

(2014) 11 DEL CK 0253
In the Delhi High Court
Case No : W.P.(Crl) 2210/2014

Joseph Palanivel Jeyapaul

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 200, 228, 482
Evidence Act, 1872 — Section 10, 3, 90
Extradition Act, 1962 — Section 10, 29, 5, 7, 7(3)
Land Acquisition Act, 1894 — Section 51A
Penal Code, 1860 (IPC) — Section 354, 375, 506

Citation : (2014) 11 DEL CK 0253

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : Mohit Mathur, K.V. Balakrishnan, Badar Mehmood and Praman N. Mathur, Advocate for the Appellant; Ripu Daman Bhardwaj, CGSC, T.P. Singh, Advocate and D.K. Ghosh, Consultant - Extradition, Advocate for the Respondent

Judgement

Pratibha Rani, J.—The Petitioner Joseph Palanivel Jeyapaul has invoked the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India and exercise of inherent powers vested in this Court under Section 482 Cr.P.C. praying that the Extradition Inquiry Report dated 25.08.2014 by learned ACMM, Patiala House Courts may be set aside and he be discharged.

2. It may be noted here that as per averments made in para 23 of the writ petition, earlier the Petitioner has filed W.P.(crl.) No. 1856/2014 which was dismissed as premature on 16.09.2014. However, in para 22 of the writ petition, it is mentioned that the Petitioner filed a representation dated 01.09.2014 in terms of Section 7(4) of Extradition Act, 1962 to the Government of India seeking his discharge but no communication has been received by the Petitioner in this regard till date.

3. However, perusal of the proceedings dated 31.10.2014 reveals that this writ

petition has been filed after communication to the Petitioner rejection of the representation dated 01.09.2014 of the Petitioner by Government of India on 30.10.2014. On 31.10.2014, on urgent mentioning at 4.00 pm, when this writ petition was taken up for hearing, learned counsel for the Petitioner submitted that he received a communication through some relation of the Petitioner about the rejection of the representation of the Petitioner by Union of India. Learned counsel for the Petitioner submitted that on receipt of said communication, he has filed this writ petition. Surprisingly, in the prayer clause of this writ petition, the order dated 30.10.2014 passed by Union of India has not been challenged. The prayer made in the present writ petition is to the following effect :

"set aside/quash the Extradition Inquiry Report dated 25.08.2014 passed by Shri Ajay Garg, ACMM, Patiala House Courts, New Delhi, in case being OLD CC No. 48/1/11 and New CC No. 13/1/13 titled Union of India v. Joseph Palanivel Jeyapaul and discharge the Petitioner and render justice."

4. Notice of the writ petition was sent to Respondent/Union of India.

5. Perusal of the record reveals that on the basis of Note Verbal No. 2011-127/CONS dated 01.02.2011 received from the Embassy of USA and the order No. T-413/18/2011 dated 08.03.2011 passed by Government of India in exercise of its powers conferred by Section 5 of Extradition Act, 1962, the learned Extradition Magistrate conducted an inquiry as to the extraditability of the Petitioner for offences involved, by determining whether a prima facie case exists in terms of The Extradition Act, 1962 and the Extradition Treaty between the Government of Republic of India and the Government of USA and other applicable laws.

6. The extradition of the Petitioner was sought pursuant to his indictment in a case of criminal sexual conduct committed in United States of America, details of which are given in paras 14 to 28 of the Prosecutor's Affidavit under the heading "SUMMARY OF FACTS".

7. Charges, Potential Sentences and Statutory Provisions, as incorporated in Prosecutor's Affidavit, are as under :

"CHARGES AND POTENTIAL SENTENCES

6. Specific violations charged in the Complaint and the Warrant of Arrest are as follows :

(a) Count One charges Criminal Sexual Conduct in the First Degree in violation of Minnesota Statute ?609.342, Subd.1(e) (i) .

(b) Court Two charges Criminal Sexual Conduct in the First Degree in violation of Minnesota Statute ?609.342, Subd. 1(c) .

7. The maximum sentence which may be imposed upon conviction of Joseph Palanivel Jeyapaul of Count One of the Complaint consists of 30 years imprisonment and/or a \$40,000 fine; of Count Two 30 years imprisonment and/

or a \$40,000 fine.

