

(2011) 07 DEL CK 0277

In the Delhi High Court

Case No : Writ Petition (Criminal) 1081 of 2010

Avtar Singh Grewal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Extradition Act, 1962 — Section 21, 31(1), 5, 7, 7(3)
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2011) 6 AD 213 : (2011) 3 JCC 2023

Hon'ble Judges : Manmohan Singh, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : K.T.S. Tulsi, Sr, V.K. Ohri, Maheen Pradhan and Akshay Malik, for the Appellant; A.S. Chandhiok, ASG, Baldev Malik, A.K. Wali and P.S. Parmar, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—In this writ petition, the Petitioner has prayed that the order dated 19.07.2010 passed by the learned ACMM, New Delhi directing the detention of the Petitioner pursuant to the inquiry report dated 09.07.2010 be set aside and the Petitioner be set at liberty. The impugned inquiry report dated 09.07.2010 was made by the learned ACMM under the provisions of The Extradition Act, 1962 (hereinafter referred to as "the said Act"). The impugned order dated 19.07.2010, whereby the Petitioner, being a fugitive criminal, was committed to prison to await the orders of the Central Government, was also passed pursuant to the inquiry report under the said Act.

2. Mr K.T.S. Tulsi, the learned senior counsel, appearing on behalf of the Petitioner, has challenged the said order on three counts. The first ground is based on the doctrine of "Speciality" and specifically on Section 31(1)(c) of the said Act. It was argued that the State of Arizona in the United States of America, where the Petitioner is sought to be tried, permits an extradited person to also be tried for crimes / offences other than those for which he was extradited.

According to the learned Counsel for the Petitioner, this provision is to be found in the Code of Criminal Procedure, Chapter 51: Fugitives from Justice and specifically in Article 51.13, para 26, which, according to the learned Counsel for the Petitioner, is the Code of Criminal Procedure applicable in the United States of America. Thus, according to the learned Counsel for the Petitioner, the provisions of Section 31(1)(c) of the said Act are triggered and, therefore, the fugitive criminal is not to be surrendered or returned to the United States of America.

3. The second point urged before us by the learned Counsel for the Petitioner was that Article 8 of the Extradition Treaty between the Government of the United States of America and the Government of the Republic of India entered into on 25.06.1997 in Washington, USA (hereinafter referred to as "the said Treaty") would also come into play and, therefore, the Requested State may refuse extradition. Article 8 of the said Treaty deals with "Capital Punishment" and stipulates that when an offence, for which extradition is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may refuse extradition, unless, of course, the conditions stipulated in Clauses (a) or (b) contained therein are fulfilled. According to the learned Counsel for the Petitioner, the offence, *inter alia*, made out as per the indictment, includes the death sentence. He submitted that, according to him, under the Indian Penal Code, 1860 (hereinafter referred to as "IPC"), the offence would not amount to murder, but would be one which would fall under Exception No. 1 or Exception No. 4 in Section 300 IPC. Thus, it was submitted by the learned Counsel for the Petitioner that the offence would not be murder, but would be culpable homicide not amounting to murder. As such, it would not be punishable u/s 302 IPC, but u/s 304 IPC, even if the prosecution case is established. If that were to be so, according to the learned Counsel for the Petitioner, since the punishment u/s 304 does not include a death sentence, there would be a violation of Article 8 of the said Treaty if the Petitioner is extradited to the United States of America.

4. The third and the final point urged by the learned Counsel for the Petitioner was that the documents accompanying the request for extradition were not duly authenticated in accordance with Article 10 of the said Treaty and, therefore, the procedural safeguard had not been complied with. Consequently, it was submitted, the Petitioner ought not to be extradited and the impugned order be set aside.

