PHILIP GORDON JAMES BENWELL

v.

THE ATTORNEY-GENERAL

SUPREME COURT.
SHARVANANDA, C.J., ATUKORALE, J. AND TAMBIAH, J.
S.C. APPEAL No. 56/84.
C.A. APPEAL No. 63/83 AND C.A. (REV.) APPLICATION No. 978/82.
H.C. COLOMBO CASE No. EXTRADITION 1/1981.
NOVEMBER 13, 14 AND 15, 1985.

Extradition – Extradition Law No. 8 of 1977 – Authentication of documents – Revisionary jurisdiction of the Court of Appeal.

In extradition proceedings under our Extradition Law No. 8 of 1977 the High Court Judge as a Judge of the Court of committal exercises a jurisdiction conferred by the statute itself. Such proceedings are judicial proceedings and cannot be regarded as wholly administrative process and they are amenable to the revisionary jurisdiction of the Court of Appeal. The certificate appended to the proceedings by the Stipendiary Magistrate of the State of New South Wales constitutes due authentication although he did not certify separately each page of the proceedings or the evidence of each witness.

The requisition for the appellants extradition to Australia where he was wanted on charges of embezzlement and false pretence was correctly made to the Minister of Foreign Affairs.

Per Atukorale, J. :

Our extradition law provides for the extradition of fugitives to and from designated Commonwealth countries and foreign States (called treaty States). Proceedings in extradition are founded on international obligations arising out of mutual agreement between different countries. These obligations involve a very high sense of responsibility and commitment on the part of such countries. Extradition law is designed to prevent a fugitive who has committed a crime in one country from seeking asylum in another to

which he has fled to avoid trial and punishment. It rests upon the plainest principles of justice. It is a law which is of vital importance to the public administration of criminal justice as well as to the security of different countries.

Per Atukorale, J. :

It is indeed in the rarest instance that a fugitive from justice can be heard to complain of unjust opression and harassment from proceedings lawfully commenced, though for a second time, for the purpose of determining whether he should be extradited or not to his country which he has fled and which is so anxious to secure his return in order to bring him to justice for the offences he is accused of having committed therein.

Cases referred to :

(1) *Alles v. Palaniappa Chetty (1917) 19 NLR 334.*

(2) *Re. Ganapathipillai 21 NLR 481.*

(3) *Thompson v. Gould [1910] AC 420.*

(4) *Rex v. Oakas [1959] 2 QB 350.*

Dr. Colvin R. de Silva with *C. P. Ilangakoon (Jr.)* and *Miss Saumya de Silva* for the appellant.

Priyantha Perera, Deputy Solicitor-General with *K. C. Kamalasabeyson, S. S. C., Mervyn Samarakoon, S. C.* and *T. G. Gooneratne, S. A.* for the respondent.

Cur. adv. vult.

December 20, 1985.

ATUKORALE, J.

The appellant is an Australian national residing in Sri Lanka. By a requisition dated 14.4.1981 addressed to the Minister of Foreign Affairs, the Attorney-General of Australia on behalf of the Government of Australia, which is a designated Commonwealth country for the purposes of the Extradition Law, No. 8 of 1977, requested that the appellant, a person accused in the State of New South Wales, of 18 offences of fraudulent misappropriation contrary to s. 178 A of the Crimes Act of 1900 (N.S.W.) and one offence of false pretence contrary to s. 179 of the said Act, be returned to Australia. The appellant's extradition was sought under the provisions of the aforesaid Extradition Law of Sri Lanka, hereinafter referred to as the Law. In pursuance of this request His Excellency the President, who is the Minister in charge of the subject of extradition, issued in terms of s. 8 (3) thereof an authority to proceed to the High Court of Colombo which then issued a warrant for the arrest of the appellant. After he was arrested and produced the High Court commenced proceedings under s. 10 of the Law with a view to committing him to custody to await extradition.

