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held to have acted with due care and caution. This same sort of confusion runs throughout the judgment. There is no more *primâ facie* ground for holding that Girmálla and Tammappa have assumed a false attitude in this matter, than for holding that Karigowda gave false information. The Magistrate, it may be noted, fixed a special standard of his own, with a view not to press hard on the accused, and notwithstanding this leniency, he was led to hold that Karigowda's statement about the alleged bribery was not only not proved, but was false. The Joint Sessions Judge should not have set aside such a finding on mere surmises and probabilities, which were more than counterbalanced by the evidence of the accounts, the evidence of the village extracts, the admitted credit of Rs. 128 shortly after the alleged loan borrowed from the 'savkár,' the discrepancies and contradictions noticed by the Magistrate, and the denial of the principal witnesses of all knowledge of the alleged payment. There is, under these circumstances, no justification on the ground of good faith any more than on the ground of truth. I would, therefore, reverse the order of acquittal, and convict Karigowda with simple imprisonment for four months.

Order of acquittal reversed and accused convicted.

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ránade.

IN RE MUKUND BA'BU VETHE.*

1894. *January* 29.

Criminal Procedure Code (Act X of 1882), *Sec.* 54—*Offence committed by a British subject in foreign territory—Powers of the Police to arrest for such offence without a warrant—Wrongful arrest—Wrongful confinement—Indian Penal Code (Act XLV of* 1860), *Sec.* 342.

Section 54 of the Criminal Procedure Code (Act X of 1882) does not empower a police officer to arrest, without a warrant, a British subject in British India on a charge of criminal breach of trust or other cognizable offence committed outside British India.

Mukund was a native Indian subject of the Queen-Empress, residing at Belgaum. A complaint was filed against him in the Sángli State, charging him with committing breach of trust within the territories of that State. Thereupon he obtained an

* Application for criminal revision, No. 321 of 1893.

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order from the District Magistrate of Belgaum, dated 15th November, 1891, which exempted him from arrest for the offence of criminal breach of trust without a warrant issued by himself or by the Political Agent of the Southern Marátha Country. This order was communicated to Mukund through the accused, who was chief constable at Belgaum. On the 27th November, 1891, a police officer from the Sángli State came to Belgaum with a warrant issued by the Sángli Court for the arrest of Mukund on a charge of criminal breach of trust. The chief constable thereupon directed Mukund's arrest. Mukund brought to the notice of the chief constable the District Magistrate's order of the 15th November, 1891, but he was detained in custody till the matter was reported to the First Class Magistrate, who ordered his discharge. In the meantime the complaint filed against Mukund in the Sángli State was dismissed without requiring his extradition.

Mukund thereupon prosecuted the chief constable on a charge of wrongful arrest and wrongful confinement.

Held, that the chief constable had no power to arrest the complainant without a warrant, and that he was guilty of the offence of wrongful confinement under section 342 of the Indian Penal Code (XLV of 1860).

THIS was an application under section 435 of the Code of Criminal Procedure (Act X of 1882) under the revisional jurisdiction of the High Court.

The complainant Mukund Bábu Vethe was a native Indian subject of Her Majesty, residing at Belgaum.

A criminal prosecution was instituted against him in the Sángli State for criminal breach of trust committed within the territories of that State.

Thereupon he obtained an order from the District Magistrate of Belgaum, dated 15th November, 1891, which exempted him from arrest of the offence in respect of which he was prosecuted in the Sángli State without the warrant of the District Magistrate, or of the Political Agent of the Southern Marátha Country. This order was communicated to Mukund through the chief constable at Belgaum.

On 27th November, 1891, a jamádár from Sháhápur, a town in the Sángli State, came to the chief constable at Belgaum, bearing a warrant issued by an officer of the Sángli State for the arrest of Mukund on a charge of criminal breach of trust committed in the Sángli State.

The chief constable thereupon directed the arrest of Mukund. Mukund pointed out to the chief constable the order of the

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District Magistrate of the 15th November, 1891, but he was not released from custody till the matter was reported to the First Class Magistrate, who ordered Mukund to be discharged.

In the meantime the complaint filed against Mukund in the Sangli State was dismissed without requiring his extradition.

On the 2nd December, 1891, Mukund prosecuted the chief constable of Belgaum on a charge of wrongful confinement under section 342 of the Indian Penal Code (XLV of 1860).

