

State Vs. Prem Sarup Puri

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Court : Delhi

Decided On : Jan-22-1973

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Judge : S. Rangarajan and; M.R.A. Ansari, JJ.

Acts : [Extradition Act, 1962](#) - Sections 20

Appeal No. : Criminal Revision Appeal No. 265 of 1972

Appellant : State

Respondent : Prem Sarup Puri

Advocate for Pet/Ap. : R.L. Mehta,; B.S.C. Singh and; A.K. Marwaha, Advs

Judgement :

S. Rangarajan, J.

(1) This judgment will not only dispose of Cr. Rev. 224 of 1972 but also Cr. Writ 20 of 1972 both preferred by Prem Sarup Puri; Cr, Revision 265 of 1972 has been preferred by the State.

(2) The Hon'ble the Chief Justice has constituted this Bench for hearing the above on a reference made by one of us (Ansari. J.).

(3) The facts alleged by the prosecution may be briefly stated. One Ravi batra of Simla had applied in response to an advertisement in the Hindustan Times in the winter months of 1966. for the post of an Executive .in an eminent international organisation, care of a certain Post Box Number: he was called for an interview and interviewed by Prem Sarup Puri (hereinafter called 'Puri') at his residence in defense Colony, New Delhi, some time in February. 1967. Puri advised Ravi Batra to apply for a passport as the post would entail travel abroad. Ravi Batra accordingly applied to the Regional Passport Officer. New Delhi and also addressed a letter authorising P. R. Mehra of Messrs Sita World Travels, New Delhi to collect his passport from the office of the Regional Passport Officer. At the suggestion of Puri Ravi Batra further wrote to P.R. Mehra to hand over his passport to R. K. Mehta of International Finance Corporation. Puri obtained both the aforesaid letters from Ravi Batra. After some time Ravi Batra enquired from Messrs Sita World Travels and learnt from them that his passport had been handed over to a person sent by R. K.. Mehta of International Finance Corporation. Since Ravi Batra did not get the passport even afterwards his suspicions were aroused and he complained to the Police Station, Parliament Street and sent copy of it to the Regional Passport Officer. A case was registered and investigated by the Special Police Establishment. It transpired during the investigation that Puri had visited Simla and stayed at the darks Hotel Private Limited, Simla East from 13-4-1967 to 22-4-1967. During that period he contacted Ravi Batra and got from him a fresh passport application duly completed with about 20 copies of his photograph to be signed by him, his passport and letter addressed to one Shri J. S. Lall, I.C.S., Director General of Supplies & Disposals, New Delhi requesting him to issue a special certificate in his favor, to attest his photographs and forward the same to the Regional Passport Officer, New Delhi for the issue of a passport. Puri posted the said letter himself along with the passport application, photographs and the old passport of Ravi Batra from Simla to Shri J. S. Lall by registered post. Shri J. S. Lall issued the necessary certificate in favor of Ravi Batra, attested his photographs received Along with the passport application and forwarded them to the Regional Passport Officer, New Delhi by registered post. The Regional Passport Officer, New Delhi after verifying the genuineness of the special certificate issued Passport No. 1-454020 in the name of Ravi Batra on

23-5-1967. The passport was collected by P. Raj Mehra of M/s Sita World Travels, New Delhi from the said office on 25-5-1967 on the basis of the letter of authority issued by Ravi Batra. Puri attested the signatures of one Sher Singh (an unknown person) as R. K.. Mehta and left the country, using the said passport.

(4) Puri was himself prosecuted earlier in R. C. No. 1/FS/62 and 31/E/65 and had jumped bail. He was stated to have made false entries in Passport No. A-668077; he had fraudulently acquired another passport No. 1282813, in addition to Passport No. I-454020; we are concerned now with only Passport No. I-454020.

(5) When it was known that Puri was residing in France the Government of India requested the French Government for his extradition to India, for being tried for certain offences said to have been committed by him in relation to all the above said three passports. The French Government, after considering the request of the Government of India, granted decree of extradition for the trial of Puri in respect of only one of those passports namely, I-454020. We shall refer to the language of the decree of extradition presently. 8 HCD/72-5.