At the hearing evidence was led in support of the request for extradition. It contained, inter alia, of exhibits E1 to E352 and the depositions of witnesses contained in pages 1 to 260 of part A of the proceedings before the Stipendiary Magistrate of the State of New South Wales. At the conclusion of the hearing the learned High Court Judge discharged the appellant from custody upholding the main objection advanced on behalf of the appellant, namely, that there was no due authentication as required by s. 14 of the Law of the documents setting out the depositions and exhibits produced in evidence before the Stipendiary Magistrate for the reason that the latter had failed to comply with the provisions of s. 33A (2) of the Extradition (Commonwealth Countries) Act, 1966, which required him, inter alia, to take the evidence on oath or affirmation of each witness appearing before him and to cause the evidence to be reduced to writing and to certify at the end of that writing that the evidence was taken by him. The learned Judge held that as the Stipendiary Magistrate had failed to make the requisite certificate either at the end of the writing of the evidence of each witness or even at the end of the recording of all the evidence, there had been no due authentication of the said documents within the meaning of s. 14 of the Law. He therefore held that the documents were inadmissible in evidence and discharged the appellant.

The Attorney-General of Sri Lanka, who is the present respondent and on whose behalf evidence was led before the High Court, invoked the appellate as well as the revisionary jurisdiction of the Court of Appeal to have this order set aside. The Court of Appeal whilst upholding the objection of the appellant that there was no right of appeal from an order of the High Court in extradition proceedings overruled his further objection to the maintainability of the revision application and held that the jurisdiction of the Court of Appeal extended to the revision of such an order. On the merits the Court held that the High Court erred in determining the question of due authentication of the relevant documents by reference to the provisions of s. 33A (3) of the said Act of 1966 and ruled that that question should have been determined having regard solely to the provisions of s. 14 (2) (*a*) of our Law. Acting in revision the Court set aside the order of the High Court and remitted the case to the High Court for an appropriate order on the basis that the documents in question had been duly authenticated as required by our Law. The present appeal is from this judgment of the Court of Appeal.

At the hearing before us learned counsel for the appellant submitted that the Court of Appeal erred in holding that it had jurisdiction in revision in matters appertaining to extradition. It was his contention that extradition proceedings envisaged under our law, though conducted partly in the High Court and also, in the sole instance of an application for a writ of habeas corpus, in the Court of Appeal, are when regarded in their totality in the nature of an administrative process to which the High Court is drawn as an instrument of that process. Being an administrative process the only remedy, he submitted, in respect of any matter arising out of such proceedings in the High Court is by way of writ procedure to the Court of Appeal and that the revisionary jurisdiction of the Court of Appeal did not lie. In support of his submission that extradition proceedings are in the nature of an administrative process learned counsel pointed out that no person could be dealt with under the law 'except in pursuance of an Order of the Minister. . . issued in pursuance of a request to a Minister by or on behalf of a Government' of the country or State in which the person to be extradited is accused or was convicted ; that on receipt of such a request 'the Minister may issue an authority to proceed unless it appears to him that an order for extradition of the person concerned could not lawfully be made in accordance with the provisions of the law' ; that if a High Court judge issues a provisional warrant for the arrest of a fugitive person he must forthwith give notice of its issue to a Minister and transmit to him the information and evidence upon which it was issued, upon which communication the Minister 'may in any case and shall if he decides not to issue an authority to proceed' by order cancel the warrant and if the person concerned has been arrested thereunder discharge him from custody ; that the High Court is only a court of committal and that in certain circumstances the Minister may not order extradition despite the decision of the High Court to commit. Learned counsel stressed that except in the case of a decision in favour of the fugitive person by the High Court or by the Court of Appeal upon an application to it for a writ of habeas corpus, it is the Minister who eventually decides on the actual extradition, a decision which is dependent on matters of policy and expediency. He submitted that our Extradition Law is a self contained enactment subject to its own procedure and that it would offend the very scheme of the law to hold that the revisionary jurisdiction of the Court of Appeal was available in the particular circumstance of this particular type of proceeding.