The trying Magistrate discharged the accused under section 253 of the Code of Criminal Procedure (Act X of 1882) and at the same time gave sanction for the prosecution of the complainant and his witnesses for giving false evidence.

Against this order the complainant applied to the Sessions Judge, but he declined to interfere.

The complainant thereupon made the present application to the High Court under its revisional jurisdiction.

Anderson (with him *Mahádeo C. Apte* and *N. G. Chandavarkar*) for complainant:—The District Magistrate had passed an order exempting the complainant from arrest without a warrant either issued by himself or by the Political Agent. We brought this order to the notice of the accused and yet he did not release us. The arrest was, therefore, illegal. Even independently of the District Magistrate's order, the accused had no power to arrest the complainant without a warrant. Section 188 of the Code of Criminal Procedure (X of 1882) does not authorize the police to arrest without an order from the Political Agent or from a Magistrate in British India. Nor do sections 11 and 15 of the Extradition Act (XXI of 1879). Nor does section 76 of the Indian Penal Code justify the arrest. The accused was not labouring under a mistake of fact. If there was any mistake of fact on the part of the accused, there is nothing to show that he acted in good faith. He was aware of the District Magistrate's order, and yet he directed the arrest of the complainant and actually detained him in custody for some time. He was, therefore, guilty of wrongful confinement under section 342 of the Indian Penal Code. Refers to *Queen-*

Empress v. *Kathaperumal*[1], *Regina* v. *Náráyan Bábáji*[2]; *Queen* v. *Beharysing*[3].

Jardine (with him *B. A. Bhágvat*) for the accused:—The order of the District Magistrate was *ultra vires*. It was a mere expression of opinion that the complainant would not be arrested without a warrant. The chief constable was not bound to take notice of it. When a British subject commits an offence in foreign territory, section 188 of the Criminal Procedure Code distinctly says that he may be "dealt with" as if the offence were committed in British India. Section 54 of the Code empowers a police officer to arrest without a warrant a person who is concerned in a cognizable offence. The offence of criminal breach of trust, in respect of which the complainant was arrested, was a cognizable offence. This power of the police to arrest without a warrant is not taken away by Act XXI of 1879. Sections 11 and 15 of the Extradition Act do not touch the question of arrest by a police officer. The Act is altogether silent on this point. It leaves intact the powers conferred on the police under section 54 of the Code of Criminal Procedure. The arrest was, therefore, legal. The accused, moreover, acted in good faith. This is found as a fact by the lower Court. The accused released the complainant as soon as he discovered that he was the person mentioned in the District Magistrate's order. Section 76 of the Penal Code, therefore, protects the accused.

JARDINE, J.:—On the 27th November, 1891, a police officer of the Sángli territory, an independent State, and so described in *Rámchandra Dádá Náik* v. *Dádá Mahádev Nák*[4], came from Sháhápur, in that territory, to Belgaum, with a written request from one of the chief officials to the chief constable to arrest Mukund Bábu Vethe on a charge of criminal breach of trust committed in the Sángli territory. Mukund is a native subject of the Queen-Empress, residing at Belgaum. The chief constable thereupon directed the arrest, which was performed by the Sángli officer, and Mukund was brought up before the chief constable and showed him a written reply, made to Mukund in October,

(1) I. L. R., 13 Mad., 423.
(2) 9 Bom. H. C. Rep., 346.
(3) 7 W. R. Cr. Rul., 3.
(4) 1 Bom. H. C. Rep., at p. 84 app.

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1891, by the District Magistrate of Belgaum, to the effect that he could not be arrested without a warrant from either the Political Agent for Sángli or from the District Magistrate. Whereupon the chief constable forthwith brought Mukund before a Magistrate, who discharged him from custody. The question before us is whether the act of arrest was lawful. If not, the confinement was wrongful, and the question, whether the chief constable knew that it was unlawful, is irrelevant in construing section 342 of the Indian Penal Code; see *Dhania* v. *F. L. Clifford*[1], which differs from section 220 as interpreted in *Regina* v. *Náráyan Bábáji*[2]. The only treaty or convention between our Government and Sángli about extradition appears to be that printed at page 230 of Aitchison's Treaties, Vol. 7, Ed. of 1892. It provides that if offenders come into British India from the Sángli Jághir "you (*i.e.* the Chief) will represent the affair, and they shall on inquiry be delivered up to you." These words do not justify the arrest. It is not contended that the arrest would be lawful without authority of statute law. It was argued, however, that the words of section 188 of the Code of Criminal Procedure—"when a native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India, he may be dealt with in respect of any such offence as if it had been committed at any place within British India at which he may be found"—justified the action of the police, because they apply the provisions of section 54, whereby a police officer may without warrant arrest for any cognizable offence (which criminal breach of trust is) when there is a reasonable complaint or credible information or reasonable suspicion. "Offence" is defined in this Code to mean "any act or omission made punishable by any law for the time being in force."