STATUTORY PROVISIONS

8. The statutes cited in the Complaint and the Warrant of Arrest which Joseph Palanivel Jeyapaul is charged with having violated, including applicable penalties, and which form the basis of the request for extradition are : Minnesota Statute ? 609.342, Subd. 1(e) (i) and Minnesota Statute ?609.342, Subd. 1(c) . The text of Minnesota Statute ?609.342 is attached as Exhibit E.

9. All of the statutes cited herein were part of the criminal laws of the State of Minnesota at the time of offenses alleged in the Complaint and when the Complaint was filed and are presently in full force and effect.

10. Violations of the statutes which form the basis of the charges in the Complaint issued against Joseph Palanivel Jeyapaul are felonies under the laws of the State of Minnesota, punishable by more than one year imprisonment.

11. The offenses charged in the Complaint and set forth in the Warrant of Arrest are offenses for which extradition may be granted under the laws of the United States."

On the point of limitation, it is mentioned in para 12 of Prosecutor's Affidavit, as under :

"12. Minnesota Statute ?628.26(f) , sets forth the statute of limitations which governs prosecution of the offenses charged in the Complaint. That Section provides :

"Indictments or complaints for violation of Section 609.342 to 609.345 if the victim was under the age of 18 years at the time the offense was committed, shall be found or made and filed in the proper Court within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities.

The Complaint charges offenses occurring during all fall of 2004. Since the Complaint was originally filed on December, 15, 2006 prosecution is not barred by the applicable statute of limitations."

8. Learned Extradition Magistrate recorded the statement of Mr.D.K.Ghosh. Consultant Extradition, Ministry of External Affairs and after giving an opportunity to the Petitioner to cross examine the witness, recording the statement of Petitioner herein, heard learned counsel for the parties at length.

9. By a reasoned order dated 25.08.2014, learned Extradition Magistrate recommended extradition of the Petitioner to United States of America. This writ petition has been filed by the Petitioner questioning the legality and validity of the order dated 25.08.2014 passed by learned Extradition Magistrate.

10. As noted above, though the Petitioner has not challenged the legality and validity of the order dated 30.10.2014 passed by Government of India, even oral

request was not made to this Court at the time of submissions to seek any amendment in the writ petition impugning the order dated 30.10.2014 passed by Government of India. However, when attention of learned counsel for the Petitioner was drawn to this flaw in the writ petition, he submitted that on his oral request, the prayer may be read as also impugning the order dated 30.10.2014 passed by Government of India whereby the representation dated 01.09.2014 of the Petitioner was rejected. This prayer was allowed.

11. I have heard Mr.Mohit Mathur, Advocate for the Petitioner as well as Mr.Ripu Daman, CGSC for the Union of India and also carefully gone through the record as well the brief written submissions filed on behalf of the parties.

12. Mr.Mohit Mathur, Advocate for the Petitioner has raised the following issues requiring quashing of Extradition Inquiry Report recommending extradition of the Petitioner :

(i) As per Article 7 of Extradition Treaty between the Government of Republic of India and the Government of the United States of America, extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws of the Requesting State. As per para 12 of the Prosecutor's Affidavit, which quotes Minnesota Statute ?628.26(f) about the law of limitation applicable in the case, the limitation had expired for the reason that the matter was reported to the law enforcement authorities in October, 2006 (page No. 43) and the second amended complaint (page No. 61) in the case No. 68-CR-06-465 filed on 28.12.2010 in the District Court for the County of Roseau in the State of Minnesota. Extradition Inquiry Report has been challenged on the ground that law of limitation as applicable to the Requested State, has been considered by learned Extradition Magistrate whereas as per Article 7 of the Extradition Treaty, the law of limitation applicable is of Requesting State.

(ii) Learned Extradition Magistrate was required to form an opinion about the existence of a prima facie case on the basis of information received from the Requesting State. However, the first complaint had not been received from the Requesting State and the extradition has been sought on the basis of second amended complaint as referred to in the Communication No. 2011- 127/CONS (at page No. 61 of this writ petition) . In the absence of first complaint, learned Extradition Magistrate could not have formed an opinion about the existence of a prima facie case against the writ Petitioner.

(iii) Learned counsel for the Petitioner has also questioned the existence of first complaint and effect of not supplying the copy of the same to the writ Petitioner.

(iv) There is no explanation given about what happened during the period between first complaint (filed in October 2006) and second amended complaint (filed on 28.12.2010) .

(v) Learned Extradition Magistrate, though recorded the contentions of the Petitioner in para 13 of the Extradition Inquiry Report, but failed to deal with all

the contentions raised therein.