The order of the High Court Judge which was sought to be revised in the Court of Appeal is one that was made in pursuance of the provisions of s.10(4) of the Law. s.10 (2) provides that for the purposes of proceedings under s. 10, a court of committal (which is the High Court) shall have the like jurisdiction and powers as though the proceedings were in respect of an offence triable by that court. S. 10 (4) stipulates, inter alia, that where an authority to proceed has been issued in respect of a person arrested and produced before the court of committal and the court is satisfied, after hearing evidence, that the offence to which the authority relates is an extraditable offence and it is further satisfied, in the case of a person accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the court, then the court shall, unless his committal is prohibited by any other provisions of that law, commit him to custody to await his extradition thereunder. But if the court is not so satisfied or if the committal of the person is so prohibited, the court shall discharge him from custody. Whilst subsection (2) of s.10 in effect confers, in so far as proceedings under that section are concerned, the same jurisdiction and powers on a court of committal as if it were a court of trial, subsection (4) mandates the making of an order after hearing evidence either committing or discharging him. A High Court judge as a judge of the court of committal is thus required to exercise a jurisdiction conferred on him by the statute itself. The proceedings that take place before him are judicial proceedings and the order he makes is a judicial order. The submission of learned counsel for the appellant that extradition proceedings under the Law are in their nature a wholly administrative process cannot thus be sustained. The question that arises next is whether such an order made in such proceedings is amenable to the revisionary jurisdiction of the Court of Appeal. The jurisdiction of the Court of Appeal to act in revision is set out in Article 138 of the Constitution. It enacts that the Court of Appeal shall have and exercise, subject to the provisions of the Constitution or of any law, sole and exclusive cognizance, by way of appeal, revision and restitutio in intergram of all causes, suits, actions, prosecutions, matters and things of which a court of first instance, tribunal or other institution may have taken cognizance. The revisionary jurisdiction conferred on the Court of Appeal by this article is indeed very wide and general and clearly it has the right to revise any order made by a court of first instance including the High Court. There is nothing either in the Constitution or in the Extradition Law or any

other enactment which in any way limits or restricts the width and generality of the powers of the Court of Appeal to revise an order made by the High Court under s. 10(4) of the Law. The Court of Appeal was therefore correct in holding that it had jurisdiction to revise the order of the learned High Court Judge in the instant case. The view I have formed gains support from two decisions of the Supreme Court – *Alles v. Palaniappa Chetty* (1) and in *Re. Ganapathipillai* (2) – in both of which proceedings were taken under the English Fugitive Offenders Act, 1881, which was then applicable to Sri Lanka. In the former case the order of the Magistrate issuing a warrant for the arrest of the fugitive was challenged by way of revision to the Supreme Court whilst in the latter case the order of the Magistrate refusing to order the fugitive to be returned to Kedah was sought to be revised. In both cases objection was taken that the powers of revision which were then vested in the Supreme Court were inapplicable to extradition proceedings under the Fugitive Offenders Act which, as in our Law, contained no legal provision for appeals or applications for revision of orders made thereunder. In both cases the Supreme Court overruled the objection and held that the provisions of s. 21 (2), later s. 19 of the Courts Ordinance then in force were sufficiently wide to confer on the Supreme Court the power to revise and correct proceedings held by the Magistrate under the Fugitive Offenders Act. It is significant to note that the provisions of s. 21 (2) of the Courts Ordinance were substantially the same as contained in Article 138 (1) of the Constitution in so far as the jurisdiction in revision is concerned.