(6) In pursuance of the decree of extradition Puri was brought to India and produced before Shri S. C. Chaturvedi, Additional Chief Judicial Magistrate, Delhi. He framed a charge against him as follows:

'THATyou on. or about the 29th day of May, 1967 at Delhi forged an authority for obtaining delivery of Passport No. I-454020 issued by the Regional Passport Officer, Delhi by attesting signatures of one Sher Singh under the assumed signatures of R. K. Mehta intending the said passport to be used for the purpose of cheating and thus committed forgery by cheating P. R. Mehta of M/s Sita World Travels, New Delhi, in respect of the said passport dated 23-5-67 in the name of Ravi Batra and thereby committed an offence punishable u/s 468 of the Indian Pena Code and within my cognizance.'

(7) Against the framing of the above-said charge both Puri as well as the State preferred revision petitions to the Court of Session. While Puri contended that he could be tried only for an offence mentioned in the extradition decree and that the above charge as framed was not in conformity with it, the State on the other hand

contended that in addition to the charge under Section 468 Indian Penal Code . charges also under Sections 420, 467 and 471 Indian Penal Code . ought to have been framed. Both the revision petitions were dismissed. Both of them filed the above said further Criminal Revision Petitions to this Court. In addition, Puri also filed Criminal writ No. 20 of 1972 under Articles 226(1), 21 and 22 of the Constitution for issue of a writ in the nature of habeas corpus or other appropriate writ, directions or orders.

(8) Regarding the meaning of Article I of the decree of extradition (which is in French) there has been acute controversy. The decree of extradition (dated the 30th July, 1971) itself mentions that the request of the Government of India to obtain the extradition of Puri was made in pursuance of a warrant of arrest issued on 29-9-1969 by Shri N. L. Kakkar, Magistrate 1st Class, Delhi. It is not necessary to notice the details of the two heads, pertaining to the two other passports. It is worth recalling that the present charge relates to passport No. 1-454020 alone; Puri, shortly stated, is alleged to have obtained it fraudulently from the office of Regional Passport Officer by means of cheating and false personation on 29-5-1967 and used the falsified passport to leave India. The Ministry of Justice of the French Republic is stated to have perused the judicial opinion of the Chambred' Accusation (the Court of Appeal) Paris of 7th July 1971 and the Law of 10th March, 1927. The relevant part of the decree is Article I, the translation of which has been a matter of difficulty.

(9) At the direction of Ansari, J., Mrs. T.L. Verma, Lecturer in French Department of Modern European Languages, Delhi University and Mr. R. Ardouin, Reader in French, 24/23, Shakti Nagar, Delhi were examined in this Court. Article I reads in French as follows:

'ARTICLE PREMIER.-L'extradition du nomme Prem Swarup Puri ou Sarup Puri est accordee au Gouvernement de l'Inde pour les seuls faits de faux commis a l'occasion de delivrance du passport no. 1-454020 du 3 mai 1967.'

(10) Mr. R. Ardouin had translated Article I as follows:

'ARTICLE1. The extradition of Prem Swarup Puri or Sarup Puri is granted to the Indian Government for the sole facts of forgery committed on the occasion of the issue of the passport No. 1-454020 of the 3rd of May, 1967'.

(11) Mrs. T.L. Verma had translated the same as follows:

'ARTICLE1. The extradition of Prem Swarup Puri Or Sarup Puri is granted to the Government of India for the act of falsification committed on the occasion of the delivery of passport No. 1. 454020 of the 3rd May, 1967'.

(12) The French word 'Faux' was translated by Mrs. T.L. Verma as falsification-one of its meanings-forgery, counterfeit and imitation. According to Mr. R. Ardouin 'Faux' is 'false'. The literal translation of 'Seuls' in Article I of the extradition decree is stated by Mr. R. Ardouin to mean 'sole facts of', 'only for that and for nothing else'. Mr. R. Ardorin could not accept the suggestion that the passage appearing in Article I of the extradition decree may mean 'for the only facts of forgery committed on the occasion of the delivery of the passport'. Mrs. T.L. Verma translated the words 'to seals faits' as 'the act of' and not as 'the sole facts of'.

