

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

ICA No.193/2021

Pirran Ditta Khan

Versus

Federation of Pakistan through Ministry of Interior,  
Islamabad & 3 others

Appellant by : Mr Tanveer Iqbal, Advocate.  
Chaudhry Khanzada, Advocate.

Respondents by : Kh. Imtiaz Ahmed, Dy. Attorney General.  
Mr Fahad Ali, State Counsel.  
Mr Qaiser Masood, Addl. Director (Law), FIA.  
Mr Akhtar Ali, Inspector, FIA.

Date of Hearing : **28-03-2022**

Athar Minallah, C.J.- This appeal is directed against judgment, dated 31-03-2021, passed by the learned Single Judge in W.P. No. 3418/2020.

2. Pirran Ditta Khan, also known as Peter Khan (*hereinafter referred to as the "Appellant"*) was alleged to have been involved in armed robbery committed in the United Kingdom on 18-11-2005. It was alleged that during the commission of the armed robbery, a police woman was murdered and another official was seriously injured. The Appellant had left the United Kingdom in January, 2006 and he has

been living in Pakistan since then. The five other accused were tried by a competent court in the United Kingdom and upon conclusion of the trial, they were convicted and sentenced. The Appellant could not be tried because he had left the United Kingdom and, therefore, a request for his extradition was made by the Government of the United Kingdom in 2008. There was no progress and, therefore, another request was made on 07-12-2016. The Government of Islamic Republic of Pakistan accepted the request and vide notification, dated 19-12-2016, the Federal Government, in exercise of powers conferred under section 7 of the Extradition Act, 1972 (*hereinafter referred to as the "Act of 1972"*), ordered the inquiry. A Magistrate was duly designated for this purpose. Subsequently, notifications, dated 12-09-2017 and 16-10-2017, were issued. Pursuant to the latter notification, the inquiry is pending before the Additional District Magistrate, Islamabad. An application was filed on behalf of the Appellant wherein the learned Magistrate was requested to provide certain documents. The documents regarding which the request was made, were other than those that were sent by the Government of the United Kingdom alongwith the extradition request. The Appellant had sought documents relating to the trial of the other accused. The application was dismissed by the learned Magistrate vide order, dated 09-11-2020. The Appellant challenged the order by invoking the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the*

**"Constitution"**) and his petition was dismissed by the learned Single Judge vide the impugned judgment, dated 31-03-2021.

3. The learned counsel for the Appellant has argued that; the refusal amounts to violation of the right to have fair trial; the documents regarding which the request was made were crucial for determination of the Appellant's rights; the refusal by the learned Magistrate to entertain the request of the Appellant was arbitrary and in violation of the fundamental right guaranteed under Article 10A of the Constitution; it is the Appellant's right to be have an opportunity of trial; reliance has been placed on the cases titled "*Abdul Qadar Ahsan v. Additional Deputy Commissioner (G), Islamabad and another*" [PLD 2019 (Islamabad) 434] and "*Haroon Rashid and another v. FOP through Secretary, Ministry of Interior and others*" [PLD 2019 (Islamabad) 453].

4. The learned Deputy Attorney General, on the other hand, has argued that; the scope of inquiry is confined to those documents which have been received from the requesting State; the inquiry under the Act of 1972 is not a trial nor the provisions of the Code of Criminal Procedure, 1898 (*hereinafter referred to as the 'Cr.P.C.'*) are attracted; the Magistrate is required to form a 'prima facie opinion' solely on the basis of the documents received from the requesting State; the extradition proceedings have been pending since a considerably long time and the application filed by the Appellant was

an attempt to further delay the proceedings and frustrate the extradition proceedings.