(vi) Representation of the Petitioner has been rejected by Government of India by a non-speaking order.

13. Mr.Mohit Mathur, Advocate for the Petitioner has drawn the attention of this Court to the fact that as per Article 7 of Extradition Treaty between the Government of Republic of India and the Government of the United States of America, extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws of the Requesting State. Learned counsel for the Petitioner has also drawn the attention of this Court to the inquiry report by learned Extradition Magistrate wherein he has wrongly interpreted the provisions by observing that "Limitation has not expired as per the laws of Requested State i.e. India". Learned counsel for the Petitioner has relied upon *Surender Kaushik and Others Vs. State of Uttar Pradesh and Others*, , *T.T. Antony Vs. State of Kerala and Others*, , *In the Matter of Madhu Limaye and Others*, , *Manoj Vs. State of Madhya Pradesh*, and *D.K. Basu Vs. State of West Bengal*, in support of his contentions.

14. Mr.Ripu Daman, learned CGSC for the Respondent/Union of India submitted that the Extradition Magistrate is not required to go into the merits of the case but only to ascertain the questions as to :

(i) Whether the offence with which the Fugitive Criminal (FC) has been charged is an extradition offence?

(ii) Whether the documents in support of the extradition have been sent in accordance with the extradition Treaty? and

(iii) Whether the documents in support of the request indicate the existence of a prima facie case against the FC warranting his extradition to the Requesting State?

15. Learned CGSC for the Respondent/Union of India further submitted that the learned Extradition Magistrate is not required to look beyond the above three aspects and the only requirement to be satisfied is "prima facie case" and in this regard law is well settled that being Enquiry Court, the Extradition Magistrate is not required to appreciate the evidence on merits but to examine the case to form an opinion whether FC can be put to trial on the basis of information received and its admissibility. Learned CGSC for the Respondent/Union of India has relied upon *Sarabjit Rick Singh Vs. Union of India (UOI)*, , *Kamlesh Babulal Aggarwal Vs. Union of India (UOI)* and *Another*, , *Niranjan Patel Vs. UOI*, , *State of Rajasthan Vs. N.K.-The Accused*, , *State of Himichal Pradesh Vs. Gian Chand*, and *State of Madhya Pradesh Vs. Babulal*, in support of his contentions.

16. Before dealing with the rival contentions, first of all, it is necessary to refer to the scope of inquiry required to be conducted by learned Extradition Magistrate and thereafter to consider in what circumstances the said Extradition Inquiry Report and the order passed by Government of India can be interfered by this

Court in exercise of writ jurisdiction.

17. The scope of magisterial inquiry ordered under Section 5 of The Extradition Act, 1962 is well settled. The said inquiry does not decide about the innocence or guilt of the Fugitive Criminal. It is conducted only with a view to determine about the existence of a "prima facie case" or reasonable grounds which warrant the FC being sent to the demanding State. (Ref. Smt. Nina Pillai and others Vs. Union of India and others, .

18. In the case of Sarabjit Rick Singh vs. Union of India (Supra) , the Supreme Court has considered the scope and power of Extradition Magistrate. In para 35 of the report, it was held as under :

"35. In a proceeding for extradition no witness is examined for establishing an allegation made in the requisition of the foreign State. The meaning of the word "evidence" has to be considered keeping in view the tenor of the Act. No formal trial is to be held. Only a report is required to be made. The Act for the aforementioned purposes only confers jurisdiction and powers on the Magistrate which he could have exercised for the purpose of making an order of commitment. Although not very relevant, we may observe that in the Code of Criminal Procedure, 1973, the powers of the committing Magistrate has greatly been reduced. He is now required to look into the entire case through a very narrow hole. Even the power of discharge in the Magistrate at that stage has been taken away."

19. In the case of Kamlesh Babulal Aggarwal vs. Union of India & Anr. (Supra) , it was held that while holding an inquiry under Section 7 of The Extradition Act, 1962, the Magistrate is entitled to take evidence on all aspects other than as to whether the offence is of political character or not and/or is an extradition offence or not and that the other evidence would be as to the existence of a prima facie case.

20. While dealing with "what prima facie means" and the scope of inquiry under Section 7 of The Extradition Act, 1962, which lays down procedure before the Magistrate, it was further observed as under :-

"12. "Prima facie" has a definite connotation in law. It is defined as "at first sight" or "accepted as so until proved otherwise" or "on face of it", or "so far as it can be judged from the first disclosure." The prima facie case will prevail until contradicted and overcome by other evidence. While determining whether a prima facie case has been made out, the relevant consideration is whether on the evidence laid it was possible to arrive at the conclusion in question.