(13) In addition to the above we have also consulted the dictionnaire moderne francais-anglais/anglais-francais, page 314, by Larousse, which gives following, among other meanings for 'faux' 'false, untrue'; the juridical meaning is given as forgery. 'Faux' was judicially considered in re Arton (No. 2) 1896 1 Q.B. 509. The offence, in English law, of fraudulent falsification of accounts by a director, public officer, or member of a public company fell within Art. 147 of the French Code Penal and was understood to be covered by the expression 'faux on ecritures de commerce'. It was held that though the same did not amount to forgery according to English law, it was an extradition crime within the French version of Art. 3(2) of the extradition treaty with France, within the English version of Art. 3(18) of the same treaty, and also within the Extradition Act of 1870. It was contended by the Attorney General and the Solicitor General in that case that 'faux' means more than 'forgery' means in English law, and includes of offences by English law not amounting to forgery. The Magistrate had come to the conclusion, in that case, that there was no offence of forgery according to English law, but the same constituted faux or forgery against the law of France, Lord Russell, C.J. observed

as follows :

'THE learned law officers of the Crown, for some reason which I failed to appreciate, seemed unwilling to admit that 'faux' in art. 147 means forgery. For my part it seems to me to be clear that it means that and nothing else', etc.

(14) Lord Russell, C.J. also pointed out that what the French law was on any particular point raised a question of fact in the courts in England and that the treaties should receive a liberal interpretation; he had not known any head of the French law for which an exact equivalent was to be found in the law of England. He concluded as follows :

'WE are here dealing with a crime alleged to have been committed against the law of France; and if we find, as I hold that we do, that such a crime is a crime against the law of both countriesalthough under different heads, we are bound to give effect to the claim for extradition'.

(15) A further direction was given that the order of committal should make clear what crime ('faux') Arton had committed.

(16) Puri has placed before us his own translation, which he has certified to be a correct translation of the judgment of the Chambre d' Accusation of the Court of Appeal, Paris, as well as photostat copies of various documents (which he had received from his counsel in France) stated to be the entire judicial record of the extradition (judicial) proceedings in Paris. It seems sufficient, however, in the view we are taking to refer to Puri's own translation of certain portions of the judgment :

'3. The fraudulent obtaining by Prem Swarup Puri from the Regional Passport Office in New Delhi of a Passport delivered on 3 May, 1967 under No. I. 454020 under the false or forged identity of Ravi Batra son of Lieutenant Colonel Kanshi Ram Batra of Simla, passport with which he succeeded in leaving India and with the utilisation of which in France he obtained false administrative documents and led to his condemnation by the 13th chambre of the Court of Appeal to 13 months suspended sentence on 3 October, 1969.'

(17) Considering that the said facts are punishable in French Penal Law and that for them the penalties in India are up to 7 years imprisonment. Considering that there is no political character or that the extradition is requested with a political objective.

(18) Considering nevertheless that the prosecutions for the fraudulent obtaining or the falsification of passports of 28 August 1958 under no. A 668077, of 29 June 1965 under no. 1. 282813 and of 17 July 1965 under no. 282846 are barred according to French law, the competent Indian authorities not having produced any documents justifying the interruption of said prescription.

(19) That the extradition cannot be granted for forgeries committed in procuring the said passports or for their use in accord with Article 5, section 5 of the Law of 10 March 1927.

(20) That there is nothing against a favorable opinion with regard to the extradition for the prosecution of Prem Swarup Puri for forgery committed on the occasion of the delivery of passport of 3 May, 1967 under no. 1. 454020.

(21) That the above-named cannot claim having been punished by the 13th Chambre of the Court of Appeal of Paris on 3 October 1969, this condemnation having been only for the obtaining of false administrative documents in France by means of a falsified passport above- mentioned and the use of these false documents and irregular (unlawful) residence on French territory.

'Isthis judicial opinion ('avis') in response to the request for extradition made by the Government of India against the said Prem Swarup Puri, but restricted to sole prosecution against him for forgeries committed on the occasion of the delivery of the passport no. 1. 454020 of 3 May 1967.'

