JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.320 of 2019
Federation of Pakistan
Versus
Abdul Qadar Ahsan and another

Dates of Hearing:	22.07.2019, 23.07.2019, 12.02.2020 & 22.07.2020.
Appellant by:	Mr. Tariq Mahmood Khokhar, learned Additional Attorney General. Khawaja Imtiaz Ahmad, learned Deputy Attorney General. Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney General. Ch. Muhammad Tahir Mehmood, learned Assistant Attorney General. Mr. Muhammad Atif Khokhar, learned State Counsel. Mr. Qaiser Masood, Additional Director Law, F.I.A. Headquarter. Mr. Adeel Ahmed Sheikh, S.I. FIA/AHTC.
Respondents by:	Barrister Usman G. Rashid Cheema, for respondent No.1. Barrister Ummar Ziauddin and Barrister Zainab Janjua, learned *amici curiae.*

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal, the appellant, Federation of Pakistan, impugns the judgment dated 15.05.2019 passed by the learned Judge-in-Chambers allowing writ petition No.4606 of 2018 filed by Abdul Qadir Ahsan (**"respondent No.1"**) against the Enquiry Magistrate's report dated 25.10.2018 wherein it was concluded that, on the basis of sufficient incriminating evidence on the record, a *prima facie* case of respondent No.1's extradition to the United Kingdom (**"U.K."**) had been made out. The matter was remanded by the learned Judge-in-Chambers to the Enquiry Magistrate with certain directions.

2. The record shows that on 23.09.2016, the British High Commission, Islamabad made a request to the Government of Pakistan for the extradition of respondent No.1 from Pakistan. The allegation against respondent No.1 was that he had murdered Mr. Andre Antonio Marshall (**"Mr. Marshall"**) in Manchester, U.K.

Respondent No.1 was interviewed by the police in Manchester. After respondent No.1 was taken in police custody and interviewed, he was released on police bail. Respondent No.1 was due to surrender himself to the police on 23.07.2015 but he failed to do so. His whereabouts were not known to the police in Manchester and there was no record of him having left U.K. On 27.01.2016, the Magistrates Court in the City of Manchester issued warrants for respondent No.1's arrest.

3. It is an admitted position that, till date, an extradition treaty has not been executed between Pakistan and U.K. If there is no extradition treaty between Pakistan and a foreign State, the provisions of the Extradition Act, 1972 ("**the 1972 Act**"**)can be made applicable for the return of persons to such a non-treaty State provided the requirements of Section 4 of the 1972 Act are fulfilled. Unless and until a notification in terms of Section 4 of the 1972 Act is issued by the Federal Government, a person accused of an offence at places within, or within the jurisdiction of, a non-treaty State cannot be extradited to such a State under the provisions of the said Act.**

4. On 02.06.2017, a notification was issued by the Federal Government in exercise of the powers under Section 4 of the 1972 Act directing that the provisions of the said Act, shall, with respect to the extradition of respondent No.1, who was wanted in U.K. for the charges of murder, have effect in relation to that State.

5. On 23.11.2017, the Ministry of Interior forwarded the said notification dated 02.06.2017 to the Enquiry Magistrate. On 01.07.2018, respondent No.1 was arrested in execution of the warrants of arrest issued by the Enquiry Magistrate on 12.12.2017. On 02.07.2018, respondent No.1 was sent to judicial custody. The extradition request and its annexes were supplied to respondent No.1 on 31.07.2018.

6. In the proceedings before the Enquiry Magistrate, the affidavits of nine witnesses along with supporting documentation were produced as Exh.P/1 to Exh.P/47. Respondent No.1's statement under Section 342 Cr.P.C. was recorded. He denied all

the allegations against him. He chose not to record his statement under Section 340(2) Cr.P.C. After hearing the final arguments, the Enquiry Magistrate, in his report dated 25.10.2018, recorded that there was sufficient documentary evidence on the record to hold that a *prima facie* case for respondent No.1's extradition to U.K. had been made out. Respondent No.1 assailed the said report dated 25.10.2018 before this Court in writ petition No. 4606 of 2018, which was allowed vide impugned judgment dated 15.05.2019. The said judgment has been assailed by the appellant in the instant intra Court appeal.

7. In the impugned judgment, it was held *inter alia* that the witnesses who submit their affidavits in support of the extradition request have to be cross-examined and that investigation officer of the country making the extradition request has to appear before the Enquiry Magistrate and record his evidence. This is what the appellant is most aggrieved by.

8. The learned Additional Attorney General on behalf of the appellant (Federation of Pakistan) submitted that the report of the Enquiry Magistrate holding that a *prima facie* case for respondent No.1's extradition had been made out does not suffer from any legal infirmity; that respondent No.1 was alleged to have committed a gruesome murder in U.K.; that ample evidence had been brought on record, in the form of affidavits, to show that respondent No.1 was involved in the commission of an extradition offence i.e. Mr. Marshal's murder; that the documents on which reliance was placed by the prosecution were authenticated in accordance with Section 9(2) of the 1972 Act; and that respondent No.1 was not required in U.K. for any act of a political character.

