends that the procedure to be followed is stated in the words "shall be delivered up". Section 18 contains the words "the procedure provided by any such Treaty shall be followed in any case to which it applies." These words, it is argued, refer to and sanction that procedure. I do not think that the words "shall be delivered up" provide any procedure. They say what has to be done; they do not say how it shall be done, which would be a matter of procedure. It might equally be said that the words "The High Contracting Parties engage to deliver up to each other" in the first clause of the Treaty of 1876 comprise the procedure to be followed under that Treaty--But in point of fact Articles VI and VII of the Treaty contain elaborate provisions in regard to the procedure to be followed, as also does the Extradition Act.

17. There is another aspect of the matter. The Indian Extradition Act, as I have pointed out in an earlier portion of the judgment, contains clauses stating what has

to be done when extradition is demanded by a Foreign State; then follow clauses stating what has to be done when extradition is demanded by a State other than a Foreign State. No attempt has been made to justify what has been done in this case under the latter clauses and the argument ignores them entirely; but it is unnecessary, in the view I take of the matter, further to consider their applicability.

18. In my judgment, Chandernagore is a Foreign State as defined by the Indian Extradition Act, 1903 and the procedure provided by Chapter II of that Act should have been followed in this case.

19. Learned Counsel for the Commissioner of Police founded his argument on the judgment of this Court in Rahamat Ali v. Emperor ILR (1919) Cal. 37, in which this point was decided and it was held that Chandernagore was not a Foreign State as defined by the Indian Extradition Act. The circumstances which gave rise to that decision were somewhat different, as proceedings which resulted in the Rule being issued were in progress, and according to the explanation given by the Magistrate, purported to be in accordance with the Extradition Act. But the Deputy Legal Remembrance argued differently and put forward the same contention as has been argued before me. It does not appear from the report that Section 25 of the Extradition Act, 1870, was referred to and it is possible that had that been done it might have influenced the decision of the Court. However that may be, after having carefully considered the judgment of the learned Judges, for whose opinion I entertain the greatest respect, I find myself unable to come to any but a contrary conclusion. I thought I might be bound to follow that judgment, but I was referred to Abhai Charan Ghose v. Dasmani Dasi ILR (1919) Cal. 37, in which it was held that the opinion of an Appeal Bench in one matter relative to an issue of law or the construction of a document is not binding upon another Bench sitting as a Court of first instance in another matter.

20. The Rule will be made absolute. I direct that the Petitioner be set at liberty.