

1983 September 17

[TRIANTAFYLIDES, P.]

IN THE MATTER OF AN APPLICATION BY ALBERT BANTING FOR AN ORDER OF HABEAS CORPUS AND FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI.

(Application No. 9/83).

Habeas Corpus—Order for—Is of a remedial and not of a punitive nature—Not possible to make an order for habeas corpus after release of applicant from detention.

On March 29, 1983 the District Court of Paphos, apparently acting under section 9(2) of the Extradition of Fugitive Offenders Law, 1970 (Law 97/70), made an order remanding the applicant into custody. Applicant challenged this order by means of applications for an order of habeas corpus and for an order of certiorari. The latter application was withdrawn on the 2nd April, 1983. The remand order in question expired on the 6th April, 1983 and eventually the applicant was set free and was allowed to leave Cyprus without being extradited.

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On the application for an order of habeas corpus:

Held, that an order of habeas corpus is of a remedial and not of a punitive nature and it follows that when the person charged with allegedly unlawfully detaining another has de facto ceased to have the custody or control of that other person an order of habeas corpus cannot be made; that as the remand order, by virtue of which the applicant in this case was detained, expired on the 6th April 1983 and he was allowed to leave Cyprus as a free man, and, consequently, he is no longer detained in Cyprus, it is not possible to make an order of habeas corpus as has been applied for by him; accordingly the application must fail.

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Application dismissed.

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Cases referred to:

Barnardo v. Ford, Gossage's Case [1892] A.C. 326 at p. 333;
Ex parte Whitehead [1957] Crim. L.R. 114.

Application.

Application for an order of habeas corpus by Albert Banting following his committal awaiting extradition by a Judge of the District Court of Paphos and for leave to apply for an order of certiorari.

Ph. Valiantis with *Chr. Christofides*, for the applicant.

M. Photiou, for the Republic.

Cur. adv. vult.

10 TRIANTAFYLIDIS P. read the following judgment. In this case the applicant has applied for an order of habeas corpus and for leave to apply for an order of certiorari in respect of the detention of the applicant as a result of an order for his remand into custody which was made on the 29th March 1983 by the District Court of Paphos, apparently under section 15 9(2) of the Extradition of Fugitive Offenders Law, 1970 (Law 97/70).

The case came before me on the 2nd April 1983 and its hearing was concluded on the 5th April 1983.

20 While the case was pending before me counsel for the applicant stated on 2nd April 1983 that he withdrew, with reservation of the rights of the applicant, the application for leave to apply for an order of certiorari.

25 The remand order in question expired on the 6th April 1983 and I was subsequently informed by counsel for the applicant that, eventually, the applicant was set free and was allowed to leave Cyprus without being extradited.

30 What remains, therefore, to be determined is whether, after the expiry, on 6th April 1983, of the remand order in question, and with the applicant not being any longer in custody, I can issue an order of habeas corpus as has been applied for by him while he was in custody.

35 As is pointed out in Halsbury's Laws of England, 4th ed., vol. 11, p. 771, para. 1456, an order of habeas corpus is of a remedial and not of a punitive nature and it follows that when the person charged with allegedly unlawfully detaining another has de facto ceased to have the custody or control of that other person an order of habeas corpus cannot be made.

In *Barnardo v. Ford, Gossage's Case*, [1892] A.C. 326, Lord Halsbury L.C. said (at p. 333):

“But, assume the fact that the detention has ceased, then the writ of habeas corpus is, in my judgment, inapplicable”.

In the same case Lord Watson stated the following (at pp. 333–334): 5

“The remedy of habeas corpus is, in my opinion, intended to facilitate the release of persons actually detained in unlawful custody, and was not meant to afford the means of inflicting penalties upon those persons by whom they were at some time or other illegally detained. Accordingly, the writ invariably sets forth that the individual whose release is sought, whether adult or infant, is taken and detained in the custody of the person to whom it is addressed, and rightly so, because it is the fact of detention, and nothing else, which gives the Court its jurisdiction”.

As it appears, too, from the case of *Ex parte Whitehead*, [1957] Crim. L.R. 114, there is no need to make an order of habeas corpus after the applicant has been released and the only thing that would then remain to be decided is the question of the costs of the application for such an order. 20

As the remand order, by virtue of which the applicant in this case was detained, expired on the 6th April 1983 and he was allowed to leave Cyprus as a free man, and, consequently, he is no longer detained in Cyprus, it is not possible to make an order of habeas corpus as has been applied for by him; and, I may add that if he was remanded into further custody after the 6th April 1983—and I have not any material before me indicating what happened after that date—the validity of an order for detention of the applicant after such date (if any such order was ever made) cannot be determined in the present proceedings, but it ought to have been challenged by means of an application for an order of habeas corpus filed in respect of any further detention of the applicant. 25 30

Of course, there is nothing to prevent the applicant from pursuing any other remedy that may be available to him for the purpose of testing the legality of his detention pursuant to the remand order made on the 29th March 1983. 35

Finally, it is not necessary, in my opinion, for me to decide in this case about the legality of the detention on remand of the applicant, on the strength of the order which was made, as aforesaid, on the 29th March 1983, only for the purpose of
5 deciding whether or not to award the costs of this application in favour of the applicant, because I have formed the view, in the light of all relevant considerations, including the fact that this application was initially filed both for an order of habeas corpus and for an order seeking leave to apply for an order
10 of certiorari and then the application for leave to apply for an order of certiorari was discontinued, that I would not have awarded costs, in any event, in favour of the applicant even if I had found that his complaint in relation to his detention on remand was justified.

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Order accordingly.