9. He further submitted that the learned Judge-in-Chambers erred by not appreciating that there was no provision in the 1972 Act which required an officer investigating an offence in the requesting State to appear before the Enquiry Magistrate in Pakistan in order to give evidence in support of the extradition request; that there are several precedents where fugitive offenders, required by a requesting State to undergo a trial in

such a State, have been extradited without the investigating officer being required to appear before the Enquiry Magistrate; that there is also no requirement in the 1972 Act for the deponent of a duly authenticated affidavit filed in support of an extradition request to appear before the Enquiry Magistrate for the purpose of cross-examination; that as long as the documents produced before the Enquiry Magistrate in support of an extradition request are executed in accordance with Section 9(2) of the 1972 Act, they are admissible in evidence; that it is well settled that the proceedings before the Enquiry Magistrate are not a trial but simply an enquiry; and that in such an enquiry, the guilt of the fugitive offender need not be established but the Enquiry Magistrate is to determine whether on the basis of the documents on the record, a *prima facie* case had been made out in support of the fugitive offender's extradition. The learned Additional Attorney General prayed for the appeal to be allowed and for the writ petition filed by respondent No.1 to be dismissed.

10. On the other hand, learned counsel for respondent No.1 submitted that there is no legal infirmity in the ratio in the impugned judgment that an affidavit is inadmissible unless the deponent appears and is cross-examined before the Court/Authority before which the affidavits are submitted; that as a result of the said ratio, the prosecution's case is rendered as a case of no evidence; that the evidence produced before the Enquiry Magistrate in support of the request for respondent No.1's extradition not worthy of any consideration; and that since respondent No.1 is the citizen of Pakistan by descent, he has the protection of all the fundamental rights guaranteed under the Constitution.

11. Learned counsel for respondent No.1 further submitted that a false and fabricated case had been prepared in U.K. against respondent No.1; that Mr. Marshall's murder was a blind occurrence with which respondent No.1 had nothing to do; that the request for respondent No.1's extradition was without any legal basis; that there was no evidence to connect respondent No.1 with Mr. Marshall's murder; that after respondent No.1 was

interviewed and released by the police, he could not attend the police station subsequently since he had decided to move to Pakistan; that the leader of the Gooch Gang had extended life threats to respondent No.1; that this matter had been reported to the police; that the police had given a *"panic alarm"* to respondent No.1 and his family; that the Enquiry Magistrate had taken extraneous consideration into account while holding that a *prima facie* case for respondent No.1's extradition had been made out; that such considerations included respondent No.1's failure to appear before the Police in U.K. on 23.07.2015 and his escape from U.K. to Pakistan; that respondent No.1 had adequately explained that he was forced to leave U.K. in order to save his life; that the mere fact that respondent No.1 changed his name and identity card should have had nothing to do with the extradition proceedings; that the Enquiry Magistrate erred by not appreciating that the evidence adduced against respondent No.1 had not been presented in accordance with the requirements of Section 9 of the 1972 Act; that no one who conducted the investigation against respondent No.1 appeared before the Enquiry Magistrate; that the Enquiry Magistrate was under an obligation to apply the local laws while conducting the proceedings; that the evidence adduced against respondent No.1 does not satisfy the requirements of the *Qanoon-e-Shahadat* Order, 1984; and that in Pakistan, a charge would not have been framed on the basis of the evidence produced before the Enquiry Magistrate. Learned counsel for respondent No.1 prayed for the appeal to be dismissed.

12. We have heard the contentions of the learned Additional Attorney General and the learned counsel for respondent No.1 and have perused the record with their able assistance. We have also gone through the well prepared briefs on the subject prepared by the learned *amici curiae*.

13. The facts leading to the filing of the instant appeal have been set out in sufficient details in paragraphs 2 to 7 above, and need not be recapitulated.

14. Respondent No.1's extradition to U.K. was being sought so that he could undergo a trial for the offences he was alleged to have committed. Under the provisions of the 1972 Act, a fugitive offender, suspected to be in any part of Pakistan, can be extradited. *"Fugitive offender"* has been defined in Section 2(1)(d) of the 1972 Act to mean a person who is (i) being accused of an extradition offence, or (ii) convicted of an extradition offence. It is an admitted position that respondent No.1 was alleged to have committed an extradition offence.