5. Mr A.S. Chandhiok, the learned Additional Solicitor General, appearing on behalf of the Union of India, controverted the arguments advanced on behalf of the Petitioner. He, first of all, submitted that the doctrine of "Speciality", that was sought to be invoked by the Petitioner, has not at all been violated in the present case. He submitted that Section 31(1)(c) which enshrines the said Treaty, has not been contravened in the present case. The reference to Article 51.13 of the Code of Criminal Procedure on the part of the learned Counsel for the Petitioner is misplaced inasmuch as it does not deal with the laws of the State of Arizona,

but it pertains to the State of Texas. Moreover, he submitted that even if there were to be a similar provision in the Code of Criminal Procedure pertaining to the State of Arizona, that would be of No. consequence because, in the present case, we are concerned with international extradition, whereas that provision relates to extradition in between the States of the United States of America.

6. With regard to the plea based on Article 8 of the said Treaty, Mr Chandhiok submitted that the arguments advanced by the learned Counsel for the Petitioner are once again not in consonance with the plain meaning of Article 8 of the said Treaty. He submitted that the argument is based on a presumption that the case against the Petitioner is one of culpable homicide not amounting to murder. He submitted that the facts, as they stand, are that the Petitioner has been indicted for murder and it is a matter of trial as to whether the prosecution is able to establish this charge or not. At this stage, it cannot be said, *prima facie*, that the case is not of murder. Thus, according to Mr Chandhiok, the Petitioner cannot take any aid or assistance from Article 8 of the said Treaty.

7. Lastly, Mr Chandhiok submitted that even the plea with regard to documents not being in conformity with Article 10 of the said Treaty, is not tenable. He submitted that all the documents were certified in the manner prescribed and they have been authenticated as such. He also submitted that the documents have been received by the Government of India from the United States Government in a condition which clearly indicates that they have not been tampered with inasmuch as the seals are intact. Consequently, Mr Chandhiok submitted that there is No. infirmity or illegality in the impugned inquiry report dated 09.07.2010 and / or the order dated 19.07.2010, whereby the Petitioner has been committed to prison by the learned ACMM to await the orders of the Central Government. He, therefore, submitted that the writ petition be dismissed.

8. Before analyzing the arguments advanced by the counsel for the parties, it would be appropriate if the background facts leading to the extradition request are briefly mentioned. As per the documents on record, the case against the Petitioner is that on 30.03.2007, the police authorities of Phoenix, Arizona, USA found the dead body of one Navneet Kaur in her home at 4218, East Redwood Lane, Phoenix. The police also found a broken glass in the kitchen floor, a knife on the bed of the Master Bedroom and a ceiling fan torn away from the ceiling. The body of Navneet Kaur was found lying face down in a bath tub located on the first floor of the said house. There were blood stains throughout the house and primary indications were that Navneet Kaur had suffered blunt force trauma and strangulation as a cause of her death. A note which purportedly was signed by the fugitive criminal (the Petitioner herein), confessing to his killing his wife (Navneet Kaur) and stating his intent to kill himself also was found in the said home. One Mr Ganesh Kumar Kodavuru, a neighbour of the deceased, had seen the Petitioner backing out from the driveway of the deceased in a black BMW car. The Petitioner is said to have spoken briefly to the said neighbour and then parked the said BMW car in the garage of the house and then left the place in a

taxi. The investigation further revealed that the Petitioner, who resides in Abbotsford, British Columbia, Canada, flew to Phoenix from Vancouver on 29.03.2007 following a discussion with Navneet Kaur during which she allegedly told him that she wanted a divorce. The prosecution case against the Petitioner is further that friends of the deceased Navneet Kaur had told the investigating authorities that she (Navneet Kaur) had narrated to them that she had asked her husband (the Petitioner herein) for a divorce and that he had told her that a divorce would only happen if she were dead. Further investigation revealed that from the Petitioner's credit card activity, the Petitioner, following the death of Navneet Kaur, purchased an airline ticket to Newark to New Jersey, USA and from there a ticket to New Delhi, India where he arrived on 31.03.2007. On the basis of the investigation, the Superior Court of the State of Arizona in and for the County of Maricopa, on 03.04.2007, passed an indictment charging that in Maricopa County, Arizona:

COUNT 1:

AVTAR GREWAL, on or about the 29th day of March, 2007, intending or knowing that his conduct would cause death, with premeditation caused the death of NAVNEET KAUR, in violation of A.R.S. ?? 13-1101, 13-1105, 13-3601, 13-702, 13-702.01, 13-703, 13-703.01 and 13-801.