(22) The above passages in the judgment make the following aspects clear:

(1)Offences said to be committed in relation to Passports No. A. 668077 and 1. 282813 were barred, according to the French Law, the Indian authorities had not produced any document justifying the interruption of the said prescription (limitation). (2) Even in respect of the passport in question, namely, No. 1. 454020,

Puri was not to be prosecuted in respect of the commission of offences pertaining to the use of the said passport in the French soil, he having been convicted and sentenced by the French Court and he having undergone the sentence.

(23) The question now for consideration is whether in addition to the above-said limitations imposed by the French Court there are in fact any further limitations in the matter of prosecuting Puri for whatever offences as are punishable in India falling within the Second Schedule of the Indian Extradition Act of 1962 (to which reference will be made presently) such as, cheating, commission of forgery of the passport by falsification of the same and the use of the forged (falsified) passport, in India, to leave this country. Having given the matter our very earnest consideration it seems to us that Art. I of the extradition decree has not placed any further limitation.

(24) The Indian Extradition Act of 1962 having been modelled on the English (Extradition) Act of 1870 (33 and 34 Vict. c (52) it would be necessary to notice the legal position in England. In Halsbury's Statutes of England, Third Edition, Vol. 13, the position has been summed up on page 246 as follows :

'If the magistrate is not satisfied on the evidence that the prisoner has committed or was convicted of an extradition offence, or that the act would be an offence if committed in England, he must discharge him; if he is so satisfied, he must commit him to prison' if certain conditions are complied with.'

'EXTRADITION cannot take place unless the offence for which it is demanded is a crime by the laws both of this country and of the country seeking surrender, and is one of the crimes specified in the treaty between the two countries. No extradition will be made in respect of crimes of a political nature, and a prisoner undergoing in England a term of imprisonment for an offence committed in England will not be surrendered until he has served such term.'

(25) Section 3(2) of the English Extradition Act, 1870 provides that a fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state, or by arrangement that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be

detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded. According to Section 10 the Police Magistrate could commit if the foreign warrant authorised the arrest of a criminal and the evidence produced would justify the committal for trial if the crime of which he was accused had been committed in England.

(26) SECTION. 19, on which the corresponding Indian Section 21 is modelled, reads as follows:

'WHERE, in pursuance of any arrangement with a foreign state, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act is surrendered by that foreign state, such person shall not, until he has been restored or had an opportunity of returning to such foreign state, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the fact on which the surrender is grounded.'

(27) The construction of this section in at least two English cases may be considered. In *The King v. Corrigan* 1931 1 K.B. 527(2) the appellant was brought before a tribunal in France on a claim for his extradition on a charge of false pretences. He was convicted in England on the charge of fraudulent conversion based upon the facts contained in the information upon which the claim for extradition was based. The contention put forward was that Section 19 of the Act was not abrogated by Article IV of a treaty of extradition made between England and France which prohibited the trial of such person for any offence other than upon which his surrender had been granted and hence the Court had jurisdiction to try the person for fraudulent conversion.

(28) Swift, J. had no difficulty in rejecting the said contention. The extradition was held to have been based upon the facts contained in the information and depositions, which disclosed not only offences of obtaining money by false pretences, but facts by which fraudulent conversion of such moneys may be proved. The facts were said to be a little difficult to ascertain and what really happened was not quite clear. In this context Swift, J. observed as follows :

'INconsidering what the facts are, and what they amount to in point of law, it must always be borne in mind that the burden of proving such facts as will establish his contention in law rests upon the accused', etc.

(29) There was a conflict in that case between Section 19 of the English Act and Article 4 of the treaty of 1876; according to the latter a person could not be tried for any offence other than for which his surrender had been granted.