15. The learned Judge-in-Chambers has drawn a distinction between a request for extradition of a fugitive offender who is alleged to have committed an extradition offence and the matter is at the investigation stage in the requesting State and a request for extradition of a fugitive offender against whom a judgment, specifying his role, has already been passed in the requesting State. After drawing the said distinction, it has been held that in cases where a judgment has not been passed against the fugitive offender and the matter is at an investigation/enquiry stage in the requesting State, *"the Inquiry Magistrate with a view to reach at just conclusion should also call the Investigation Officer of the requesting state, who inquired and investigated the crime in his own jurisdiction due to the reason that such Investigation Officer has collected the evidence and other incriminating articles, recorded the statements of witnesses through which he believes that fugitive offender is linked with the alleged crime."* Furthermore, it was held that *"such Investigation Officer of foreign jurisdiction has to appear before Inquiry Magistrate in Pakistan to record his statement and such witness has to undergo test of cross-examination so as to reach at just decision of the case in which the Inquiry Magistrate comes [to] a definite conclusion that as to whether a prima facie case has been made out against the fugitive offender or otherwise, failing which the admissibility of statement placed before the Inquiry Magistrate in shape of affidavit is of no legal worth."* The above-referred ratio in the judgment passed by the learned Judge-in-Chambers is what the Federal Government is most aggrieved by.

16. As mentioned above, the 1972 Act provides a mechanism and procedure for the extradition of fugitive offenders who are alleged to have committed an extradition offence in the requesting State or have been convicted of such an offence by a Court in the requesting State. But the said Act does not differentiate between the manner in which evidence is to be produced before the Enquiry Magistrate during the enquiry proceedings for either category of the fugitive offenders.

17. The mandate of Section 9(1) of the 1972 Act is that exhibits and depositions (whether or not they are received or taken in the presence of the person against whom they are used) and official certificates of facts and judicial documents stating facts, may be received as evidence in the proceedings before the Enquiry Magistrate if such documents are duly authenticated. Section 9(2) of the 1972 Act provides that warrants, depositions or statements on oath (which purport to have been issued, received or taken by any Court of justice outside Pakistan) and certificates of, or judicial documents stating the facts of, conviction before any such Court, shall be deemed to be duly authenticated if the requirements of Section 9(2)(a) to (d) of the 1972 Act are fulfilled. These requirements are as follows:-

> ***"(a) if the warrant purports to be signed by a Judge, Magistrate, or officer of the State where the same was issued or acting in or for such State;***
>
> ***(b) if the depositions or statements or copies thereof purport to be certified, under the hand of a Judge, Magistrate or officer of the State where the same were taken or acting in or for such State, to be the original depositions or statements or to be true copies thereof, as the case may require;***
>
> ***(c) if the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a Judge, Magistrate or officer of the State where the conviction took place or acting in or for such State; and***
>
> ***(d) if the warrant, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State where the same were respectively issued, taken or given."***

18. Section 9(1) of the 1972 Act does not provide a different mode for the production of evidence in the enquiry proceedings for the extradition of a fugitive offender alleged to have committed

an extradition offence but not convicted of such an offence in the requesting State than the mode for the production of evidence in the case of a fugitive offender who has already been convicted of an extradition offence in the requesting State.

19. The record further shows that the extradition request dated 23.09.2016 moved by the British High Commission, Islamabad was accompanied by following documents:-

Serial No.	Nature of document	Authentication	Exhibit
1	Statement dated 05.08.2016 made by detective constable Simon Murphy of Greater Manchester Police.	Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace	Exhibit-P/2 to P/6
2	Statement of detective Simon Murphy dated 05.08.2016 whereby he produced warrant for arrest of Mr. Abdul Qadar Ahsan dated 27.01.2016 under seal of Greater Manchester Magistrates Court and signed by Justice of Peace.	Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace	Exhibit- P/7 to P/9
3	Statement of detective Simon Murphy dated 05.08.2016 whereby he produced custody-photograph and finger prints of Mr. Abdul Qadar Ahsan	Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace	Exhibit-P/10 to P/16
4	Statement dated 05.08.2016 made by Mr. Arron Cooper a civilian witness who heard gun shots on 20.05.2015 at around 12:30AM	Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace	Exhibit-P/17 to P/18
5.	Statement dated 05.08.2016 made by Ms. Rachel Xuu a civilian witness who discovered the dead body of Andre Marshall on 20.05.2015.	Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace	Exhibit-P/19 to P/22
6.	Statement dated 05.08.2016 made by Ms. Seanie Lynch a civilian witness who heard arguments outside the front of her	Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace	Exhibit-P/23 to P/24

	house on 20.5.2015 at just after 12:30AM.		
7.	**Statement dated 05.08.2016 made by Mr. Philip Lumb a pathologist who carried out post mortem of the murdered Andre Marshall.**	**Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace**	**Exhibit-P/25 to P/26**
8.	**Statement dated 05.08.2016 made by Mr. Andre Horne a ballistic expert.**	**Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace**	**Exhibit-P/27 to P/28**
9.	**Statement dated 05.08.2016 made by Ms. Fiona Barrett a crime scene investigator at Manchester Police.**	**Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace**	**Exhibit-P/29 to P/31**
10.	**Statement dated 05.08.2016 made by Ms. Jacqueline French a forensic scientist.**	**Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace**	**Exhibit-P/32 to P/33**
11.	**Statement dated 05.08.2016 made by Mr. Kate Leonard, a Barrister of England and Wales.**	**Sworn at Manchester and Salford Magistrate's Court, singed by district judge/justice of peace**	**Exhibit-P/34 to P/46**
12.	**Certificate to authenticate statements at Exhibit P/2 to P/46, issued under seal and signature of Mr. Patrich Joseph one of the District Judges/Justices of the Peace (Magistrate's Court) sitting at Manchester and Salford Magistrate's Court.**	**-**	**Exhibit-P/47**