The State of Arizona further alleges that the offense charged in this Court is a dangerous felony because the offense involved the intentional or knowing infliction of serious physical injury upon NAVNEET KAUR, in violation of A.R.S. ? 13-604 (P).

OR IN THE ALTERNATIVE

AVTAR GREWAL, on or about the 29th day of March, 2007, acting either alone or with one or more persons, committed or attempted to commit Burglary, Second Degree, and in the course of and in furtherance of such offense, or immediate flight from such offense, AVTAR GREWAL or another person caused the death of NAVNEET KAUR, in violation of A.R.S. ?? 13-1105, 13-1101, 13-702, 13-702.01, 13-703, 13-703.01 and 13-801.

9. On 21.05.2007, the Embassy of the United States of America requested for the extradition of Avtar Singh Grewal (the Petitioner herein) to the United States in connection with the said indictment. It may also be pertinent to mention that the Petitioner had been arrested by the authorities in India at the Indira Gandhi International Airport on 31.03.2007 pursuant to an Interpol Red Notice.

10. Thereafter, by an order dated 28.05.2007 u/s 5 of the said Act and pursuant to the said Treaty, the learned Additional Chief Metropolitan Magistrate (ACMM), Patiala House Courts, New Delhi was requested to inquire into the alleged offence. The extradition request alongwith all enclosures received from the Government of USA for the extradition of the Petitioner, including the warrant of arrest issued by the Superior Court of the State of Arizona was sent alongwith

the said order dated 28.05.2007. Thereafter, the learned ACMM conducted the inquiry and, after examining the evidence on record, came to the conclusion that the prescribed procedure had been followed inasmuch as the extradition had been received through diplomatic channels alongwith the documents and the required documents as per Article 9(1)(2)(3) of the said Treaty. He also concluded that (a) the offence alleged against the Petitioner was an extraditable offence; (b) the information and the material furnished by the Requesting State (USA) alongwith the request for extradition, prima facie, showed the commission of the offence alleged against the Petitioner; and (c) a prima facie case was made out in support of the requisition by the Government of USA for extradition of the Petitioner. By virtue of the said inquiry report, the Petitioner was also informed of his right to file a written statement in terms of Section 7(4) of the said Act for the consideration of the Central Government. Thereafter, on 19.07.2010, by a separate order, the Petitioner was directed to be committed to prison to await the decision of the Government of India on his extradition.

11. As observed in *Daya Singh Lahoria etc. Vs. Union of India and Others etc.*, , extradition is always necessary and No. fugitive can be given an impression that he can commit the offence and flee from a country by taking shelter in a foreign country. The Supreme Court, however, cautioned that, at the same time, surrender must be preceded by proper precautions to the effect that nobody is denied the due process of law and nobody is being made a victim of political vindictiveness. The Supreme Court further emphasized that extradition is practised amongst nations essentially for two reasons - firstly, to warn criminals that they cannot escape punishment by fleeing to a foreign territory and, secondly, it is in the interest of the territorial State that a criminal, who has fled from another territory after having committed a crime, and taken refuge within its territory, should not be left free, because he may again commit a crime and run away to some other State. In the same decision, the Supreme Court observed that the doctrine of "Speciality" is yet another established rule of international law relating to extradition. According to the doctrine, when a person is extradited for a particular crime, he can be tried for that crime only and, if the Requesting State deems it desirable to try the extradited fugitive for some other crime committed before his extradition, the fugitive has to be placed in a State as existed prior to his extradition. In other words, he has to be returned to the State which granted the extradition and a fresh extradition has to be requested for the latter crime. As observed by the Supreme Court, the said Act makes a special provision to that effect and in view of Section 21 thereof, an extradited fugitive cannot be tried in India for any offence other than the one for which he has been extradited unless he has been restored to or has had an opportunity to return to the State which has surrendered him. The Supreme Court made it clear that the doctrine of "Speciality" is, in fact, a corollary to the principles of double criminality, and the aforesaid doctrine is premised on the assumption that whenever a State uses its formal process to surrender a person to another State for a specific charge, the Requesting State shall carry out its intended purpose of

prosecuting or punishing the offender for the offence charged in its request for extradition and none other.

