

In Re: State of Kerala and ors.

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Court : Kerala

Decided On : Jun-22-1995

Reported in : 1996CriLJ160

Judge : K.T. Thomas and; K.S. Radhakrishnan, JJ.

Acts : [Extradition Act, 1962](#) - Sections 2, 4, 5, 6, 7, 8, 9, 9(1) and 25; Code of Criminal Procedure (CrPC) - Sections 438; [Code of Criminal Procedure \(CrPC\) , 1898](#); [Constitution of India](#) - Article 226

Appeal No. : Cri. R.C. No. 4 of 1995

Appellant : In Re: State of Kerala and ors.

Advocate for Pet/Ap. : M. Retna Singh, Public Prosecutor for P-1,; M.N. Sukumaran Nair, Sr. Adv. for P-2,;

Judgement :

K.T. Thomas, J.

1. One Rajan Pillai, styling himself as 'a fugitive criminal', appeared in the Court of Additional Chief Judicial Magistrate, Thiruvananthapuram on 8-4-1995 and sought for bail. Learned Magistrate released him on 'interim bail' on certain conditions and proceeded to report to the Central Government of the surrender of that person (who would hereinafter be referred to as the petitioner). A learned Judge of this

court, while holding sittings during mid-summer vacation, came to know of the order and called for the records of the case immediately for examining the records. Later the records were examined by another learned Judge who was holding sittings during the latter half of the midsummer vacation. Learned Judge, after expressing his own tentative opinion, referred the questions involved in the case to be considered by a larger Bench. This is how we are called upon to deal with the matter.

2. We heard Shri M. Rethna Singh, learned Public Prosecutor (who is also the Director General of Prosecutions in Kerala) Shri M.N. Sukumaran Nayar, Senior Counsel who argued for the petitioner and Shri A. K. Dutt, who argued for the Central Bureau of Investigation.

3. Petitioner is a citizen of India. He has been dealing in large scale business abroad. While so, criminal proceedings were taken against him by the District Judge, Singapore and he was convicted of certain offences including criminal breach of trust and cheating. Though he was on bail at Singapore, he skulked from that country and reached India when he knew of the conviction and sentence passed on him. He first moved the Court of Session at Bombay through his wife for anticipatory bail under Section 438 of the Code of Criminal Procedure. When that move did not succeed, he approached the High Court of Bombay under Article 226 of the Constitution for restraining the CBI from arresting him. The Bombay High Court rejected the original petition by recording the submission of CBI's counsel that if petitioner is arrested, he would be produced before the competent magistrate in accordance with the procedure laid down by law. Petitioner then proceeded to Thiruvananthapuram and appeared before the Additional Chief Judicial Magistrate and applied for bail. The proceedings adopted by the said Additional Chief Judicial Magistrate are now being examined by us.

4. Additional Chief Judicial Magistrate, Thiruvananthapuram granted granted bail in the purported exercise of powers envisaged in Section 9 of the [Extradition Act, 1962](#) (for short 'the Act'). Section 2(f) of the Act defines a fugitive criminal as 'an individual who is accused or is convicted of an extradition offence committed within the jurisdiction of a foreign State or a Commonwealth country and is, or is

suspected to be, in some part of India'. Extradition offence in relation to a foreign State other than a treaty State means 'in relation to a commonwealth country an offence which is specified in the second schedule to the Act'. Two things not disputed before us are, that Singapore is a commonwealth country and that is not a treaty State i.e. there is no extradition treaty between the two countries.

5. Chapter II of the Act deals with extradition of fugitive criminals to foreign State and to commonwealth countries (when Chapter III does not apply). It consists of a fasciculus of provisions commencing with Section 4. Under Section 4 a requisition for surrender of a fugitive criminal of a Commonwealth country can be made to the Central Government of India by a diplomatic representative of the Commonwealth country at Delhi. When requisition under Section 4 is made, the Central Government is empowered under Section 5 to issue an order to 'any magistrate (who would have had jurisdiction to enquire into the offence if it was an offence committed within the local limits of his jurisdiction) directing him to enquire into the case.

6. It is submitted on behalf of Government of India that Singapore Government made a requisition for extradition of the petitioner. Such requisition was made through the High Commissioner of Singapore of New Delhi. Pursuant thereto, the Government of India issued an order on 2-6-1995 under Section 5 of the Act to the Metropolitan Magistrate, Tis Hasari Court, New Delhi to make enquiry into the case in accordance with the provision of Extradition Act.