20. In respondent No.1's writ petition, it was pleaded *inter alia* that the documents tendered in evidence before the Enquiry Magistrate were not authenticated in accordance with requirement of Section 9 of the 1972 Act. Learned counsel for respondent No.1, in his arguments, did not elaborate or explain as to what exactly was deficiency in the authentication of the said documents. These documents were authenticated by the

Magistrates Court at the Greater Manchester and, therefore the requirement of Section 9(2) had been fulfilled. Consequently, it is our view that since the documents produced in evidence in support of the request for respondent No.1's extradition satisfied the requirements of Section 9(2) of the 1972 Act, they could have been taken into consideration and relied upon by the Enquiry Magistrate to form an opinion as to whether a *prima facie* case had been made out in support of the requisition for the surrender of respondent No.1. Respondent No.1 did not take issue with the genuineness in the request for his extradition to U.K.

21. In terms of Entry No.18(5)(c) in Schedule-II read with Rule 3(3) of the Rules of Business, 1973, the subject of admission of persons into and departure of persons from Pakistan, including extradition and expulsion from Pakistan, is a subject to be dealt with by the Interior Division. We would tend to agree with the learned Judge-in-Chambers that henceforth, in order to eliminate any doubt as to the genuineness of the request for extradition and the affidavits, depositions and other documents accompanying such a request ought to be produced before the Enquiry Magistrate appointed pursuant to Section 7 of the 1972 Act by an officer duly authorized by the Section of the Ministry of Interior designated to deal with extradition requests. Furthermore, we also agree with the learned Judge-in-Chambers that the Federal Government ought not to act like a post office by simply forwarding an extradition request to an Enquiry Magistrate appointed pursuant to Section 7 of the 1972 Act.

22. When a requisition for the surrender of a fugitive offender is made to the Federal Government in accordance with Section 6 of the 1972 Act, the Federal Government, before issuing an order to an Enquiry Magistrate to inquire into the case in terms of Section 7 of the 1972 Act is expected in the very least to satisfy itself on the following matters:-

i) Whether the requesting State is included in the list of foreign States published by the Federal Government in the official gazette under Section 3(1) of the 1972 Act, with which an

extradition treaty is in operation, and is therefore, a treaty State for the purposes of the 1972 Act.

ii) Whether the offence, which the fugitive offender is alleged to have committed or for which he has been convicted in the requesting State, is specified in the declaration made by the Federal Government pursuant to Section 3(2) and (3) of the 1972 Act.

iii) Whether the offence, which the fugitive offender is alleged to have committed or for which he has been convicted in the requesting State, is an *"extradition offence"* as defined in Section 2(1)(a) of the 1972 Act and finds mention in the Schedule to the said Act.

iv) Whether the request for the extradition of a fugitive offender has been made to the Federal Government in accordance with the manner prescribed in Section 6 of the 1972 Act.

v) Whether the Federal Government is satisfied in terms of Section 5(2)(a) of the 1972 Act that the offence in respect of which the surrender of a fugitive offender is sought is not of a political character.

23. Now, the learned Judge-in-Chambers has taken the view that a fact deposed in an affidavit produced in evidence would be considered admissible if the deponent appears before the Court or authority before whom the affidavit has been submitted. In holding so, the learned Judge-in-Chambers placed reliance on Article 10A of the Constitution and the law laid down by the Superior Courts in the cases of Bank of Punjab Vs. M/s Anmol Textiles Mills Ltd. etc. (2017 CLD 631), Muhammad Tabbasum Vs. Mehmood (2017 CLC 1221 High Court AJK), Abdul Majeed Vs. Abdur Rashid (PLD 2016 Lahore 383), Mst. Iqbal Bibi Vs. Learned Additional District Judge, etc. (2014 MLD 1206), and Bashir Ahmad Vs. Abdul Wahid (PLD 1995 Lahore). Indeed in the said judgments, it has been held *inter alia* that where the deponent of an affidavit produced before the Court does not appear before the Court to undergo the test of cross-examination, the facts deposed in the affidavit would be of no evidentiary value.

24. We have noted that none of the judgments referred to by the learned Judge-in-Chambers relate to extradition proceedings under the provisions of the 1972 Act. Additionally, the said judgments relate to the evidentiary value of an affidavit where the deponent does not appear before a Court to make a statement in support of the facts deposed in the affidavit or to be cross-examined during a trial as opposed to enquiry proceedings.

