
(2006) 03 DEL CK 0046

In the Delhi High Court

Case No : Writ Petition (Criminal) 1751 of 2005 & Writ Petition (Criminal) 23736 of 2005

Maninder Pal Singh Kohli

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 17-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401
Extradition Act, 1962 — Section 7(2)

Citation : (2006) 129 DLT 185 : (2006) 87 DRJ 796

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Charanjit Bakshi, for the Appellant; Mukta Gupta for R-1 and A.K. Vali, N.K. Matta, Sumeet, Pushkarna, Anand Jha for R-2, for the Respondent

Judgement

R.C. Jain, J.—This petition initially filed as a criminal revision petition u/s 401 Cr.P.C. was treated as a writ petition, seeks to challenge the order dated 14.9.2005 passed by the Additional Chief Metropolitan Magistrate, New Delhi on an application made by the petitioner herein, who is facing extradition proceedings at the behest of U.K. authorities for his extradition to U.K. in order to face trial for the commission of the offence of kidnapping, rape and murder of a certain Ms. Hannah Foster in U.K. It would appear that the extradition proceedings are at a sufficiently advance stage in as much as the evidence on behalf of the State has already been led and even two witnesses; one Mr. Ishpreet Singh, brother of the petitioner and second other witness have been examined from the side of the petitioner. The petitioner filed an affidavit of his wife Smt. Shalinder Kaur in support of his plea against extradition. At the same time, the petitioner prayed to the inquiry Court for summoning as many as seven more witnesses, all of them based in England, in support of his defense plea. The learned trial court vide the impugned order has declined the prayer of the petitioner made primarily on the ground that the relevance for the examination of those witnesses has not been explained and secondly, that there was no

powers with the court to secure and enforce the attendance of the witnesses based in U.K. in absence of any reciprocal treaty in that behalf.

2. On being noticed, a reply stands filed by the Union of India controverting the various grounds on which the impugned order is sought to be assailed.

3. I have heard Mr. Charanjit Bakshi, counsel appearing for the petitioner and Mr. A.K.Vali, counsel representing respondent No. 2 / Union of India and have bestowed my thoughtful consideration to their submissions.

4. The extradition of the petitioner in this case has been requested by the U.K. pursuant to an Extradition Treaty No. G.S.R.790(E) dated 30.12.1993 and the provisions of The Extradition Act, 1962. The enquiry being conducted by the learned Additional Chief Metropolitan Magistrate is essentially governed by the provisions of the Act and the said Treaty including Section 7(2) of the Act and Article 11(3) of the aforesaid Treaty, which are to the following effect:

7(2) Procedure before Magistrate: Without prejudice to the generality of the foregoing provisions, the Magistrate shall, in particular, take such evidence as may be produced in support of the requisition of the foreign State and on behalf of the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal accused or has been convicted in an offence of political character or is not an extradition offence.

11(3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.

5. A bare reading of Sub-section(2) of Section 7 (supra) would show that while the Magistrate holding an enquiry is to take such evidence as may be produced in support of the extradition request made by the foreign State, equally it is bound to take such evidence as may be produced or sought to be produced by a fugitive criminal including the evidence which can show that the offence of which he is accused or has been convicted, is an offence of political character or is not an extradition offence. It is, however, pertinent to note that this right given to the accused is not an unfettered right which can be extended to seeking to lead any evidence or examine any number of witnesses whether relevant or irrelevant or which has no nexus with the matter and does not advance the case of the petitioner in any way. The evidence talked of in Sub-section(2) of Section 7 has to be necessarily the relevant evidence. Learned counsel for the petitioner has attempted to show relevance of some of the witnesses out of the list which was submitted along with the application, who are based in U.K. It would appear to the Court that those witnesses, assuming for the sake of argument that they have some knowledge about the facts of the case would rather be more relevant

as defense witnesses if the petitioner is extradited and a trial takes place. 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. The enquiry before the Magistrate in extradition proceedings cannot be converted into the trial of the offence for which the extradition of the fugitive is sought. At the enquiry, 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. That being the legal position, the petitioner, in the opinion of this Court, was not justified in making prayer for summoning or production of as many as eight witnesses based in U.K. in the extradition proceedings pending before the Magistrate. This was clearly an attempt on the part of the petitioner to delay and obstruct justice.

6. This Court must, Therefore, hold that the impugned order does not suffer from any illegality or material regularity which calls for any interference by this Court. The petition is, accordingly, disposed of. However, so far as the wife of the petitioner- Mrs. Shalinder Kaur, is concerned, the petitioner would be at liberty to examine her if he so wishes on a date to be fixed by the learned Magistrate within a period of one month from today. Mr. Bakshi, learned counsel for the petitioner submits that neither the petitioner nor his wife Shalinder Kaur is in a financial position to arrange for the to and fro air passage for the travel of Mrs. Shalinder Kaur for the purpose of her examination in the Court and, Therefore, her expenses be borne out by the requesting State in accordance with Article 20 of the aforesaid Treaty. Mr. Vali opposes this request on the ground that it is for the petitioner to produce such evidence as he may desire at his expenses and the State should not be burdened with such expenses. This Court cannot accept such an objection because once it is found that the witness is relevant and to be examined, then the question of expenses would assume secondary importance. Had the witness been stationed in India, perhaps such an objection would not have come from the respondent and, Therefore, this Court is of the opinion that in case the petitioner or the witness herself is not able to arrange for the to and fro air passage from London, the same shall be borne by the requesting State in terms of Article 20 of the said Treaty. Mr. Bakshi has also expressed difficulty with regard to the grant of visa to Smt. Shalinder Kaur. Mr. Vali states that the respondent shall facilitate the issue of visa to Mrs. Shalinder Kaur for reasonable period of her visit to India for the purpose of her examination in the Court if an application is made in that behalf.

7. With these observations, the petition stands disposed of.

8. Copy of the order be given dusty to counsel for both sides.