

(1973) 03 DEL CK 0023

In the Delhi High Court

Case No : Criminal Miscellaneous Appeal No. 22 of 1973

Prem Sarup Puri

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 26-03-1973

Acts Referred:

Citation : (1973) ILR Delhi 499

Hon'ble Judges : S.I. Rangarajan, J; M.R.A Ansari, J

Bench : Division Bench

Advocate : A.K. Marwaha and R.L. Mehta, for the Appellant;

Judgement

S.R. Angarajan, J.

(1) This Order will dispose of Cr. Misc. (SCA) 23 and 24 of 1973 also. All these three Applications have been filed by P. S. Puri under Article 134(I)(c) of the Constitution of India for a certificate of fitness to appeal to the Supreme Court.

(2) A criminal prosecution is pending against Puri. The concerned Judicial Magistrate framed a charge against him u/s 468 I. P. C. in the matter or obtaining delivery of Passport No. 1-454020 as alleged therein.

(3) As against the framing of the said charge Puri filed Cr. Revision 224 of 1972 to quash the said charge; the State had filed another Criminal Revision 265 of 1972 urging that the learned Magistrate ought to have framed charges under Sect

(4) Shri R. L. Mehta, learned counsel for the State has opposed these applications on the only ground that the order passed by us is neither a judgment nor a final order within the meaning of Article 134(1)(c) of the Constitution. For this he relied on the decision of the Supreme Court in Tarapore and Co. Vs. V/O Tractors Export, Moscow and Another, in which it was held that an interlocutory order passed without finally determining the rights and obligations of the parties in a civil proceeding was not a final order within the meaning of Article 133(1) (a) and (b) of the Constitution, the language of which

is similar. The previous decision in Mohan Lal Magan Lal Thacker Vs. State of Gujarat, was relied upon as having superseded the view taken in the earlier cases. Repelling this contention Shah, J. (as his lordship then was), who spoke for the Supreme Court, observed that in Mohanlal Maganlal v. State of Gujarat the Supreme Court was only concerned with the filing of a complaint u/s 476 Criminal Procedure Code ., which was a self-contained proceeding which had been finally disposed of by an order directing the filing of a complaint u/s 205 read with Section 114 1. P. C. Shah, J. further pointed out that the previous decisions rendered by the Supreme Court (Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay, and AIR 1949 1 (Federal Court) had only been distinguished (in Tarapore case) as cases where orders had been passed in appeals and revisions and that it was specifically observed that different tests are applied to orders made in proceedings independence of the original or the main proceeding. A Division Bench of this Court consisting of Hardy, J. (as he then was) and Jagjit Singh, J. (in Ram Nath Aggarwal v. Delhi Administration, Cr. M. (SCA) 462 of 1969 in Cr. A. 45-D of 1964, decided on 5-11-1969) distinguished Mohanlal Maganlal's case and held that where the proceeding taken in a High Court did not dispose of the whole proceedings which were pending in the subordinate court the decision of the High Court cannot be regarded as final for the purpose of a appeal under Article 134(1)(c) of the Constitution. This view gains further support from the later decision of the Supreme Court in Tarapore's case.

(5) Shri R. L. Mehta has also drawn our attention to a decision of the Division Bench of the Andhra Pradesh High Court in Kudapa Subbana Vs. Chitturi Gandhi and Others, where the case law has been discussed. It was held, inter alia, that the test of finality of a judgment, decree or order is whether the order finally disposed of the rights of the Parties. If they are not so determined by the Courts in the ordinary way, it would not be a final order. Even though the result of the order of the High Court was to make the suit infructuous as framed, still it would not be final order and it would be merely an interlocutory order. Even if the order of the High Court decided an important and even a vital issue, but left the suit alive and directed its disposal in the ordinary way, the order would not a final one.

(6) In our order we have discussed not only the meaning of Article I of the Decree of Extradition in furtherance of which Puri was extradited to India for facing a criminal prosecution in respect of the above-said passport but also the legal affect of Section 21 of the India Extradition Act of 1962. Having pointed out the ambit and scope of the Extradition Decree and the legal position in India we observed as follows :

"IT is for the trying Magistrate to frame the appropriate charges in the light of our observations. He was clearly in error in framing a charge u/s 468 I. P. C., alone; for this the learned Magistrate was himself not entirely to blame; he seems to have been led into that error to some extent even by the stand taken by the prosecution, out of misconception of both the terms of the extradition

decree and of the legal position, to start with. It follows from what we have discussed above that no occasion arises for quashing the charge u/s 468 1. P. C. framed by the learned Magistrate as Puri requested to us to do".

III the view that no writ of habeas corpus could be issued if Pun was detained for undergoing a trial before a criminal court and that We had directed the learned Magistrate to frame the appropriate charges (after explaining the scope of the Extradition Decree and the legal position) the application for issuing a writ of habeas corpus was dismissed.

(7) As pointed out by the Supreme Court in Tarapore's case the proceeding which is pending before the concerned learned Magistrate has not come to an end by reason of our order. It is not, Therefore, permissible for Puri to ask us to certify this case as a fit one for appeal to the Supreme Court on the basis of Cr. Revision and Cr. Writ filed by him being dismissed or the Cr. Revision filed by the State being allowed by us. This Application is consequently dismissed.