25. We find the observations of the learned Judge-in-Chambers to the effect that the affidavit produced in support of an extradition request to be no evidentiary value unless the deponent is produced for cross-examination not to be in consonance with the law laid down by the Superior Courts. In the case of Abdul Ghaffar Vs. Federation of Pakistan (PLJ 1999 Lahore 348), the Enquiry Magistrate, in his enquiry report, had recommended the petitioner to be extradited to United States of America ("USA"). In the said case, the prosecution had produced before the Enquiry Magistrate depositions of special agents of the Drug Enforcement Agency of the USA. These depositions were in the nature of affidavits sworn by special agents before the Magistrate, District Court, Eastern District of Virginia duly verified by the Attorney General. The prosecution, without formally tendering these depositions in evidence, brought them on record to be read as evidence in the enquiry proceedings for the extradition of the petitioner in the said case. The petitioner had objected to the production of the depositions on the ground that without the production of their deponents in the witness box and providing an opportunity to him to cross-examine them, the depositions could not be considered as evidence in the enquiry under Section 8 of the 1972 Act. The said objection did not find favour with the Hon'ble Lahore High Court which dealt with the same in the following terms:-

> ***"13. The real controversy involved in the present case is as to whether for the purpose of an inquiry under Extradition Act, 1972, the examination of the witnesses proposed to be produced in proof of the charge at the trial to be held in a Foreign Country is necessary at the inquiry or their deposition in the nature of affidavits sworn before the concerned forum in such country was sufficient to measure the nature of allegations and the evidence in support thereof to ascertain the responsibility of an accused***

> ***and justification of his extradition. The inquiry and trial are independently defined in the Criminal Procedure Code. Inquiry is different to the trial, which is conducted to find out the existence or otherwise of a prima facie case and is not equated with a regular trial by the concerned Court to give finding of guilt.***
> ***14. Taking the correct view of the matter, the law does not require the production of a witness from the country in which the trial is to be held. The only requirement is that the evidence proposed to be brought against a fugitive offender should be made available to the country from where the fugitive offender is required to be sent. The deposition of Faheem Ashraf in the nature of affidavit duly recorded before the Magistrate in Virginia and certified by the Attorney General produced before the Inquiry Magistrate sufficiently fulfilled the requirement of Section 8(2) of the Extradition Act, 1972, and the personal appearance of the witnesses before the Inquiry Magistrate was not necessary. There being clear distinction between the trial and the inquiry, the requirement of law is that the inquiry proceedings should be as nearly as possible to the procedure for the trial before the Sessions Court, but it does not mean that the inquiry should be converted into trial."***
> **(Emphasis added)**

26. The said judgment of the Hon'ble Lahore High Court was upheld by the Hon'ble Supreme Court in the judgment reported as Abdul Ghaffar Vs. Federation of Pakistan (2000 SCMR 1536). The question as to whether the deponent of an affidavit filed in support of an extradition request is to appear before the Enquiry Magistrate was also considered by the Hon'ble Supreme Court in the said judgment wherein it was *inter alia* held as follows:-

> ***"We find that the learned Judge in Chambers was quite right in opining that the personal appearance of witnesses before the Inquiry Magistrate was not necessary in that the material/evidence brought against the petitioner, including the deposition of Faheem Ashraf in the form of an affidavit duly recorded before the Magistrate in Virginia, USA and certified by the Attorney-General, was produced before the Inquiry Magistrate and the same was in line with the requirements of section 8(2) of the Extradition Act, 1972."***

27. Through the judgment reported as "Nasrullah Khan Henjra Vs. Government of Pakistan" (PLD 1994 S.C. 23), the Hon'ble Supreme Court decided appeals filed by three different fugitive offenders who had challenged judgments passed by the Hon'ble Lahore High Court dismissing writ petitions challenging reports of Enquiry Magistrates recommending the extradition of such fugitive offenders. Perusal of the said judgment shows that a specific objection was taken to the report of the Enquiry Magistrate on the ground that the Enquiry Magistrate should have

examined the witnesses, and afforded an opportunity to the petitioner to cross-examine them. This objection did not find favour with the Hon'ble Supreme Court which spurned the same in the following terms:-

> ***"8. As already indicated, together with the requisitions for the surrender of the petitioners the diplomatic representative of the United States Government sent to the Federal Government a number of documents. These included affidavits of persons who, except in the case of Nasrullah Khan Henjra, had direct dealings and association with the petitioners in regard to the smuggling of heroin in the United States. These affidavits were placed on the record of the proceedings conducted by the learned Magistrate and by operation of section 9(1), ibid, were treated as evidence by him. Copies of these affidavits were delivered to the petitioners and sufficient time was given to them before their statements under section 342, Criminal Procedure Code, were recorded. The petitioners also filed written statements in refutation of the charges being levelled against them; however, they did not lead any evidence in defence. We are unable to find any legal defect in the procedure adopted by the learned Magistrate."***

28. In the said case, the Hon'ble Supreme Court did not feel the need to require the officers investigating the case against the fugitive offender or the witnesses whose affidavits/statements had been produced in evidence to appear before the Enquiry Magistrate for the purpose of cross-examination. Moreover, in paragraph 7 of the said judgment it has been observed that the 1972 Act takes notice of the difficulty which the requisitioning State may face in producing evidence before the Enquiry Magistrate, and in order to get over this difficulty a special provision has been made in Section 9(1) of the 1972 Act for the manner in which evidence is to be produced before the Enquiry Magistrate.