The real question then is, whether the word as used in section 54 includes acts of British subjects outside of British India, which if done in British India would amount to cognizable offences? The British Indian law of offences extends to them when they are *out* of British India by section 8 of Foreign Jurisdiction Act, XXI of 1879, and so does the law of procedure. But if such a person is *within* British India, what law or procedure applies? If there

(1) I. L. R. 13 Bom., 376. (2) 9 Bom. H. C. Rep., 346.

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were no enactment at all, the better opinion is that, whatever prerogative the Government of the Queen at home may have to arrest, the police here would have none: see Forsyth's Constitutional Law, 369, and the authorities referred to. Also Maxwell on Magistrates, 125. The Fugitive Offenders Act and the Extradition Act of England do not appear to empower the police to arrest without warrant. The Government of one State has no such special interest in the affairs of another as to induce it to be diligent in capturing escaped offenders before any requisition is made. If there is a Political Agent, section 188 prohibits inquiry in British India after the arrest, unless the Political Agent certifies in favour of such an inquiry. Our Foreign Jurisdiction Act appears to contemplate only two modes of initiating inquiry, namely, by process issued either by the Political Agent or a Magistrate. If the latter officer takes the initiative, he must give immediate information to the Political Agent if there is one: if there is none, he must at once report his proceedings to the Local Government. There is no such requirement about arrests made by the police without the Magistrate's warrant. Yet it cannot be supposed that the Legislature meant this safeguard not to extend to all cases. These directions in this Act indicate that the procedure is special: so does section 17 about bail. Sections 11 and 16 provide a careful procedure to be worked by Political Agents, Governments, and Magistrates. If the intention had been to empower the police under section 54 of the Code, it would have been expressed in plain words. The word "offence" must be limited in a manner analogous to the construction put in *Empress* v. *Murgáppa*[1] by the majority of the Full Bench, Sargent and Melvill, JJ. For these reasons the arrest and detention of Mukund were illegal; and the Magistrate ought to have held that the confinement was wrongful. The evidence given by the Sángli jamádár of police shows the dangers to the personal liberty of Her Majesty's subjects in Belgaum. He says he is always arresting people in Belgaum for cognizable offences, and that the Belgaum police assist him in so doing, and it is not usual to mention the name of the criminal. What happens after these arrests is not disclosed by the evidence. We do not suppose

(1) I. L. R., 5 Bom., 338.

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that the Magistracy allow any subject of the Queen-Empress to be carried out of British India by the police of a Foreign State, and without any warrant from the Government, or the Political Agent, or a British Magistrate. There is no law which allows such things: and, indeed, every civilized Government is very jealous of all attempts to withdraw its subjects from its jurisdiction and hand them over to the Courts of a Foreign State, especially without any protection against prosecution in the Foreign State for offences committed before that for which the surrender is required. Through the mistakes made by the Magistrates who tried the chief constable for wrongful confinement, he has been twice discharged. We are asked by Mukund to use our revisional powers to put him on trial again. But as the Magistrate has found that the chief constable did not act with malice, but only followed an illegal procedure, which his superiors have sanctioned at Belgaum, we do not think the interests of justice require that he should be prosecuted a third time. We, therefore, do not interfere with the order of discharge. Mukund and two of his witnesses ask this Court to revoke the sanctions given by the Magistrate under section 195 of the Code of Criminal Procedure for their trial for having given false evidence. On examining the record we find that, even as regards the only tangible matter of charge, *viz.*, whether Mukund was sent up to the Magistrate after arrest in a *dhumney* or on foot, the statements are much balanced; the other matters charged relate to a conversation which may have been exaggerated. In no case do we see any public advantage likely to result from allowing these prosecutions to go on at the suit of a private person. We, therefore, use our powers, in revision, to revoke these sanctions, and stop the prosecutions.