5. The learned counsel for the Appellant and the learned Deputy Attorney General have been heard.

6. The inquiry contemplated under section 8 of the Act of 1972 is pending before the learned Magistrate pursuant to the extradition request received from the Government of the United Kingdom vide letter, dated 07-12-2016. The Government of the Islamic Republic of Pakistan has received documents alongwith the request and it is not disputed that all such documents have been provided to the Appellant. It is also not disputed that the Appellant had left the United Kingdom in 2006 i.e. before commencement of trial in the United Kingdom and since then he has been living in Pakistan. The other co-accused were arrested and after conclusion of trial, they were convicted and sentenced. The Appellant had filed an application before the learned Magistrate requesting that documents relating to the trial of the other co-accused concluded in the United Kingdom be provided to him. The learned Magistrate did not accede to the request.

7. Perusal of memorandum of the appeal in hand shows that the Appellant has raised two questions; whether the learned Magistrate before whom the proceedings are pending was competent to inquire into the case under section 8 of the Act of 1972 and

whether the latter was justified in refusing to provide documents regarding which request was made by the Appellant. We have carefully perused the record and the impugned judgment. We have not been able to persuade ourselves that the findings recorded by the learned judge in chambers regarding jurisdiction of the learned Magistrate are erroneous. The learned Magistrate who has been entrusted the inquiry is competent in the light of the notification issued by the Federal Government.

8. In order to answer the question; whether the refusal to accede to the request of Appellant has prejudiced his rights, it would be beneficial to survey the provisions of the Act of 1972. A combined reading of the provisions of the Act of 1972 manifests that powers regarding extradition of a fugitive offender are vested in the Federal Government, and such powers can be exercised in the manner prescribed therein. The Magistrate appointed under section 7 is required to conduct the inquiry on the basis of documents which have been received from the requesting State. The documents have been described under sub section (1) of section 9 and the same is reproduced below.-

*"In any proceedings against a fugitive offender under this Act, exhibits and depositions, whether or not they are received or taken in the presence of the person against whom they are used, and copies thereof, and official*

*certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence."*

9. The august Supreme Court in the case titled "*Nasrullah Khan Henjra v. Government of Pakistan, Ministry of Interior and Narcotics Control, Islamabad*" [PLD 1994 SC 23] has described the nature of the inquiry which is required to be conducted under section 8(2) of the Act of 1972. It has been observed and held that if, after considering the matter placed before the Inquiry Magistrate, the latter forms an opinion that a prima facie case is made out in support of the requisition, then he/she is required to send, inter alia, a report to the Federal Government and commit the fugitive offender to prison awaiting orders of the Federal Government. It is obvious that the Magistrate has to form an opinion that a 'prima facie case' is made out in support of the requisition and such opinion is to be formed on the basis of the documents provided by the requesting State. The nature of the proceedings is distinct from a criminal trial. The person against whom requisition has been received is neither to be declared as guilty nor innocent. Sub section (1) of section 9 of the Act of 1972 has been reproduced above. A plain reading of the said provision explicitly describes the documents which can be received as evidence. The expression "received and taken" is crucial. Moreover, the documents can only be received as evidence if they have been authenticated on behalf of the requesting State. As noted above, the proceedings under the Act of 1973 are not in the nature of conducting a criminal trial nor

the inquiry can lead to a declaration of guilt. The inquiry Magistrate has to form a, prima facie, opinion on the basis of the documents which have been received and taken from the requesting State. A fugitive whose extradition has been sought is not prejudiced because the proceedings are in the nature of an inquiry and the latter is entitled to obtain the documents, which can lawfully be received as evidence. There is no provision under the Act of 1972 to entitle the fugitive to seek documents from the requesting State other than those which have been described under section 9(1) *ibid*. Moreover, by allowing the request of the petitioner, we would be reading in the Act of 1972, something not provided therein.

10. For the above reasons, we are satisfied that no interference is required with the well-reasoned impugned judgment and, therefore, the appeal is accordingly **dismissed**.

(CHIEF JUSTICE)

(SARDAR EJAZ ISHAQ KHAN)  
JUDGE

Announced in the open Court on 29th June 2022.

JUDGE

JUDGE