13. The petitioner, as aforesaid, while referring to the Schtrak case relied upon a passage in the judgment of Lord Reid only. In the judgment of Lord Hodson it is held that committal under the Extradition Act is on the same footing as committal for trial by a Magistrate in an ordinary case.

14. The Division Bench of this Court in Charles Sobhraj case (29) (1986) DLT 410

also held that the entire jurisdiction under the Act vested in the Magistrate is restricted to find out whether there is a prima facie case and that there is no further power vested in the Magistrate. It is perhaps for this reason that the Division Bench of this Court in Nina Pillai case held that the position was fairly well settled.

15. In our opinion, the power of the Magistrate in conducting an inquiry under Section 7 of the Act is akin to framing of the charge under Section 228 of the Code of Criminal Procedure, 1973. At the stage of the framing of charge even a strong suspicion founded upon material and presumptive opinion would enable the court in framing a charge against the accused. At that stage, the court possess wider discretion in the exercise of which it can determine the question whether the material on record is such on the basis of which a conviction can be said reasonably to be possible. The requirement of Section 228 also is of a prima facie case. Sufficiency of evidence resulting into conviction is not to be seen at that stage and which will be seen by the trial court. At that stage meticulous consideration of materials is uncalled for. The persons who are not examined by the original investigating agency may be examined by another investigating agency to make the investigation more effective. The materials so obtained could also be used at trial. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed. The sifting of evidence at this stage is permissible only for a limited purpose to find out a prima facie case but the court cannot decide at this stage that the witness is reliable or not. At the stage of framing of charge, evidence is not to be weighed. The court is not to hold an elaborate inquiry at that stage.

16. Section 7(3) and (4) of the Act in fact require a prima facie case only "in support of requisition". Reading the said provision Along with Section 29, we feel that the ambit of inquiry under Section 7 is in fact narrower than Section 228 CrPC and is limited to find that the fugitive is not being targeted for extraneous reasons.

17. This, according to us, is the test to be applied in conducting an inquiry under Section 7 of the Act and this is the ambit and scope of the inquiry and no more.

18. The counsel for the respondent has, besides relying upon Nina Pillai case and Darshan Kumar case also relied upon Sarabjit "Rick" case 2007 (93) DRJ 712 and Maninder Pal Singh Kohli Vs. Union of India (UOI) and Others, and Maninder Pal Singh Kohli Vs. The State and Another, .

19. In Sarabjit "Rick" Singh case another Division Bench of this Court, besides relying upon Nina Pillai case, in para 19 of the judgment further held that holding of an inquiry under Section 5 of the Act is only an enabling provision and does not cast an obligation on the Government to order an inquiry in every case of a request to extradite a person. Thus, the request for extradition could be

honoured even without a judicial scrutiny of the same. The Division Bench thus held that when the Government opted to ask for a Magisterial inquiry, its scope is only limited to find the existence of a prima facie case for extradition and that for such inquiry only the documents enclosed with the request for extradition and the statements of the investigating officers may suffice.

20. Again in Maninder Pal Singh Kohli case the grievance before yet another Division Bench was only that the findings recorded by the Extradition Magistrate under Section 7(4) of the Act far from being prima facie were conclusive. This Court nevertheless on interpretation of the law held that any finding under Section 7(4) of the Act necessarily has to be prima facie and could never be conclusive. Earlier a Single Judge of this Court also on an earlier petition of the same Maninder Pal Singh Kohli had also held that the object of extradition proceedings is mainly to find out if the request made by the foreign State has a sound basis and material which would justify the extradition of the person sought to be extradited. It was further held that the inquiry before the Magistrate in extradition proceedings cannot be converted into trial of the offence for which the extradition of the fugitive is sought. At the inquiry the Magistrate has only to find out if based on the evidence and material produced in support of the requisition of foreign State and that produced by the fugitive, a prima facie case is made out in support of the requisition and nothing more."

21. Now it is time to deal with the various contentions raised at bar on behalf of the Petitioner.

Contention No. (i)

22. The first contention raised on behalf of the Petitioner is that as per Article 7 of Extradition Treaty between the Government of Republic of India and the Government of the United States of America, extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws of the Requesting State. As per para 12 of the Prosecutor's Affidavit, which quotes Minnesota Statute ?628.26(f) about the law of limitation applicable in the case, the limitation had expired for the reason that the matter was reported to the law enforcement authorities in October, 2006 (page No. 43) and the second amended complaint (page No. 61) in the case No. 68-CR-06-465 was filed on 28.12.2010 in the District Court for the County of Roseau in the State of Minnesota.