7. On receipt of the above order the magistrate concerned shall issue a warrant of arrest of the fugitive criminal as per Section 6 of the Act. Section 7 enjoins on the magistrate to hold an enquiry when the fugitive criminal 'appears or is brought before the court'. In such enquiry, if the magistrate is of opinion that a prima facie case is not made out in support of the requisition of the commonwealth country he is to discharge the fugitive criminal. On the contrary if a prima facie case is made out in support of the requisition the magistrate is empowered to commit the fugitive criminal to prison and he has to report the result of the enquiry to the Central Government. Section 8 deals with the surrender of the fugitive criminal to the commonwealth country. There can be no doubt that the magistrate mentioned in

Sections 6 and 7 is the one to whom Central Government have issued the order under Section 5 of the Act.

8. We shall now consider the legality of the proceedings of the Additional Chief Judicial Magistrate, Thiruvananthapuram in the backdrop of the provisions of the Act referred to earlier. He has purported to exercise powers under Section 9 read with Section 25 of the Act. For considering whether he could do so, we would extract the said Sections:

Section 9. Power of magistrate to issue warrant of arrest in certain cases- (1) Where it appears to any magistrate that a person within the local limits of his jurisdiction is a fugitive criminal of a foreign State or Commonwealth country, he may, if he thinks fit, issue a warrant for the arrest of that person on such information and such evidence as would, in his opinion, justify the issue of a warrant if the offence of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction.

(2) The magistrate shall forthwith report the issue of a warrant under Sub-section (1) to the Central Government and shall forward the information, and the evidence or certified copies thereof to that Government.

(3) A person arrested on a warrant issued under Sub-section (1) shall not be detained for more than three months unless within that period the magistrate receives from the Central Government an order made with reference to such person under Section 5.'

Section 25. 'Release of persons arrested on bail- In the case of a person who is a fugitive criminal arrested or detained under this Act, the provisions of the Code of Criminal Procedure, 1898, relating to bail shall apply in the same manner as they would apply if such person were accused of committing in India the offence of which he is accused or has been convicted, and in relation to such bail, the magistrate before whom the fugitive criminal is brought shall have, as far as may be, the same powers and jurisdiction as a Court of Session under that Code'.

It is clear that powers under Section 25 can be exercised only in one of the two cases. First is the case where the fugitive criminal has been arrested and brought before the magistrate who issued the warrant. Second is the case where the fugitive criminal has been detained as per the provisions of the Act. (We need not vex our mind with the latter contingency as it does not arise now). Reading Section 25 in connection with Section 9 of the Act makes it further clear that a magistrate can grant bail to a fugitive criminal only if the magistrate has issued the order of his arrest. In other words any magistrate in India before whom the fugitive criminal surrenders (other than the one who issued the arrest warrant) are not empowered to exercise powers under Section 25 of the Act. It may be that Section 9 is not controlled by the preceding Sections in the Chapter. It may also be that the magistrate who can exercise powers under Section 9 need not necessarily be the magistrate to whom the Central Government have issued the order under Section 5 of the Act. But still Section 9 would not clothe any magistrate with powers to grant bail to any fugitive criminal merely because that fugitive criminal has appeared before him.

9. Learned Senior Counsel for the petitioner then contended that if a fugitive criminal is apprehending arrest, he could appear before any magistrate and seek bail. Reliance was sought to be placed on the decisions in *Niranjan Singh v. Prabhakar* : 1980 CriLJ426 and *In Re: Digendra Sarkar* (1982 Cri LJ 2197) (Cal). As we went through the said decisions we point out that no such principle can be discerned from either of, the decisions. Raison d'etre of those decisions is the combination of factors which would amount to custody of a person who surrenders before a magistrate who has jurisdiction to deal with the case even de hors such surrender.

10. We have no doubt that the Addl. Chief Judicial Magistrate, Thiruvananthapuram has acted without jurisdiction when he granted bail to the petitioner in this case. A fugitive criminal cannot choose any Magistrate as he pleases to get himself enlarged on bail. We are of the opinion that the Addl. Chief Judicial Magistrate, Thiruvananthapuram has, in fact, usurped the powers envisaged in Section 25 of the Act by wrongfully dangling on Section 9. Even the frog leap managed by the fugitive criminal from Bombay to Additional Chief

Judicial Magistrate, Thiruvananthapuram would not confer jurisdiction on the latter to release him on bail.

11. For the aforesaid reasons, we quash all the proceedings adopted by the Additional Chief Judicial Magistrate, Thiruvananthapuram pursuant to the appearance made by the petitioner/fugitive criminal before him. Shri M. N. Sukumaran Nayar, learned senior counsel, requested us to permit the petitioner to surrender to the Metropolitan Magistrate of Tis Hazari Court, Delhi. We do not think that he requires our permission to do so if he proposes to appear before that court on his own volition.

Crl. R. C. is disposed of accordingly.

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