29. In the case of Mst. Akhtar Malik Vs. Federation of Pakistan (1994 P.Cr.L.J. 229), the Division Bench of the Hon'ble Lahore High Court addressed the question as to whether during the enquiry proceedings before the Enquiry Magistrate, the evidence produced against the fugitive offender was in accordance with the law, in the following terms:-

> ***"The definition of "evidence" as given in Qanun-e-Shahadat, 1984, shows that the word "evidence" as used means statement of the witnesses and the documents. Therefore, it cannot be said that in the case in hand the evidence is not there, merely for the reasons that oral statement of witnesses have not been recorded.***

The documents are on the record and although were not formally tendered in evidence by the prosecution; the fact remains that the said material was on file within the knowledge of the accused who had been confronted therewith and who knew as to what material is to be used against them and had full opportunity to prove, that the allegations levelled in the material were false. The affidavits/documents having been duly authenticated and attested by competent authorities/Courts of a foreign country were per se evidence in the case as per provisions of section 9 of the Act. Hence, the same can be used against the accused for prosecuting them and the said material is quite sufficient for coming to the prima facie conclusion that the accused persons are guilty of the offences alleged to have been committed by them."

The said judgment of the Hon'ble Lahore High Court was upheld by the Hon'ble Supreme Court in the judgment reported as "Nasrullah Khan Henjra Vs. Government of Pakistan" *(supra)*.

30. Section 9 of the 1972 Act is in *pari materia* to Section 10 of the Indian Extradition Act, 1962. In the case of Sarabjit Rick Singh Vs. Union of India (2008 (2) SCC 417), it was held as follows:-

"36. In a proceeding for extradition no witness is examined for establishing an allegation made in the requisition of the foreign State. The meaning of the word "evidence" has to be considered keeping in view the tenor of the Act. No formal trial is to be held. Only a report is required to be made. The Act for the aforementioned purposes only confers jurisdiction and powers of the Magistrate which he could have exercised for the purpose of making an order of commitment. Although not very relevant, we may observe that in the Code of Criminal Procedure, 1973, the powers of the committing Magistrate have greatly been reduced. He is now required to look into the entire case through a very narrow hole. Even the power of discharge in the Magistrate at that stage has been taken away.

37....

38. Section 10 of the Act provides that the exhibits and depositions (whether received or taken in the presence of the person, against whom they are used or not) as also the copies thereof and official certificates of facts and judicial documents stating facts may, if duly authenticated, be received as evidence. Distinction must be borne in mind between the evidence which would be looked into for its appreciation or otherwise for a person guilty at the trial and the one which is required to make a report upon holding an inquiry in terms of the provisions of the Act. Whereas in the trial, the court may look into both oral and documentary evidence which would enable it to ask any question in respect of which the accused may offer explanation, such a detailed procedure is not required to be adopted in an inquiry envisaged under the said Act. If evidence stricto sensu is required to be taken in an inquiry forming the basis of a prima facie opinion of the court, the same would lead to a patent absurdity. Whereas in a trial the court for the purpose of appreciation of evidence may have to shift the burden from stage to stage, such a procedure is not required to be adopted in an inquiry. Even under the Code of Criminal Procedure existence of

strong suspicion against the accused may be enough to take cognizance of an offence which would not meet the standard to hold him guilty at the trial."

31. The above-referred dicta of the Hon'ble Supreme Court of Pakistan causes us to hold that it is not obligatory for the deponents of affidavits filed in support of extradition requests to appear as witnesses before the Enquiry Magistrate for the purpose of cross-examination on the facts deposed in their affidavits. There is however no bar in the 1972 Act for the Enquiry Magistrate to require the presence of the deponent of the affidavit produced in support of an extradition request in the event the Enquiry Magistrate considers such presence essential so as to enable him to form an opinion that a *prima facie* case has been made out for the extradition of a fugitive offender.

32. For the learned Judge-in-Chambers to hold that the Enquiry Magistrate *"should also call the Investigation Officer of the requesting State, who inquired and investigated the crime in his own jurisdiction"* does not, in our view, find support in any of the provisions of the 1972 Act, rather goes contrary to the above referred ratio in the cases of Abdul Ghaffar Vs. Federation of Pakistan *(supra) and* Nasrullah Khan Henjra Vs. Government of Pakistan *(supra).* In the impugned judgment, reference has been made to a few judgments of the Superior Courts showing that witnesses had appeared before the Enquiry Magistrate during extradition proceedings. We have had the opportunity of going through the said judgments but in none of them was it held that a witness on behalf of the requesting State or the Ministry of Interior appearing before the Enquiry Magistrate, had to be cross-examined in order for his affidavit/testimony to be admitted in evidence.