(30) R v. Aubrey-Fletcher, Ex parte Ross-Munro 1968 1 All ER 993 held that Section 19 of the Extradition Act of 1870 was not directed to procedure or evidence but to jurisdiction; provided that the crimes with which the prisoner was charged were the offences for which he was surrendered, he could be committed for trial in accordance with the ordinary procedure and laws of England. The expression 'for such of the said crimes as may be proved by the facts on which the surrender is grounded' used in the said provision fell for consideration. Lord Parker, C.J., observed as follows :

'ADMITTEDLY they are not easy words to construe; in the first place 'proved' cannot mean 'proved' as ordinarily understood. Proof will only arise if and when the accused is committed, and the matter is dealt with by a jury. 'Proved' cannot therefore mean proved in the ordinary sense of the word. In the second place 'facts' are clearly not the same as 'evidence'. In my judgment the words, however, are capable of being read and should be read as meaning such of the crimes as may be disclosed by the facts alleged in the extradition proceedings. Here the facts that were alleged were that this man had forged these two cable transfers, had uttered these two cable transfers, had caused money to be transferred on those cable transfers, and the depositions described the manner in which it was alleged that these facts were carried out. In those circumstances I, for my part, can see no reason whatsoever why further evidence in support of those facts and those crimes cannot be called before the magistrate in the committal proceedings, or indeed at the trial itself.'

(31) Salmon, L.J., concurring, was even more explicit :

'I entirely agree with Lord Parker, C.J., that the last few words of the section are not very easy to construe. Whatever may be their exact meaning, it seems to me fairly plain that when, as in the present case, a man has been surrendered for forgery, the fact on which the decision of a foreign court to surrender him is grounded must be that he dishonestly made or altered the document in question. Obviously, I think, the foreign court decided that he should be surrendered so that those facts should be investigated in our courts to see whether he was guilty of the type of offence with which he was charged. It may well be that in cases such as *R v. Corrigan*(3) where a man is charged after extradition with an offence which is different from the offence in the warrant, it will be necessary to look at the surrender documents to see whether the facts on which the surrender was grounded were such that they might constitute the offence with which it is proposed to charge him. Where, however, as here, the charge which is preferred in this country is the very charge in respect of which he has been extradited, the very charge which the foreign court has surrendered him to this country to meet, it becomes entirely unnecessary in my view even to consider the surrender documents.'

(32) It is necessary to understand the divergence between American and English law regarding the enforcement of a treaty or a rule of international law by municipal courts. The Supreme Court of India (vide *State of Gujarat v. Vora Fiddali Badruddin Mithibarwala and others*, : [1964]6SCR461 followed by a majority the English as distinguished from the American approach. A rule of international law or a treaty could be enforced by the municipal courts of India (as in England and unlike in America) only to the extent to which the municipal legislation had made it enforceable or, as Mudholkar, J. pointed out, the case law of India had made the principle of International Law a part of the law in India. The true position in India, therefore, is that even if there were a treaty between India and France in the matter of extradition, which there is not, the municipal law of India alone would have to be enforced. In this view we cannot seek to derive any assistance from the American decision-particularly, of the U.S. Supreme Court in *United States v. William Rauscher* (30 Law Ed.U.S.119-1886 pages 407-436)(5) or some others following the said decision. What happened in *Rauscher* was that a prisoner was sought to be proceeded against not for the offence of murder (for trying which he

was extradited) but for a minor offence not included in the treaty of extradition. Miller, J., who delivered the opinion of the Court (Waite, C.J. dissenting) stated that this was not possible because a treaty to which the United States was a party was the law of the land which all the courts, state and national, were bound to take judicial notice of to the extent to which it was capable of judicial enforcement. Even in that case Waite, C.J. thought that the treaty under which the prisoner was surrendered gave him no immunity from prosecution for the minor offence. The learned Chief Justice further pointed out that if there was any complaint in the matter of the privileges under the treaty it would be a matter entirely for adjustment between the two countries and could not inure to the benefit of the prisoner except through the instrumentality of the Government that had been induced to give him up.