12. As indicated above, the learned Counsel for the Petitioner had sought to invoke this doctrine of "Speciality" as also the provisions of Section 31(1)(c) of the said Act by contending that, because the Code of Criminal Procedure of the State of Arizona permits extradited fugitive criminals to be tried for crimes other than those for which he was extradited, the Petitioner ought not to be surrendered to the United States of America. We entirely agree with the submissions made by Mr Chandhiok that, in the present case, there is neither a violation of the general doctrine of "Speciality" or the specific provisions of Section 31(1)(c) of the said Act. We also agree with Mr Chandhiok in his submission that Chapter 51 of the Code of Criminal Procedure which is sought to be invoked by the learned Counsel for the Petitioner, does not, at all, pertain to the State of Arizona. However, we find that there is a similar provision in Section 13-3866 (No Right of Asylum) in Title 13 of the Arizona Revised Statutes which deals with the Code of Criminal Procedure of the State of Arizona. The said Title 13 of the Arizona Revised Statutes comprises of 46 Chapters. Article 5 of Chapter 38 is the Uniform Criminal Extradition Act and Comprises of Sections 13-3841 to Sections 13-3870.02. Section 13-3866 reads as under:

13-3866. No. right of asylum

After a person has been brought back to this state upon extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

13. It is, of course, similar to para 26 of Article 51.13, which was referred to by the learned Counsel for the Petitioner, although, that pertained to the State of Texas. But, notice must also be taken of Section 13-3842 (Fugitives from Justice; Duty of Governor), which reads as under:

Subject to the provisions of this article, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

14. A plain reading of Section 13-3842 would indicate that Article 5 of Chapter 38 deals with Extradition between one State and another State within the United States. In fact, a reading of all the sections of Article 5 of Chapter 38, which is essentially the Uniform Criminal Extradition Act, would indicate that the extradition proceedings referred to therein are in relation to extradition from one State of the United States of America to another State thereof. This is also clear from the definition of State given in Section 13-3841 (4), wherein the word "State", when referring to a State, other than the State of Arizona, has been

defined to mean any other State or territory, organized or unorganized of the United States. It does not have any reference to a foreign State, such as India. Therefore, we are clearly of the view that reference to the Code of Criminal Procedure of Arizona would not be of any consequence inasmuch as the international extradition is the subject matter of the said Treaty and is not a matter of a State law and cannot be controlled by the provisions of Arizona Code of Criminal Procedure or the Uniform Criminal Extradition Act of the State of Arizona. Thus, what would govern the extradition would be the said Treaty itself.

15. Article 17 of the said Treaty incorporates the rule of Speciality and reads as under:

Article 17

Rule of Speciality

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:

(a) the offense for which extradition has been granted or a differently denominated offense based on the same facts on which extradition was granted, provided such offence is extraditable or is a lesser included offense;

(b) an offense committed after the extradition of the person; or

(c) an offence for which the executive authority of the Requested (27) State consents to the person's detention, trial, or punishment. For the purpose of this subparagraph:

(i) the Requested State may require the submission of the documents called for in Article 9; and

(ii) the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorize, while the request is being processed.

2. A person extradited under this Treaty may not be extradited to a third State for an offense committed prior to his surrender unless the surrendering State consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:

(a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or

(b) that person does not leave the territory of the Requesting State within 15 days of the day on which that person is free leave.

It is clear that Article 17 of the said Treaty specifically provides that a person

extradited under the said Treaty is not to be detained, tried or punished in the Requesting State (United States of America, in the present case) except for the offence for which extradition had been granted or a differently denominated offence based on the same facts, on which extradition was granted, provided such offence is extraditable or is a lesser included offence. This provision contained in Article 17 of the said Treaty would clearly govern the extradition of the Petitioner, being a case of international extradition.