23. In this regard, suffice it to note that alongwith the request, Prosecutor's Affidavit has also been filed. In para 1 of the Affidavit, the Prosecutor has mentioned about he being citizen of United States of America and resident of State of Minnesota and the Prosecutor of the proceedings captioned in the affidavit. In para 2, he has given the purpose of submitting the affidavit. In paras 3 and 4, he has given his background and experience. In para 12 of the affidavit, while dealing with the law of limitation, he has affirmed as under :

"12. Minnesota Statute ?628.26(f) , sets forth the statute of limitations which

governs prosecution of the offenses charged in the complaint. That Section provides :

"Indictments or complaints for violation of Section 609.342 to 609.345 if the victim was under the age of 18 years at the time the offense was committed, shall be found or made and filed in the proper Court within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities.

The Complaint charges offenses occurring during all fall of 2004. Since the Complaint was originally filed on December, 15, 2006 prosecution is not barred by the applicable statute of limitations."

Since alongwith the request for extradition of the Petitioner, Prosecutor's Affidavit is there about the fact that prosecution is not barred by applicable Statute of the limitation, the contention of the Petitioner that as per the law of limitation of the Requesting State, the prosecution has become barred by lapse of time, is liable to be rejected.

24. During the course of arguments, Mr.Mohit Mathur, Advocate for the Petitioner submitted that in the Extradition Inquiry Report, learned Extradition Magistrate has referred to the law of the Requested State whereas the law applicable has to be of the Requesting State and there is an error in understanding the applicability of law on the subject. No doubt, in para 16 of the Extradition Inquiry Report, the learned Extradition Magistrate has observed :-

"16. These counts are akin to offences of rape provided u/s. 375 IPC, Sexual assault punishable U/s. 354 IPC and criminal intimidation punishable U/section 506 IPC apart from other offences in India.

Admittedly punishment for these offences at both places i.e. Requesting State as well as Requested State are more than one year. Further these offences by no stretch of imagination can be called as political offences. Undisputedly FC has not been prosecuted for these offences in India i.e. Requested State. Limitation has not expired as per the laws of Requested State i.e. India."

25. I am in agreement with learned counsel for the Petitioner that law of limitation of the Requesting State has to be considered for purpose of Article 7 of the Extradition Treaty. But in view of para 12 of the Affidavit filed by the Prosecutor on the aspect of limitation and affirmation that as per law of the Requesting State, the present case is well within limitation, the Petitioner cannot derive any benefit on the basis of above observation (in para 16 of the Extradition Inquiry Report) .

Contention No. (ii)

26. Learned counsel for the Petitioner has vehemently argued that non-production of the first complaint filed in October, 2006 alongwith request for extradition, was sufficient to decline extradition for the reason that the learned

Extradition Magistrate was required to satisfy himself about existence of a prima facie case against the Petitioner before forming an opinion that Petitioner was required to be extradited to the Requesting State. It has been further submitted that there cannot be two FIRs on the basis of same accusations. What happened to the first complaint filed in October, 2006 and what was the nature of the investigation carried out on the basis of first complaint, is not known. Only the second amended complaint, which was filed on 28th December, 2010, was before the learned Extradition Magistrate and in the absence of first complaint, he could not have arrived at any conclusion about the existence of first complaint. Learned counsel for the Petitioner has relied upon *Surender Kaushik vs. State of U.P.(Supra)* and *T.T.Antony vs. State of Kerala (Supra)* which lay down the principles when second FIR may be lodged.

27. It is not necessary to deal with this contention for the purpose of disposal of this writ petition for the simple reason that as per the request sent by the Government of United States of America for extradition of the Petitioner, two complaints have been mentioned and extradition has been sought on the basis of second amended complaint dated 28th December, 2010.

Contention No. (iii)

28. No doubt, alongwith the request for extradition of the Petitioner, the first complaint has not been received. It is specifically mentioned in the request for extradition that Petitioner is being subjected to extradition on the basis of second amended complaint in the case No. 68-CR-06-465 filed on 28.12.2010 in the District Court for the County of Roseau in the State of Minnesota.