33. It is on the basis of the insertion of Article 10A in the Constitution that the learned Judge-in-Chambers held that *"any fact deposed through affidavit has to be considered admissible if the deponent appears before the Court or Authority before whom the affidavit of facts has been submitted."* Indeed Article 10A of the Constitution provides that for the determination of his civil rights

and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process. The writ petitioners before the learned Judge-in-Chambers had not challenged any of the provisions of the 1972 Act on the touchstone of Article 10A of the Constitution. It may be mentioned that in the case of Nargis Shaheen Vs. Federation of Pakistan (PLD 1993 Lahore 732), the Full Bench of the Hon'ble Lahore High Court held *inter alia* that the provisions of the 1972 Act were not illegal or *ultra vires* the Constitution and that they were in accord with the injunctions of Islam as set out in the Holy Quran and *Sunnah* as well as the intrinsic object of International Treaties entered into by a Muslim State. The said judgment was upheld by the Hon'ble Supreme Court of Pakistan vide judgment reported as Nargis Shaheen Vs. Federation of Pakistan (1994 SCMR 1706).

34. In the judgment passed by the Hon'ble Supreme Court in *suo moto* case No.4/2010 (PLD 2012 SC 553), the Hon'ble Supreme Court rejected the argument that the issuance of a show cause notice and the framing of a charge for Contempt of Court against the respondent would violate his rights under Article 10A of the Constitution on the ground that the Court had formed a *prima facie* opinion in the matter by initiating *suo moto* action against the respondent. Reference was made by the Hon'ble Supreme Court to the judgment in the case of President Vs. Shaukat Ali (PLD 1971 SC 585), wherein it was held *inter alia* that a preliminary enquiry intended to determine whether a *prima facie* case had been made out or not is a safeguard against the commencement of wholly unwarranted final proceedings against a person.

35. It has consistently been held that the Magisterial enquiry which is conducted pursuant to the request for extradition is not a trial. The said enquiry decides nothing about the innocence or guilt of the fugitive offender. The main purpose of the enquiry is to determine whether there is a *prima facie* case or reasonable grounds, which warrant the fugitive offender to be sent to the requesting State. The jurisdiction of the Enquiry Magistrate is limited and is not concerned with the merits of the trial. The provisions of the 1972 Act do not contemplate production of any

oral evidence by the Federal Government. No fact needs to be proved by evidence. What is necessary is to arrive at a finding that a *prima facie* case has been made out for extradition from the depositions, statements, copies and other information which are to be gathered from the official certification of facts and judicial documents produced in accordance with the requirements of Section 9 of the 1972 Act.

36. Now, there is a catena of case-law specifically dealing with extradition cases wherein it has been held that the proceedings before the Enquiry Magistrate under Section 8 (2) of the 1972 Act are not a trial but an enquiry. Section 4(k) of the Criminal Procedure Code, 1898 provides that *"enquiry"* includes every enquiry other than a trial conducted under the Code by a Magistrate or a Court. The word *"enquiry"* as used in the context of Sections 6 and 7 of the 1972 Act has been explained by the Hon'ble Supreme Court in the case of Muhammad Azim Malik Vs. Government of Pakistan (PLD 1989 SC 519) to be coextensive with the power of the Magistrate 1St Class to hold an enquiry into an offence whether triable by himself or not. It was also explained that under the provisions of the 1972 Act, the Enquiry Magistrate conducts an enquiry and not a trial. Additionally, in the case of Muhammad Asim Malik Vs. Anwar Jalil (PLD 1989 Lahore 279), it was held that the enquiry conducted by a Magistrate to find out the existence or otherwise of a *prima facie* case could not be equated with a regular trial by a Court of law.

37. Section 8(2) of the 1972 Act provides *inter alia* that when the fugitive offender appears or is brought before the Enquiry Magistrate, the latter *"shall enquire into the case in the same manner, and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a Court of Session and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive offender, including any evidence to show that the offence of which the fugitive offender is accused or alleged to have been convicted is an offence of a political character or is not an extradition offence."*

38. In paragraph 26 of the impugned judgment, the learned Judge-in-Chambers, after referring to Section 8(2) of the 1972 Act, held as follows:-

> ***"Hence, it can safely be concluded that enquiry proceedings before the enquiry Magistrate shall not be a summary proceedings, rather it would be in the same manner as a Sessions trial is conducted. In such eventuality, the enquiry Magistrate shall proceed with the matter like a trial court, especially in the manner as a sessions Court conducts the trial of an accused. Hence, the Extradition Act, 1972 itself provides complete mechanism to the fugitive offender to defend himself against the requisition made by requesting State to the Federal Government for surrender of such fugitive offender. As such, the enquiry Magistrate shall conduct the trial after giving full opportunity of producing evidence to the parties i.e. requesting State (who is seeking requisition of fugitive offender) as well as to the fugitive offender and shall also adopt every mode to dig out the truth."***

39. With utmost respect to the learned Judge-in-Chambers, we cannot bring ourselves to subscribe to his interpretation of Section 8(2) of the 1972 Act. In our view, what the Enquiry Magistrate has to ascertain during the proceedings under Section 8 of the 1972 Act is whether the material placed before him is sufficient to establish a *prima facie* case to justify the trial of a person whose extradition is sought. This is of course in cases where the fugitive offender has not been convicted by a Court in the Treaty State seeking his requisition.