RA'NADE, J.:—I concur. There is, in my opinion, no room for doubt that the practice of police officers in Belgaum lending their help, without orders from British Magistrates, in the execution of warrants of arrest issued by the authorities in the Sángli State in respect of cognizable offences alleged to have been committed by British subjects in the territories of that State, is not in strict conformity with the terms of the treaty engagements with that State, or with the provisions of the Extradition Act. The treaty

engagements permit a larger freedom to the British police to follow up offenders who escape into that State than is permitted to the authorities of the Native State to make arrests in British territory. In this latter case, nothing can be done, except after inquiry, presumably by the Magistrates in British territory. The provisions of the Extradition Act are not very clear as regards the action of the police, but they also impose the obligation of a preliminary inquiry by a Magistrate before a British subject can be made over to a foreign tribunal. The action taken by the chief constable in this case is thus clearly not in conformity with law. At the same time, the existence of the above practice for many years is held proved by the Magistrate, Mr. Boyd; and the fact, that the District Magistrate deemed it necessary to give the protection or assurance contained in his reply (Exhibit 30) to the complainant in a particular case, shows clearly that the procedure of direct arrest by the Belgaum police on the requisition of the Sángli State was well known to the district authorities, and has been followed by them in all similar cases. Under these circumstances, the chief constable cannot be held to have perversly acted in this matter when he simply gave effect to the existing practice. The protection of the District Magistrate's order was not meant by him to be a general protection against all arrests. The warrant brought by the Sháhápur jamádár specified no details, and the chief constable could not well be expected to follow any other course than the one he followed, namely, of placing the whole matter before a Magistrate, and acting according to his orders. In so doing he does not appear to have exercised his authority harshly or unreasonably. The chief constable should, therefore, in my opinion, not be put on his trial again for a third time. At the same time the counter-complaints for false evidence brought against Mukund and two others, his brother and pleader, appear to me to be of a sort for which there is not any strong justification. The fact appears to be that Mukund had good reason to be vexed, and ignorant people in such a mood of mind, are disposed to a considerable exaggeration of their feelings in the expressions they use, and in such a state of excitement they often utter inaccuracies which should never be mistaken for deliberate falsehoods. If Mukund had the

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protecting order with him, his showing it to the chief constable may be easily mistaken for his flourishing it about. Further, there is nothing unnatural in such a man showing this order to the Sháhápur jamádár, or to the chief constable, and in the jamádár not attending to it, and the chief constable urging that it could not protect Mukund. The only misstatement of fact relates to the question of conveyance. But it is too small a matter to furnish grounds for further prolonging this unhealthy litigation. No jury would convict the persons so charged with wilfully giving false evidence under such circumstances. I concur, therefore, in refusing to interfere with the order of discharge passed by the First Class Magistrate, and in revoking the sanction given by the same Magistrate to prosecute Mukund and his brother and pleader for giving false evidence in a judicial proceeding.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice M. G. Ránade.

1894. *January* 30.

NAGAR PRA'GJI (ORIGINAL APPLICANT), APPELLANT, *v.* JIVA'BHAI BA'VA'JI (ORIGINAL OPPONENT), RESPONDENT.*

Act VI of 1888 (*Bombay*), *Sec.* 31—*Gujarát Tálukdárs' Act—Sale in execution of a decree upon a mortgage before the Act—Necessity of sanction of the Governor in Council to the sale—Execution of decree—Sale.*

Certain *tálukdári* estate was mortgaged under a *sánkhát* executed before the Gujarát Tálukdárs' Act (Bom. Act VI of 1888) came into force. On the 22nd August, 1889 (*i.e.* subsequent to the Act coming into force), a decree was passed for sale of the mortgaged property. The decree was transferred for execution to the Collector, who refused to put up the property to sale without the previous sanction of Government as required by section 31 of the Tálukdári Act.

Held, that section 31 of the Act had no application to the present case. The *sán-* mortgage having been executed before the Act came into force, and left with its validity untouched by clause 1 of section 31, the ordinary remedy of the mortgagee to bring the property to sale was not taken away by that section. The sanction of the Governor in Council was, therefore, not necessary to the sale in execution of the decree on the mortgage.

SECOND appeal from the decision of J. J. Heaton, Acting Joint Judge of Ahmedabad, in appeal No. 210 of 1892.

* Second Appeal, No. 454 of 1893.