(33) Shah, J. (as his Lordship then was), speaking for the Supreme Court in *State of West Bengal v. Jagul Kishore More* : 1969 CriLJ1559 , summed up the law relating to extradition as follows :

'6.Extradition is the surrender by one State to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justiciable in the courts of the other State. Surrender of a person within the State to another State-whether a citizen or an alien-is a political act done in pursuance of a treaty or an arrangement adhoc. It is founded on the broad principle that it is in the interest of civilised communities that crimes should not go unpunished, and on that account it is recognised as a part of the comity of nations that one State should ordinarily afford to another State assistance towards bringing offenders to justice. The law relating to extradition between independent States is based on treaties. But the law has operation- national as well as international. It governs international relationship between the sovereign States which is secured by treaty obligations. But whether an offender should be handed over pursuant to a requisition is determined by the domestic law of the State on which the requisition is made. Though extradition is granted in implementation of the international commitments of the State the procedure to be followed by the Courts in deciding, whether extradition should be granted and on what terms, is determined by the municipal law.'

'8.The functions which the Courts in the two countries perform are therefore different. The Court within whose jurisdiction the offence is committed decides whether there is prima facie evidence on which a requisition may be made to another country for surrender of the offender. When the State to which a requisition is made agrees consistently its international commitments to lend its aid the requisition is transmitted to the Police authorities, and the Courts of that country consider according to their own laws, whether the offender should be surrendered-the enquiry is in the absense of express provisions to the contrary relating to the prima facie evidence of the commission of the offence which is extraditable, the offence not being a political offence nor that the requisition being a subterfuge to secure custody for trial for a political offence.'

(34) The facts of that case need not detain us because that was the obverse situation and concerned with the position as it arose under the Fugitives Act. Puri sought to rely upon the observations of Shah, J. as supporting his contention that it is the municipal law that should have paramountcy; but this would be to read the entire observations 'out of context. Shah, J., was only setting out how the extradition proceedings which are the subject matter of a municipal law should be conducted by courts with reference to the municipal law. Puri could, therefore, derive no assistance from them.

(35) It is now appropriate to refer to the Indian Extradition Act which was passed in 1962. As the Statement of Objects and Reasons shows it was enacted to remove all anomalies and fill in the lacunae in the law relating to extradition of fugitive criminals to all foreign States and Commonwealth countries. It was to come into force on such date as the Central Government may by notification in the Official Gazette appoint, the date appointed being 5-1-1963. Section 2(c) defines an extradition offence as meaning-

'(i)in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State; (ii) in relation to a foreign State other than a treaty State or in relation to a Commonwealth country an offence which is specified in, or which may be specified by notification under, the Second Schedule.'

(36) In the Second Schedule items 8 and 10 are material and may be set out:

'8.Cheating (section 415 to 420) 10. Forgery, using forged documents and other offences relating to false documents (Section 463 to 477A).'

(37) Section 3 provides for the application of the Act in the following manner:

'3.Application of Act.-(1) The Central Government may, by notified order, direct that the provisions of this Act other than Chapter Iii shall apply- (a) to such foreign State or part thereof; or (b) to such Commonwealth country or part thereof to which Chapter Iii does not apply; as may be specified in the order. (2) The Central Government may, by the same notified order as is referred to in sub-section (1) or any subsequent notified order, restrict such application to fugitive criminals found, or suspected to be, in such part of India as may be specified in the order. (3) Where the notified order relates to a treaty State,- (a) it shall set out in full the extradition treaty with that State; (b) it shall not remain in force for any period longer than that treaty; and (c) the Central Government may, by the same or any subsequent notified order, render the application of this Act subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the treaty with that State.'

(38) Sections 20, 21 and 31 are material and they may be read:-

'20.Conveyance of accused or convicted person surrendered or returned.-Any person accused or convicted of an extradition offence who is surrendered or returned by a foreign State or Commonwealth country may, under the warrant of arrest for his surrender or return issued in such State or country, be brought into India and delivered to the proper authority to be dealt with according to law. 21. Accused or convicted person surrendered or returned by foreign State or Commonwealth country not to be tried for previous offence-Whenever any person accused or convicted of an offence, which, if committed in India, would be an extradition offence, is surrendered or returned by a foreign State or Commonwealth country, that person shall not, until he has been restored or has had an opportunity of returning to that State or country, be tried in India for an offence committed prior to the surrender or return, other than the extradition offence proved by the facts on which the surrender or return is based. 31. Restrictions on surrender.-A fugitive criminal shall not be surrendered or returned

