

Present : Bertram C.J.

1920.

ELIYATAMBY v. MOHOMODO.

825—P. C. Colombo, 88 F.

Fugitive offender—Power to release him on bail.

A Magistrate may in an appropriate case release the fugitive offender on bail, and allow him to appear in the ordinary course in the Court to which his return is sought.

THE facts appear from the judgment.

A. St. V. Jayawardene (with him *Tisseverasinghe*), for accused, appellant.—The application for the return of the appellant is not made in good faith in the interests of justice. The appellant on a previous occasion applied to the Magistrate to make this appear to him by cross-examining the complainant, who gave evidence, but the Magistrate disallowed this application. The Supreme Court set aside this order, and permitted the appellant to make it appear to the Magistrate that “ the application for his return was not made in good faith in the interests of justice.” The complainant failed to appear to be cross-examined, though every endeavour was made to secure his attendance. The Magistrate has in his order under appeal expressed his opinion that the complainant was not acting with proper frankness. In the circumstances it would, in the words of section 19, be unjust and oppressive to return the appellant to the Singapore Court. The charge against the appellant is false; he has a full and complete defence to it. He is prepared to stand his trial if he will be spared the indignity of being removed to Singapore in police custody.

This Court has full power to do so. Section 19 itself provides that “ the Magistrate may discharge the prisoner either absolutely or on bail.” It also provides for the return being deferred “ until the expiration of a certain period.” There is therefore sufficient authority in the section itself. Apart from the section, the Supreme Court has, under section 21 (2) of the Courts Ordinance, sole and exclusive cognizance by way of appeal and revision of all prosecutions which any original Court may have taken cognizance. Here the Magistrate has exercised his jurisdiction in his ordinary capacity as Police Magistrate. The Supreme Court has jurisdiction to revise and correct his proceedings (*Alles v. Palaniappa Chetty*,¹ *In re Ganapathipillai*²). He referred also to section 53 of the Courts

¹ (1917) 19 N. L. R. 334.

² (1920) 21 N. L. R. 481.

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Ordinance and section 369 of the Criminal Procedure Code. In *Regina v. Spilsbury*,¹ the Court of King's Bench released a prisoner on bail in circumstances similar to the present.

Jansz, C.C., for the Crown.—The Act does not provide for release on bail as contended for by the appellant. Even if it does, the appellant has not made it appear to the Magistrate that the application for his return was not made in good faith in the interests of justice. The absence of a special provision in the Act itself for release on bail in circumstances of this kind show that the intention of the Legislature was that bail should not be granted.

The general power of the Supreme Court to release on bail have, therefore, no application to the present case.

Jayawardene, in reply.

November 8, 1920. BERTRAM C.J.—

This is a case under the Fugitive Offenders Act, 1881, in which the present appellant was charged with criminal misappropriation, and his return is sought under part 2 of the Act. The learned Magistrate would appear to have been willing to release the appellant on bail under section 19 but for his being of opinion that he had no power to do so. The learned Magistrate appears to me not to have given their full force to the words of section 19, which speak of a release on bail and the suspension of the return of the fugitive being within the power of the Magistrate, and also to the words which allow the Magistrate to make such other order as seems just. It appears to me, therefore, that the Magistrate had more powers than he apprehended, and I think this is a case in which he might well have exercised his power under this section. For this purpose it must be made to appear to him either that the case is trifling—which in this case is not the fact—or that the application for the return is not made in good faith in the interests of justice or otherwise. The learned Magistrate had before him these facts: that the offence is two years old; that the prosecutor, who is not in Singapore but in India, has declined to come over to be cross-examined in accordance with the Magistrate's order; and the Magistrate further in the course of the proceedings formed the opinion that the prosecutor was not acting with proper frankness. I have had to-day presented to me an affidavit sworn to by the alleged fugitive, which may also be taken into account. This seems to me a *prima facie* justification for the impression which the learned Magistrate appears already to have formed. The only question is as to the powers of the Court. Section 19 seems to contemplate that in an appropriate case the Magistrate may decline to order the return of the prisoner until a period has elapsed which would allow of the alleged fugitive presenting himself in the ordinary

¹ (1898) 2 Q. B. 615.

course in the Court to which his return is sought. The section also provides for his release on bail, and I see no reason why under the general powers conferred by the section these two provisions should not be combined. Mr. Jayawardene, for the appellant, has offered to give security for his appearance in the Singapore Court. I think that the case may be remitted to the learned Magistrate to enable this to be done. The appellant should be released on bail with one surety, and the obligation of the surety should be to produce the appellant on the expiration of two months. There must be a further security in the form of a deposit in Court of Rs. 15,000, and the condition of the bond should be that if it should be made to appear to the learned Magistrate that the appellant has presented himself at the Court in Singapore, to which his return is sought, then the bond shall be void, but that otherwise it shall be of full force and effect. The Magistrate should, I think, make an accompanying order, that in the event of default the appellant shall be returned at the expiration of the said period of two months.

The case will be remitted to him to carry out these directions.

Sent back.

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