

(1946) 11 MAD CK 0023
In the Madras High Court

T.K. Verghese Vaidyar

APPELLANT

Vs

Rex (Sub-Inspector of Police) and Another

RESPONDENT

Date of Decision : 18-11-1946

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 491

Citation : (1947) ILR (Mad) 640 : (1947) 60 LW 10 : (1947) 1 MLJ 2

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—This is an application u/s 491, Criminal Procedure Cede, alleging that the petitioner was illegally and improperly detained by the

Superintendent, Sub-Jail, Calicut and praying that this Court do issue an order for his release.

2. The petitioner was arrested without a warrant by the Sub-Inspector of Police of Calicut Town on information received from the Special

Inspector of Police, Alleppey. The petitioner was produced before the Sub-Divisional Magistrate of Calicut, who remanded him to the Sub-Jail,

Calicut.

3. It is argued that the procedure adopted by the police in the case was not warranted by law. Section 54(7), Criminal Procedure Code,

authorises any police officer to arrest without a warrant any person (1) against whom credible information has been received that he has done an

Act outside British India, which, if done within British India would be an offence and (2) who, under any law relating to extradition, etc., is liable to

be apprehended or detained in custody in British India. It is not denied that credible information that an offence was committed by the petitioner

was received ; but it is argued that the petitioner is not under any law relating to extradition liable to be apprehended or detained in custody. We

can find no authority for such a contention. Section 23 of the Extradition Act says:

...any person arrested without an order from a Magistrate and without a warrant in pursuance of the provisions of Section 54, clause seventhly,

may...be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate u/s 10.

Of that Act. The learned advocate relies on the dictum of Mukerjee, J., in *Subodh Chandra Roy Chowdhry v. Emperor* ILR (1924) Cal. 319 in

which the learned Judge read into the second part of Section 54, clause seventhly, a proviso that the person should be liable to be arrested without

a warrant if the offence had been committed in British India. With respect, we find nothing in Section 54 or elsewhere which justifies that

conclusion ; but we are not here dealing with a non-cognizable case. The petitioner has been charged under the Travancore Penal Code of

offences corresponding to Sections 148, 149, 324, 342 and 436, read with Section 109 of the Indian Penal Code. If such offences had been

committed in British India, there can be no doubt that the petitioner could have been arrested by the police without a warrant.

4. A great deal has been said about the procedure to be adopted in extradition proceedings ; but we are not here concerned with the extradition

proceedings; proper. We do not know whether they have yet been initiated or not. The Magistrate who committed the petitioner to the Sub-Jail

has authority over him and can modify his orders if he subsequently finds that the petitioner ought not to be kept under further detention.

5. The petition is dismissed.