This brings me to the substantive question that was raised and argued in the High Court and the Court of Appeal as well as before us, namely, whether the exhibits E 1 to E 35.2 and the depositions contained in pages 1 to 260 of part A of the proceedings held before the Stipendiary Magistrate of New South Wales have or have not been duly authenticated as required by s. 14 (2) of our Extradition Law, No. 8 of 1977. The High Court held that they were not, as maintained by the appellant. The Court of Appeal reversed this finding and held that they were duly authenticated, as maintained by the Attorney-General. The relevant portion of s. 14 is as follows :–

"(2) A document shall be deemed to be duly authenticated for the purposes of this section –

(a) in the case of a document purporting to set out evidence given as aforesaid, if the document purports to be certified by a judge or other officer in or of the country or State in question to be the original document containing or recording that evidence or a true copy of such document ;

(b) in the case of a document which purports to have been received in evidence as aforesaid or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of a document which has been so received ;

(c) ... and in any such case the document is authenticated either by the oath of a witness, or by the official seal of a Minister, of the designated Commonwealth country or treaty State in question."

In construing the true meaning of this subsection I do not think it is permissible to have recourse to the corresponding provisions of the Australian law of extradition as was done by the learned High Court Judge. There is no justification for doing so. It is imperative that the court should have regard solely to the provisions of our law because what constitutes due authentication of a document is set out in the above subsection. The material portions of the certificate of the Stipendiary Magistrate read as follows :

"I, Kevin Robert Webb, the undersigned, one of Her Majesty's Stipendiary Magistrates . . . hereby certify that on the third, fourth, fifth and sixth days of February, in the year of Our Lord one thousand nine hundred and eighty one, there appeared before me . . . . the persons hereinafter named who, being duly severally sworn, gave evidence on oath consisting of testimony given orally for transmission to the country of Sri Lanka . . . . .

And I further certify that I caused the said testimony of each of them to be reduced to writing which said writing is constituted in the documents annexed hereto and numbered '1' to '260' inclusive.

And I further certify that the said documents annexed hereto and numbered '1' to '260' are the original documents truly recording the evidence so given on oath in the Commonwealth of Australia by the said persons and are a true record of the said testimony so taken by me.

And I further certify that the documents annexed hereto and numbered as exhibits '1' to '352' inclusive are true copies of the documents received in evidence by me in the proceedings

conducted before me in the Commonwealth of Australia on the said days for taking the said evidence and testimony."

It is dated 12 .2. 1981 and signed by the Stipendiary Magistrate. There is also another document signed by and bearing the official seal of the Attorney-General of Australia, who is a Minister of the Government of Australia. It reads as follows :

" GIVEN UNDER MY HAND and OFFICIAL SEAL affixed to the tape binding all the annexed documents."

This is dated 14.4.1981. Hence there is only one certificate of the Stipendiary Magistrate and a single affixation of the official seal of the Minister. The certificate is to the effect that the depositions are the original documents recording the evidence of witnesses given on oath before him and that the exhibits are true copies of the documents received in evidence by him at the proceedings conducted by him for taking evidence. S.14(2)(*a*) of the Law, which relates to depositions, stipulates that a document puporting to set out evidence given on oath shall be deemed to be duly authenticated if it purports to be certified by the Judge to be the original document containing or recording that evidence and if it is authenticated by the official seal of a Minister. Similarly s. 14 (2) (*b*), which relates to exhibits, stipulates that a true copy of a document purporting to have been received in evidence shall be deemed to be duly authenticated if it purports to be certified by a Judge as a true copy of the document which has been so received in evidence by him and if it is authenticated by the official seal of a Minister. In my view there has been full compliance by both the Stipendiary Magistrate and the Attorney-General with the two-fold requirements of each of the above two stipulations. The fact that the certificate of the Stipendiary Magistrate and the authentication of the Attorney–General relate to the entirety of the depositions and the exhibits does not in my view detract from the validity of the certificate or the authentication. The certificate of the Stipendiary Magistrate and the authentication of the Attorney–General of the entire set sufficiently vouch for the genuineness of each of the documents comprising the bundle. There is no mandatory requirement, as urged on behalf of the appellent, that each deposition and each exhibit (or a true copy thereof) should ex facie be individually and separately certified by the Judge and sealed by the official seal of the Attorney–General. To uphold the contention of the appellant would do