to a foreign State or Commonwealth country- (a) if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or Court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character; (b) if prosecution for the offence in respect of which his surrender is sought is according to the law of the State or country, barred by time; (c) unless provision is made by the law of the foreign State or Commonwealth country or in the extradition treaty with the foreign State or extradition arrangement with the Commonwealth country, that the fugitive criminal shall not, until he has been restored or has had an opportunity of returning to India, be detained or tried in that State or country for any offence committed prior to his surrender or return, other than the extradition offence proved by the facts on which his surrender or return is based; (d) if he is accused of some offence in India, not being the offence for which his surrender or return is sought, or is undergoing sentence under any conviction in India until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise; (e) until after the expiration of fifteen days from the date of his being committed to prison by the magistrate.'

(39) According to Section 20, therefore, when once a person is brought to India after being delivered to the proper authority by a foreign State or country he will be dealt with according to law. The legal position is to be gathered from Section 21. The only difference between the English and the Indian statutes is that while the expression 'grounded' has been employed in the former, the expression 'based' is used in the latter. The ordinary dictionary meaning of both the said expressions does not appear to be significantly different. The Concise Oxford Dictionary gives the meaning of 'base' as 'found (something) on; rely upon' and of 'ground' as 'base, establish on some fact or authority'. It is not possible, therefore, to contend that by the expression 'based' having been used in the Indian statute instead of 'grounded' used in England a different approach has to be adopted in India.

(40) Section 21 is the only pertinent provision in the Act which places restrictions on the trial of the person extradited. The first restriction is that the person surrendered or returned by the Foreign State shall not, until he has been restored

or has had an opportunity of returning to that State or country, be tried in India for an offence committed prior to the surrender or return in India other than an offence which is regarded here as an extradition offence. On this question we are thrown back on the definition of extradition offence by section 2(c) in the light of Second Schedule items 8 and 10, the offence of cheating (Sections 415 to 420) and of forgery, using forged documents and other offences relating to false documents (Sections 463 to 477A) fall within the category of 'extradition offences'. The second restriction is that the trial in India should be confined to the extradition offence proved by the facts on which the surrender or return is based. On the latter question Puri and his counsel, Shri A. K. Marwah, contended that the offence for which the extradition was granted is limited to what was proved before the French Court. This contention is opposed to the observation of Lord Parker, C. J., and of Salmon, L. J., with which with great respect, we are in perfect agreement. But only the words 'proved' and 'facts' are not easy to construe. Whatever may be their meaning, as both Parker, C. J., and Salmon, L. J. observed, it seems plain, that when a person has been surrendered for 'forgery' it means that he dishonestly made or altered the document in question. Corrigan referred to in R.Vs. Aubrey Fletcher,(3) clearly holds that a person extradited on a charge of false pretences could be convicted of fraudulent conversion also on the same facts. Corrigan is thus totally against the contention put forward on behalf of Puri.

(41) Puri himself being a person well versed in law, particularly International Law, as we can see from the several learned written submissions which he made to us in the course of the hearing, based his arguments on Article I of the decree of extradition: according to him, it had permitted his trial, on the Indian soil, only for the offence of forgery in relation to the said passport, delivered on the 3rd of May, 1967 (3 seems a mistake for 23). Reliance was also placed upon the fact that when the Government of India had made an application to the French court that the 3rd of May was a factual error and that it should have been the 23rd of May, the French court refused to allowe the said correction. It is argued on this basis that the trial in India of Puri should be confined only to forgery in relation to the said passport said to have been issued on 3rd of May, 1967 but to no other. We are wholly unable to accept this contention. The facts which were placed before the French court cover the entire spectrum of Puri's overt-acts in relation to the