29. What is the effect of non-supplying of certain documents at the time of requesting for extradition, has been considered by the Supreme Court in the case of *Sarabjit Rick Singh vs. Union of India (Supra)* wherein it was contended that the affidavit enclosed with the extradition request, did not contain any document in support of the statement made in the said affidavit in which he had stated about the arrest of few alleged co-defendants, but no arrest memo or transcribes of the alleged conversations with the appellant, which had led to their arrest, had been annexed with the affidavit. The learned ACMM declined the request to supply the copies of the documents and after conducting an inquiry, recommended the extradition to United States of America.

30. Writ petition filed by the Petitioner questioning the legality and validity of the order passed by learned ACMM, was also dismissed by this Court. Appeal was filed before the Supreme Court vide Crl. A. No. 1705/2007 arising out of SLP No. 178/2007. The Supreme Court considered the documents sent by the Requesting State i.e. United States of America alongwith the request of extradition, which contained a certificate of authentication by the First Secretary (Consular) , Embassy of India, Washington DC in terms of the Treaty, a certificate from the Secretary of State certifying that the documents annexed thereto were under the authority of the Department of Justice of the United States of America and that

such seal is entitled to full faith and credit, a certificate of the Attorney General for the United States of America stating that Ernestine B. Gilpin, whose name was signed to the accompanying paper, was at the relevant time was an Associate Director in the Office of the International Affairs, Criminal Division, Department of Justice, United States of America and a certificate issued by Associate Director, International Affairs, Criminal Division, Department of Justice, United States of America. The meaning of word "evidence", scope of inquiry, power of Extradition Magistrate and what is requirement of Section 7 of the Extradition Act have been discussed by the Supreme Court in the following paragraphs of the report :-

"35. In a proceeding for extradition no witness is examined for establishing an allegation made in the requisition of the foreign State. The meaning of the word "evidence" has to be considered keeping in view the tenor of the Act. No formal trial is to be held. Only a report is required to be made. The Act for the aforementioned purposes only confers jurisdiction and powers on the Magistrate which he could have exercised for the purpose of making an order of commitment. Although not very relevant, we may observe that in the Code of Criminal Procedure, 1973, the powers of the committing Magistrate has greatly been reduced. He is now required to look into the entire case through a very narrow hole. Even the power of discharge in the Magistrate at that stage has been taken away.

36. Law in India recognizes affidavit evidence. (See Order IX of the Code of Civil Procedure and Section 200 of the Code of Criminal Procedure) . Evidence in a situation of this nature would, thus, in our opinion mean, which may be used at the trial. It may also include any document which may lead to discovery of further evidence. Section 3 of the Indian Evidence Act which defines "evidence" in an enquiry *stricto sensu* may not, thus, be applicable in a proceeding under the Act.

37. Section 10 of the Act provides that the exhibits and depositions (whether received or taken in the presence of the person, against whom they are used or not) as also the copies thereof and official certificates of facts and judicial documents standing facts may, if duly authenticated, be received as evidence. Distinction must be borne in mind between the evidence which would be looked into for its appreciation or otherwise for a person guilty at the trial and the one which is required to make a report upon holding an enquiry in terms of the provisions of the Act. Whereas in the trial, the court may look into both oral and documentary evidence which would enable him to ask question in respect of which the accused may offer explanation, such a detailed procedure is not required to be adopted in an enquiry envisaged under the said Act. If evidence *stricto sensu* is required to be taken in an enquiry forming the basis of a *prima facie* opinion of the Court, the same would lead to a patent absurdity. Whereas in a trial the court for the purpose of appreciation of evidence may have to shift the burden from stage to stage, such a procedure is not required to be adopted in an

enquiry. Even under the Code of Criminal Procedure existence of strong suspicion against the accused may be enough to take cognizance of an offence which would not meet the standard to hold him guilty at the trial.

38. Reliance has been placed by Mr. Vishwanathan, learned Counsel for the appellant, on Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, wherein interpreting Section 51A of the Land Acquisition Act this Court held that the certified copy of a registered sale deed would be admissible in evidence. The said decision, we may notice, has been approved by the Constitution Bench of this Court in Cement Corporation of India Ltd. Vs. Purva and Others, . It may be true that a document does not prove itself. Its contents, unless admitted, should be proved in terms of the provisions of the Evidence Act, unless the contents of the documents are said to be admissible by reason of a provision of a statute, as for example Section 90 of the Evidence Act. But what misses the aforementioned submission/contention is that whereas the contents of the document is to be proved for the purpose of trial but not for the purpose of arriving at an opinion in regard to existence of a prima facie case in an enquiry. Strict formal proof of evidence in an extradition proceeding is not the requirement of law. While conducting an enquiry the Court may presume that the contents of the documents would be proved and if proved, the same would be admitted as evidence at the trial in favour of one party or the other. We, therefore, are unable to accept the submission of Mr. Vishwanathan that even at this stage the affidavits by way of evidence of the accomplices Michael Ryan "O" Mealey and Alan Lane Blackly who had been arrested and pleaded guilty and had been cooperating with DEA Agent were required to be excluded from consideration by the learned Magistrate without any corroboration.