violence to the ordinary and natural meaning of the clear and unequivocal words of the subsection. A plain reading of the subsection shows that there is nothing therein which bars one composite and all–embracing cerificate of the Judge given at the end of the proceeding before him or an authentication in a similar way being given by the Minister. "It is a strong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do" – *per* Lord Mersey in *Thompson v. Gould* (3). "Where the literal reading of a statute...produces an intelligible result....there is no ground for reading in words according to what may be the supposed intention of Parliament" – *per* Lord Parker, C.J. in *Rex v. Oakes* (4). Where the language of an Act is clear and explicit, the courts must give effect to it whatever may be the consequences for in that case the words of the Statute speak the intention of the legislature–vide Craies on Statute Law, 11th Edition, p.64. Under the circumstances I reject the narrow and strict interpretation that was sought to be placed on s. 14(2) by learned counsel for the appellant and uphold the conclusion of the Court of Appeal that there has been due authentication of the documents as required by that subsection.

It was also submitted on behalf of the appellant that the Court of Appeal erred in exercising its revisionary powers in the special facts and circumstances of this case. It was specifically stressed that the appellant had already been put to the expense and harassment of contesting three extradition proceedings, namely, the first application in which the High Court committed him to custody in respect of 12 out of the present 19 charges, the habeas corpus application made by him consequent thereon to the Court of Appeal which made order discharging him on the ground of insufficiency of evidence to warrant his trial on those charges and the proceedings in this case. His counsel urged that it would be unjust and oppressive to put the appellant in jeopardy of another proceeding for his extradition. Our extradition law provides for the extradition of fugitives to and from designated Commonwealth countries and foreign States (called treaty States). Proceedings in extradition are founded on international obligations arising out of mutual agreement between different countries. These obligations involve a very high sense of responsibility and commitment on the part of such countries. Extradition law is designed to prevent a fugitive who has committed a crime in one country from seeking asylum in another to which he has fled to avoid trial and punishment. It rests upon the plainest principles of justice. It is a law which is of vital

importance to the public administration of criminal justice as well as to the security of different countries. The instant proceedings commenced in consequence of a second request made of the Sri Lankan Government by the Government of Australia within whose territory the appellant is accused of having committed grave crimes involving embezzlement and false pretence. His discharge stemmed purely and solely out of a misconstruction of the law by the Judge of the court of committal. It is indeed in the rarest instance that a fugitive from justice can be heard to complain of unjust oppression and harassment from proceedings lawfully commenced, though for a second time, for the purpose of determining whether he should be extradited or not to his country which he has fled and which is so anxious to secure his return in order to bring him to justice for the offences he is accused of having committed therein. Considering the totality of all the above circumstances including those urged on behalf of the appellant I am of the view that the interests of justice called for the intervention of the Court of Appeal by way of revision.

Learned counsel for the appellant also submitted that the requisition for the appellant's extradition was not made to the appropriate Minister in charge of the subject of extradition but to the Minister of Foreign Affairs and that the requisition was therefore bad in law. I cannot agree with this submission either. As pointed out by the learned Deputy Solicitor-General, the Minister of Foreign Affairs, according to international practice, is the intermediary between one country and another and communications between countries are chanelled through him. Moreover it is not the requisition of the Foreign Minister but the authority to proceed issued by the appropriate Minister of this country which empowers the Court of committal to commence proceedings for the committal of the fugitive.

For the above reasons the order of the Court of Appeal is affirmed and the appeal is dismissed. I also direct the High Court to which this case must now be remitted to hear and dispose of the matter as early as possible.

SHARVANANDA, C. J. – I agree.

TAMBIAH, J. – I agree.

Appeal dismissed.