said falsified passport, on foot of which he had left India for France limited only to this extent, that he could not be tried once again in India concerning the use of the said passport on the French soil, in respect of which he had been convicted. In saying so we do not think that the principle of double criminality, invoked on Puri's behalf is in any way offended. It is only necessary to recall, in this context, that the French court had not permitted extradition of Puri on the basis of the two other passports which according to the French law could not be the subject matter of the prosecution on account of the period of limitation prescribed by the French law for such prosecution. Puri is not being prosecuted here in respect of those two passports; the surrender, in other words, was not 'based' on facts pertaining to offences committed in respect of those passports. Puri was surrendered, after extradition proceedings were taken in this behalf, solely on the facts relating to the only passport in question subject only to this limitation, viz., that in respect of the use of the said passport in the French soil he could not be prosecuted again he having not only been convicted for it but had also undergone the sentence imposed by the French court. The proper way of reading Article I of the decree of extradition, particularly in the light of the facts, stated in the judgment itself, seems to be that the entire facts necessary for prosecuting Puri for the offences punishable under Sections 467, 468, 471 and 420 Indian Penal Code . were all placed before the French court and there can be no bar whatever in respect of Puri being prosecuted in respect of those offences which had been disclosed by the facts on which the extradition was based.

(42) It is only necessary before concluding to notice the argument of Puri that whenever there is any ambiguity, a statute should be so construed as not to contravene International Law. We do not consider it necessary in this case to discuss this aspect in view of our understanding of what the French court itself had done in this particular case and what we consider is the legal position to be gathered from Sections 20 and 21 of the Act.

(43) Section 31 of the Indian Act deals with the situation, the obverse of the present one, as to what the Indian courts would do when a prisoner is to be extradited from India to a foreign country in respect of an extradition offence. Section 31 also contains expressions and ideas similar to Section 21.

(44) Puri wanted to address us on the practice adopted by various other countries in the matter of extradition and the trend, as he put it, of the several treaties pertaining to extradition. We have not considered it necessary, in the above view, to refer to them, though Puri and his counsel had with great labour submitted elaborate written notes of the studies made by them in this area.

(45) In the result Criminal Writ 20 of 1972 as well as Criminal Revision 224 of 1972 are both dismissed. Criminal Revision 265 of 1972 is accepted.

(46) It appears needless to give any specific direction to the trying Magistrate since we have pointed out the ambit and scope of the extradition decree and the legal position in India. It is for the trying Magistrate to frame the appropriate charges in the light of our observations.

(47) He was clearly in error in framing a charge under Section 468 Indian Penal Code . 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 under Section 468 Indian Penal Code . framed by the learned Magistrate as Puri requested us to do.

(48) We do sympathise with Puri for the delay that has been occasioned in the matter of these proceedings being held up for such a long period, necessitating his being kept in jail all the time. He could not be released on bail obviously in the view that he had jumped bail earlier; we are told that proceedings are still pending against the person who stood surety for Puri. We are, however, not concerned to make any further observations in this regard; reference to it has become necessary only in the context of the criminal proceedings against Puri having been delayed to this extent. These proceedings, we earnestly hope, will be carried on expeditiously either by the Chief Judicial Magistrate himself or by a competent Magistrate to whom this case may , assigned by the Chief Judicial Magistrate. The learned Additional Chief Judicial Magistrate (Shri S. C. Chaturvedi) having since been promoted as additional Sessions Judge, Puri will be produced before the Chief Judicial Magistrate on 27th January, 1973. We need hardly stress the

imperative necessity of giving top priority to this case and expediting the trial of Puri.

(49) CR. Misc. 798 of 1972 was for production of certain records. Such of the record as were required by Puri was produced by Shri R. L. Mehta and Puri himself furnished certain translations of the file of the judicial proceedings in France. No further order on the said petition is necessary.

(50) In Cr. Misc. 799 of 1972, Puri has prayed that certain personal effects which are said to be no longer in issue may be returned to him. We have dismissed both the Criminal Writ 20 of 1972 and Cr. Revision 224 of 1972 filed by Puri and have directed the trying Magistrate to frame the charges that arise as per the observations in this judgment. We have no doubt that such of those articles about which there is no controversy would be returned to him. If Puri has any further difficulty in this regard he may apply to the trying Magistrate. Cr. Misc. 799 of 1972 is ordered accordingly.

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