
(1995) 04 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 81007/94S

Rosiline George

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-04-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Extradition Act, 1962 — Section 24, 7(4)

Citation : (1995) 04 KL CK 0017

Hon'ble Judges : M.M. Pareed Pillay, C.J.; T.V. Ramakrishnan, J

Bench : Division Bench

Advocate : Mathai M. Paikeday and Mohan Pulikal, for the Appellant; George Poonthottam for Central Government, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, C.J.—This is a petition for habeas corpus to command the Respondents to produce the Petitioner's husband Georgekutty Kuncheria before this Court and set him at liberty. It is also prayed by the Petitioner that there should be an order to discharge her husband u/s 24 of the Extradition Act, 1962.

2. Petitioner's husband was arrested by the police from his residence at Ernakulam on 12th April 1989 and he was produced before the Magistrate at Delhi on 17th April 1989 whereupon he was sent to Tihar Jail. Pursuant to a request by the Government of the United States of America for his extradition to that country to stand trial for violation of Federal fraud statutes and related offences allegedly committed by him during the period he had worked as an Officer of the Chase Manhattan Bank, New York during 1980 to 1985, proceedings have been initiated under the Extradition Act. In view of the letter of request received from the U.S. Embassy in New Delhi for the extradition of Georgekutty Kuncheria together with documents furnished by the Government of U.S.A. in support of their request, Central Government having been satisfied on the basis of the materials before it that the alleged offences should be enquired

into, directed the Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi to conduct an enquiry into the alleged offences. The Magistrate after enquiry submitted his report dated 19th November 1993 to the Central Government reporting that a prima facie case existed against Georgekutty Kuncheria. That was done u/s 7(4) of the Act.

3. Section 7(4) of the Act provides that if the Magistrate is of opinion that a prima facie case is made out in support of the requisition of the foreign State or Commonwealth country, he may commit the fugitive criminal to prison to await the orders of the Central Government, and shall report the result of his inquiry to the Central Government; and shall forward together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Central Government. Contention of the Petitioner is that her husband has submitted his representation and all along he has been awaiting the orders of the Central Government pursuant thereto and as he has been in jail for the past six years this is a case where he has to be discharged u/s 24 of the Act.

It is also contended by the Petitioner that as no order has been passed by the Central Government pursuant to the report of the Magistrate her husband ought to have been discharged and as that has not been done his custody can only be treated as illegal and that being the position, this is a case where a writ of habeas corpus has necessarily to be issued.

4. Section 24 of the Act provides that if a fugitive criminal who, in pursuance of this Act, has been committed to prison to await his surrender or return to any foreign State or Commonwealth country is not conveyed out of India within two months after such committal, the High Court, upon application made to it by or on behalf of the fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Central Government, may order such prisoner to be discharged unless sufficient cause is shown to the contrary. Relying on the above section Petitioner contended that as no orders have been passed by the Central Government and as no sufficient cause has been shown as against the discharge of her husband this is a case where certainly Section 24 can be invoked.

5. In view of the above contention, we have necessarily to consider as to whether this Court has jurisdiction to order discharge of the Petitioner's husband by invoking Section 24. Admittedly the order was passed by the Additional Chief Metropolitan Magistrate, New Delhi. As this Court has no jurisdiction over the Magistrate who submitted the report regarding the Petitioner's husband she can only approach that High Court having jurisdiction over the Magistrate who submitted the report to the Central Government with regard to her husband. As the report has been sent by the Magistrate, Petitioner can only move before the High Court having jurisdiction over that Magistrate. Contention of the Petitioner that it is open to her to move for the discharge of her husband from this High Court as her husband was arrested while he was residing within the jurisdiction of this Court is not tenable.