16. Section 13-3866 of the Arizona Revised Statutes would, therefore, not be applicable to the present extradition proceedings. Consequently, there is No. violation of either the generally accepted doctrine of "Speciality" or the provisions thereof incorporated in Article 17 of the said Treaty and Section 31(1)(c) of the said Act. Consequently, the plea raised on behalf of the Petitioner on this aspect of the matter is clearly untenable.

17. We now come to the next submission made on behalf of the Petitioner. It was contended, as pointed out above, that Article 8 of the said Treaty enables the Requested State to refuse a request for extradition when the offence for which extradition is sought is punishable by death under the laws in the Requesting State, but is not punishable by death under the laws in the Requested State. In the context of the present case, it was submitted that if the offence for which extradition is sought is punishable by death in the USA, but is not punishable by death under the laws prevalent in India, the Government of India could refuse extradition. It was then contended that from the facts, as laid out in the extradition documents, the offence that could, if at all be made out, would be of culpable homicide not amounting to murder and would, therefore, not be punishable with death under the laws as applicable in India, although it may be punishable with death in the USA. Thus, as per the contention, it is reason enough for the Government of India to refuse extradition. We are not at all impressed by this argument. As rightly observed and noted by the learned ACMM, this Court in the case of Smt. Nina Pillai and Ors. v. Union of India and Ors. Cri.L.J. 2359, had observed that it is now fairly well-settled that the Magisterial inquiry, which is conducted pursuant to the request for an extradition, is not a trial. The said inquiry decides nothing about the innocence or guilt of the fugitive criminal and that the main purpose of the inquiry is to determine whether there is a prima facie case or a reasonable ground which warrants the fugitive criminal being sent to the Requesting State. This Court had made it clear in the said case that the jurisdiction in an extradition inquiry under the said Act is limited to the former part of the request and does not at all concern itself with the merits of the trial.

18. The objective of Section 7 of the said Act is to ensure that the fugitive criminal, whose extradition has been sought by a Requesting State, is in accordance with the procedure set out in the Act and, secondly, that the offence for which the fugitive criminal is accused or has been convicted in the foreign state, is not an offence of a political character or is not an extradition offence. If

the Magistrate is of the opinion that a prima facie case is not made out in support of the requisition by the Requesting State, he, by virtue of Section 7(3), is mandated to discharge the fugitive criminal. On the other hand, if the Magistrate is of the opinion that a prima facie case is made out in support of the requisition of the foreign State, he, by virtue of Section 7(4) of the said Act, may commit the fugitive criminal to prison to await the orders of the Central Government and shall also report the result of his inquiry to the Central Government. He is also required to forward together with such report, any written statement which the fugitive criminal may submit for the consideration of the Central Government.

19. It is, therefore, clear from a reading of the provisions of the said Act and, in particular Chapter II thereof, that the scope of a Magisterial Inquiry under the said provisions cannot be equated with a full-fledged trial. All that the Magistrate has to see is that there is a prima facie case in support of the requisition. At this stage, the Magistrate is not required to go into a detailed examination of whether the offence made out is culpable homicide not amounting to murder and as to whether it falls under one of the exceptions specified in Section 300 IPC or not. That is a subject matter of trial and can only be determined in a full-fledged trial. Therefore, the argument raised by the learned Counsel for the Petitioner that the offence alleged to be made out against the Petitioner is not murder and, therefore, not punishable with death in India is not tenable at this stage. A prima facie examination reveals that the indictment has been correctly made and that a prima facie case has been made out in support of the requisition by the Government of the United States of America. Once it is clear, prima facie, that the offence, for which the Petitioner has been charged, constitutes murder under the Indian law, there is No. question of invoking Article 8 of the Treaty requiring the Government of India to refuse extradition. In any event, we may also point out that, as in the United States of America, so also under the Indian Penal Code in India, murder is an offence which is punishable with life imprisonment or even death. Thus, there is No. scope for the Petitioner to take the plea that the Government of India should refuse extradition in the context of Article 8 of the said Treaty.