39. Our attention has been drawn to a decision of this Court in Ramgopal Ganpatrai Ruia and Another Vs. The State of Bombay, wherein this Court upon noticing the decisions of the Bombay High Court in Queen Empress v. Namdev Satvaji I.L.R. (1887) 11 Bom. 372 and of the Allahabad High Court in Lachman v. Juala I.L.R. (1882) All. 161 held that the Magistrate should commit the accused for trial if he is satisfied that sufficient grounds for doing so have been made out. It is difficult to apply those crucial words "sufficient grounds" in an extradition case.

Therein, this Court considering the evidence brought on records, posed a question as to whether the same constituted a prima facie case, or that the voluminous evidence adduced therein was so incredible that no reasonable body of persons could rely upon it.

40. Existence of prima facie case or bringing on record credible evidence at the stage of commitment is again a requirement of a statute. Section 7 speaks of manner, the jurisdiction and power of the Magistrate. It does not set the standard of proof. What is necessary for passing a judicial order may not *stricto sensu* be necessary for making a report."

In para 48 of the report, it was held as under :-

"48. In a case of this nature the second part of Section 10 of the Act would apply which does not contemplate production of any oral evidence by the Central Government. No fact needs to be proved by evidence. What is necessary is to arrive at a prima facie case finding that a case has been made out for extradition from the depositions, statements, copies and other informations which are to be gathered from the official certification of facts and judicial documents that would include the indictment by the Grand Jury."

31. In the case of Niranjana Patel vs. Union of India (Supra) , the request for extradition was made by the Government of USA without enclosing the copy of the judgment of conviction or a statement by a judicial authority that a person has been convicted. In para 17 of the report, it was held as under :

"In the present case, the Petitioner is a fugitive convict. Thus clause 4 of Article 9 of the Treaty would be applicable according to which a copy of the judgment of conviction or if such a copy is not available, a statement by a judicial authority that the person has been convicted has to be annexed with the extradition request. Learned counsel for the Petitioner contends that non-supply of conviction order has made the request non-est in law and in absence of such an order of conviction, an adverse presumption is liable to be drawn against the Requesting State as the Petitioner was not able to prove that the offences for which he was convicted are of political character for want of the copy of conviction order. I find no merit in these contentions. Although a copy of conviction order was not annexed with the extradition request, the order on sentence was annexed with the request in which the Sections under which the Petitioner was convicted were mentioned. Further the copy of the order on sentence was accompanied by the copy of statement indicating the offences for which petitioner has been convicted of. Article 9.4 (a) itself gives option of providing a statement by a judicial authority that the person has been convicted, if the copy of the judgment is not available. Thus the non-supply of copy of order of conviction does not ipso facto vitiate the inquiry proceedings under Section 5 of the Extradition Act."

32. Reverting to the case of the Petitioner herein, who is aggrieved for the reason that copy of the first complaint has not been supplied to him, suffice it to note that he has been sought to be extradited on the basis of second amended complaint. Even otherwise, in view of the limited scope of inquiry by the learned Extradition Magistrate and the letter of request being accompanied by all the necessary information and copy of the documents supported by Prosecutor's Affidavit to enable the learned Extradition Magistrate to satisfy himself about the existence of a prima facie case for purpose of extradition, merely because the first complaint filed in October, 2006 was not annexed with the letter of request by the Requesting State, is no ground to interfere with the impugned orders. In view of the above legal position, the effect of not sending the first complaint (filed in October 2006) by the Requesting State is of no consequence and the

Petitioner cannot seek quashing of Extradition Inquiry Report and his discharge on this ground.

Contention No. (iv)

33. In the Prosecutor's Affidavit, in para 29, it is specifically affirmed as under :-

"The victim, as a result of the sexual abuse, is on medication for anxiety and sleep deprivation. She has been diagnosed with Post Traumatic Stress Disorder and has flashbacks. The victim indicated that she has been hospitalized many times and continues to see a therapist weekly."