It is under valid orders of the Magistrate that her husband was arrested and produced before the Additional Chief Metropolitan Magistrate. That Magistrate u/s 7(4) opined that a prima facie case has been made out in support of the requisition against the Petitioner's husband and accordingly committed him to prison to await the orders of the Central Government. As that Magistrate has reported the result of his enquiry and as the detailed representation of the Petitioner's husband was also forwarded to the Central Government, it is true that the Central Government had to pass the order within two months from the date of report of the Magistrate. In a case where a petition has to be filed u/s 24 of the Act, it can only be filed before the High Court having jurisdiction over the Magistrate who submitted his report to the Central Government as provided u/s 7(4). Aggrieved party cannot pick and choose any other High Court with a prayer to discharge him u/s 24 of the Act. The aggrieved party can only file necessary petition for such discharge only before the concerned High Court. Contention of the Petitioner that her husband was arrested while he was at Ernakulam and so she can file petition u/s 24 before this Court is without any justification.

6. Next contention of the Petitioner is that the detention of her husband two months after the report of the Magistrate to the Central Government is illegal and as he was arrested from Ernakulam this Court has jurisdiction to issue a writ in the nature of habeas corpus. Learned Additional Central Government Standing Counsel pointed out that the aforesaid contention cannot be accepted as the Petitioner's husband was arrested by a valid order issued by the Additional Chief Metropolitan Magistrate. In other words, it is contended that Petitioner's husband was arrested on legal authority and even if it is held that his continued detention is not legally sustainable the only course open to the Petitioner is to have filed application u/s 24 of the Extradition Act for his discharge before the concerned High Court and as that has not been done, writ of habeas corpus cannot be issued from this Court. As the Petitioner's husband was arrested by a valid order issued by the Additional Chief Metropolitan Magistrate, it is not possible for us to hold that the Petitioner can seek the writ of habeas corpus from this Court.

7. Even on the basis of the contention of the Petitioner that the continued detention of her husband has become illegal as no orders have been passed by the Central Government pursuant to the report of the Magistrate it would not be possible for this Court to issue writ of habeas corpus as sought by the Petitioner as no part of the cause of action with regard to the illegal detention has arisen within the jurisdiction of this Court. As already noted, arrest of the Petitioner's husband was under lawful authority being based on the warrant issued by the Additional Chief Metropolitan Magistrate, New Delhi. Even if the continued detention of the Petitioner's husband is considered to be illegal, the remedy open to the Petitioner is to have moved an application before the concerned High Court u/s 24 or to have moved a writ of habeas corpus before that High Court. In the matter of issuance of habeas corpus by this Court it is not possible for us to hold that even a part of the cause of action has arisen within the jurisdiction of

this Court. Merely on the ground that Petitioner's husband was arrested from a place within the jurisdiction of this Court, it is not possible to hold that this Court has the jurisdiction to issue writ of habeas corpus when the detention becomes illegal within the jurisdiction of another High Court. It is pertinent to note that Petitioner's husband was arrested on valid warrant issued by the Additional Chief Metropolitan Magistrate. As his arrest was pursuant to a valid warrant, this Court could not have issued a writ of habeas corpus. Admittedly after the arrest he was taken beyond the jurisdiction of this Court. Even according to the Petitioner, detention has become illegal only two months after the Magistrate's report dated 19th November 1993. Even if it is held that the detention of the Petitioner's husband is illegal as Central Government has not passed order's within two months from the date of the order of the Magistrate as provided u/s 24 of the Extradition Act, it would not be possible to hold that the illegal detention has arisen at least partly within the jurisdiction of this Court. In a case where cause of action has arisen wholly or in part within the jurisdiction of the High Court its power to issue writ under Article 226 of the Constitution of India cannot be disputed. Only in a case where it is established that the cause of action arose at least partly within the jurisdiction of this Court it can be held that this Court has jurisdiction to issue writ of habeas corpus to release the Petitioner's husband. As it cannot be said that the detention of the Petitioner's husband is tainted with any illegality while he has been detained within the jurisdiction of this Court, we hold that Petitioner has chosen a wrong forum for a writ in the nature of habeas corpus.

8. Thus, the position is that if the Petitioner wants to move for her husband's discharge u/s 24 of the Extradition Act she has to necessarily move that High Court having jurisdiction over the concerned Magistrate. On the other hand, if she has to file a writ of habeas corpus on the ground that her husband is illegally detained she will have to move that High Court where cause of action has arisen. That being the position, we hold that this Court has no jurisdiction to allow the reliefs sought for in the Original Petition. Original Petition is dismissed.