20. This brings us to the third and the last plea raised by the learned Counsel for the Petitioner and that is with regard to the documents accompanying the request for extradition allegedly not being duly authenticated in accordance with Article 10 of the said Treaty. Article 10 of the said Treaty reads as under:

Article 10

Admissibility of Documents The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:

(a) in the case of a request from the United States, they are certified by the principal diplomatic or principal consular officer of the Republic of India resident in the United States;

- (b) in the case of a request from the Republic of India, they are certified by the principal diplomatic or principal consular officer of the United States resident in the Republic of India, as provided by the extradition laws of the United States; or
- (c) they are certified or authenticated in any other manner accepted by the laws in the Requested State.

It is apparent that the documents which accompany an extradition request are to be received and admitted in evidence in extradition proceedings if, in view of Clause (a) of Article 10, in the case of a request from the United States of America, the documents are certified by the Principal Diplomatic or the Principal Consular Officer of the Republic of India resident in the United States of America.

21. Mr Chandhiok had referred to page 57 of the paper book which is a copy of a Certificate of Authentication dated 16.05.2007 issued by the First Secretary (Consular), Embassy of India Washington D.C., USA. The Certificate of Authentication clearly indicates that the said First Secretary / Consular had certified that the annexed papers, being the official documents provided by the Government of USA proposed to be used upon an application to the extradition from India of Mr Avtar Singh Grewal (the Petitioner herein), charged with certain criminal offences alleged to have been committed in USA, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunal in India, as required under the Indo-US Extradition Treaty. We also note that the Certificate of Authentication alongwith the annexed papers are sealed with a ribbon bearing a seal of the Consular Division, Embassy of India. The seal has not been tampered with. Nor has the seal of the Government of the United States of America alongwith the ribbon on the annexed documents been tampered with. Page 58 of the paper book is a copy of the seal and ribbon affixed by the Department of State and the signatures thereon of the Secretary of State, USA authenticated by the Assistant Authentication Officer, Department of State. It is also indicated at the bottom of the said certificate that the certificate is not valid if it is removed or altered in any way whatsoever. There is No. evidence of any removal or alteration of any of the documents which have been sealed in the manner indicated above. Therefore, the entire set of documents, which accompany the extradition request, is to be admitted as evidence in extradition proceedings. The learned ACMM has rightly done so.

22. The argument of the learned Counsel for the Petitioner is based on the evidence of PW-1 (Mr M.R. Qureshi) Under Secretary, Ministry of External Affairs) that No. list of enclosures accompanied the note from the Indian Embassy and the number of pages accompanying the note are also not mentioned. It was contended by the learned Counsel for the Petitioner that this would reveal that there is No. indication as to how many pages were contained in the annexed papers and which were those pages and, therefore, the authentication is not proper. We do not accept this argument inasmuch as the Respondents have clearly established and shown that the documents, as received from the United

States Government, have been transmitted to India. There has been No. tampering with the seals and, therefore, the non-mentioning of the number of pages or the list of such documents being separately indicated by the Principal Consular Officer of India resident in the United States, is of No. consequence. The fact remains that the documents which accompany the extradition request, were certified by the First Secretary (Consular), Embassy of India Washington D.C., USA, who is undoubtedly a Principal Officer of the Republic of India resident in the United States of America. As a result, even this plea of the Petitioner is without any merit.

23. From the above discussion, we find No. infirmity or illegality in the order dated 19.07.2010 or the inquiry report of 09.07.2010 made by the learned ACMM. We may also point out that we are not sitting in appeal over the impugned order / report. The Petitioner has invoked our extraordinary writ jurisdiction and, in doing so, we do not have to examine as to whether the inquiry report / order is right or wrong, but we have to examine whether the same are legal or illegal and whether the procedure prescribed in the Extradition Act, as also in the said Treaty, have been followed or not. We have already pointed out that we find No. illegality in the impugned report / order and we are of the view that the procedure has been correctly followed.

24. In view of the foregoing discussion, the writ petition has No. merit and the same is dismissed. The parties are left to bear their own costs.