34. Otherwise also, it was not subject matter of inquiry by learned Extradition Magistrate about the progress and investigation from the date of filing of the first complaint till filing of the second amended complaint.

Contention No. (v)

35. The Petitioner is also aggrieved for the reason that various contentions raised at bar before learned Extradition Magistrate as recorded in para 13 of the Extradition Inquiry Report, have not been dealt with by learned Magistrate. The contentions raised before learned Extradition Magistrate, which have not been dealt with in the Extradition Inquiry Report, are :

(i) The Petitioner rendered services for more than 23 years and had an unblemished track record.

(ii) The Petitioner never indulged in any wrong doing and considering his reputation, he was invited to United State of America to serve the Church there.

(iii) He never fled from justice and returned to India on 31.08.2005 to attend his ailing mother and till then, there was no complaint against him.

(iv) Warrant of arrest issued against him on 16.03.2012 is illegal and in violation of his constitutional right for the reason that he was neither informed about the grounds of arrest nor produced before the Magistrate within 24 hours. Reliance in this regard was placed on Madhu Limaye & Ors. vs. Leachinsky (Supra) , Manoj vs. State of Madhya Pradesh (Supra) and D.K.Basu vs. State of West Bengal (Supra) .

36. Looking into the limited scope of inquiry, the above contentions were not required to be dealt with by the learned Extradition Magistrate in his Inquiry Report. The past track record of the Petitioner or no complaint being filed till he was in United State of America was also not a relevant factor to record satisfaction about existence of a prima facie case for limited purpose of extraditing the Petitioner. If the Petitioner had any grievance about the violation of his fundamental rights, he could have availed his remedy under the law and not in the inquiry proceedings before learned Extradition Magistrate. Thus, merely because, the contentions referred to in para 13 of the Extradition Inquiry Report, have not been dealt with by learned Extradition Magistrate, is no ground

to set aside the Extradition Inquiry Report.

Contention No. (vi)

37. On oral request of the Petitioner, he was allowed to challenge the order dated 30.10.2014 passed by Government of India, copy of which is placed on record as Annexure-R1 to the Counter Affidavit filed by the Respondent/Union of India. The communication dated 30.10.2014 by Ministry of External Affairs addressed to the Petitioner lodged at Central Jail No. 4, Delhi through concerned Superintendent, reads as under :

"Kindly refer to the representation dated September 1, 2014 seeking discharge from case filed by the Government of the United States of America for extradition.

The Appeal has been carefully examined and the Central Government does not find reasonable grounds to accept the appeal. This issues with the approval of the competent authority.

Yours faithfully,

Sd/-

Director (CPV) "

38. Despite the fact that the communication dated 30.10.2014 does not contain reasons for rejection of the representation, from the record it is made out that case of the Petitioner does not fall under any of the exceptions (i) the offence being trivial, (ii) for the reason of malafide, or (iii) for political reasons.

39. The scope of power of this Court in exercise of writ jurisdiction in a matter like the one in hand, has been explained in the case of Kamlesh Babulal Aggarwal vs. Union of India & Anr.(Supra) as under :

"This Court, exercising the writ jurisdiction, cannot substitute its opinion for the opinion of the ACMM. In fact, the Division Bench of this Court in Charles Sobhraj case has also held that the High Court in writ jurisdiction could not re-appreciate the evidence and could only examine whether the view taken by the Magistrate was a possible view or not. In a writ petition, this Court is concerned only with the decision making process and as to whether the view formed by the Magistrate could not have been formed by any reasonable thinking person at all. We have been taken through the material on record and are unable to accept that the view of the existence of the prima facie case taken by the ACMM could not have been taken by any reasonable person."

40. In the Extradition Inquiry Report by learned Extradition Magistrate as well in the decision dated 30.10.2014 of Government of India on the representation dated 01.09.2014 of the Petitioner, I am unable to find any fault either with the decision making process or with the view taken by the learned Extradition Magistrate while recording his satisfaction about existence of a prima facie case for the purpose of extraditing the Petitioner to the Requesting State.

41. Resultantly, the writ petition is hereby dismissed.

42. Copy of the order be given dasti to learned counsel for the parties under the signature of Court Master. Copy of the order be also communicated to the Petitioner through concerned Jail Superintendent.

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Since the writ petition has been dismissed, the applications have become infructuous and the same are accordingly dismissed.