



IN THE SUPREME COURT OF BRITISH COLUMBIA

Judgment Morrison J.

RE BHAGWAN SINGH

On the 7th Oct. last upon the application ex parte of Bhagwan SINGH a writ of habeas corpus was ordered to be issued to Malcolm R.J.Reid, Dominion Government Immigration Superintendent and Inspector for the Port of Vancouver B.C. directing him to have before a Judge of this Court presiding at chambers at Vancouver forthwith on receipt of the said writ, the body of the said Bhagwan Singh, alleged to be detained in the custody of the said Reid. At the time this application was made Bhagwan Singh was not in custody having been released on sufficient bail. This fact was not disclosed in the material read in support of the application nor by Mr. Steers who then appeared for the applicant. This order lay dormant until the 19th day of November following. Bhagwan Singh in the meantime changed his Solicitors. On the 19th of November the writ was issued but not served on Reid, but by means of wireless message the fact of its issuance appears to have been communicated to him whilst en route to Victoria.

After arrival in Victoria whence Bhagwan Singh was taken for deportation to Hong Kong pursuant to the provisions of the Immigration Act he applied for and obtained an order for another writ of habeas corpus from my brother Murphy there. This writ was issued and duly served upon Bhagwan Singh. Notwithstanding all this Bhagwan Singh was deported, and is

now without.....

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..... now without the jurisdiction. Application is now made to one upon motion served upon Mr. Reid requiring him to produce Bhagwan Singh "before the Court on Monday the 5th of January 1914 and to make a return to the writ issued on the 19th of November 1913" This notice is dated the 1st of December 1913. On the 4th of December another notice of a similar character dated the 4th of December was filed and in due course served on Mr. Reid requiring him to appear on the 9th day of January 1914.

From the material filed and submitted I am of opinion that the order of the 7th of October was obtained by the suppression or omission of a material fact viz: That Bhagwan Singh was not in custody at that time. "The essential and leading theory of the whole procedure is the immediate determination of the right to the applicants freedom" Halsbury L.C. in Cox vs. Hakes 15 A.C. 517; 10 Halsbury p. 42; Barnard v. Ford 1892 A.C. 335.

Then as to the subsequent course of the matter I think the applicant has prejudiced his right to a return per Lord Watson in Barnard vs. Ford supra.

As to the right to reverse an order obtained ex parte see Hunter C.J. in Hardware Company v. West Bank Trading Company 16 B.C.R. p. 35.

+ The incident referred to in the material filed, that I was interrupted in my sittings at the Vancouver Criminal Assize by a Solicitor on the applicants behalf for the purpose of instructing the

the Registrar

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.... the Registrar to forward a message to Mr. Reid that the writ had been issued, cannot I submit in any way be taken as a confirmation of my previous order. I merely told the Registrar that if a writ had in fact been issued I saw no reason why he should not state that fact in a telegram to whomsoever might be interested in that occurrence. Considerable stress was laid in the affidavits filed on behalf of Bhagwan Singh upon the alleged contumely displayed by Mr. Reid when told of the proceedings leading to the issue of the writ and which allegations are derived by him. As to that phase of this matter all I have to say is that Mr. Reid is a responsible officer of a great Department of Government and doubtless the Minister in charge of that Department will take proper cognizance of this incident if founded on facts. Under all circumstances I do not think I am called upon to display any undue sensitiveness concerning it. The dignity of the Court in such cases usually takes care of itself. X The order of the 7th Oct. 1913 upon which is based the writ of the 19th Nov. 1913 is therefore set aside. X

Aulay Morrison, J.