40. The mere fact that Section 8(2) of the 1972 Act requires the Enquiry Magistrate to conduct the enquiry in a manner as if the case was one triable by a Sessions Court does not *ipso facto* make the proceedings before the Enquiry Magistrate into a trial. The scope of the enquiry to be conducted by the Enquiry Magistrate in terms of Section 8(2) of the 1972 Act has been well explained by the Division Bench of the Hon'ble Lahore High Court in the case of Muhammad Asim Malik Vs. Anwar Jalil (PLD 1989 Lahore 279). In the said case, the Division Bench of the Hon'ble Lahore High Court held *inter alia* that the only pre-requisite for the Enquiry Magistrate was to ascertain whether on the basis of material placed before him in accordance with the requirements of the 1972 Act, a *prima facie* case as understood in legal parlance was made out. Furthermore, it was held that the Enquiry

Magistrate was not expected to return a verdict of guilt upon the offender and that what the Enquiry Magistrate was obligated to find was whether a triable case was made out. Law to the same effect was recently laid down by this Court in the case of Tahir Attique Zarif Vs. Federation of Pakistan (PLD 2019 Islamabad 483).

41. We find the interpretation of the learned Judge-in-Chambers placed on Section 8(2) of the 1972 Act also to be contrary to the Hon'ble Supreme Court's interpretation of the said Section. In the case of Nasrullah Khan Henjra Vs. Government of Pakistan *(supra)*, the Hon'ble Supreme Court in paragraph 6 of the said report, after reproducing Section 8(2) of the 1972 Act, interpreted the same in the following terms:-

> ***"If after considering the material before him the Magistrate forms the opinion that a prima facie case has not been made in support of the requisition for the surrender of the fugitive offender he must discharge him and make a report to that effect to the Federal Government. But if on the other hand he comes to the conclusion that a prima facie case has been made out in support of the requisition he is required to send inter alia a report to the Federal Government and commit the fugitive offender to prison to await the orders of the Federal Government. (See section 10 of the Act). Under section 11, on receipt of the report from the Magistrate the Federal Government may, if it thinks fit, issue a warrant for the surrender of the fugitive offender to the requisitioning country."***

42. The said interpretation of the Hon'ble Supreme Court would indicate that the Enquiry Magistrate is not required by the provisions of the 1972 Act to conduct the enquiry proceedings like a criminal trial before a Sessions Court. It is not mandatory for the Enquiry Magistrate to summon witnesses whose depositions or affidavits accompany the request for extradition or the Officer investigating the offence against the fugitive offender in the country making such a request. Such depositions or affidavits produced before the Enquiry Magistrate are to be treated as evidence by operation of Section 9(1) of the 1972 Act. What is however required is for such depositions or affidavits and other documents accompanying the request for extradition be delivered to the fugitive offender and sufficient time be given for the recording of his statement under Section 342 Cr.P.C. This is

implicit in the observations of the Hon'ble Supreme Court in paragraph 8 of the judgment in the case of Nasrullah Khan Henjra Vs. Government of Pakistan *(supra)* which is reproduced herein below:-

> ***"As already indicated, together with the requisitions for the surrender of the petitioners the diplomatic representative of the United States Government sent to the Federal Government a number of documents. These included affidavits of persons who, except in the case of Nasrullah Khan Henjra, had direct dealings and association with the petitioners in regard to the smuggling of heroin in the United States. These affidavits were placed on the record of the proceedings conducted by the learned Magistrate and by operation of section 9(1), ibid, were treated as evidence by him. Copies of these affidavits were delivered to the petitioners and sufficient time was given to them before their statements under section 342, Criminal Procedure Code, were recorded. The petitioners also filed written statements in refutation of the charges being levelled against them; however, they did not lead any evidence in defence. We are unable to find any legal defect in the procedure adopted by the learned Magistrate."***

43. In the case of Muhammad Azim Malik Vs. Government of Pakistan (PLD 1989 SC 519), an objection was raised on behalf of the fugitive offender that since the offence which was alleged to have been committed by the fugitive offender was triable under the laws of Pakistan by a Court of Sessions, therefore, the Enquiry Magistrate had no jurisdiction under Section 8 of the 1972 Act to conduct the enquiry. While spurning the said objection, the Hon'ble Supreme Court held that the Enquiry Magistrate *"conducts an inquiry and not a trial and an inquiry, under the Criminal Procedure Code, also is different from the trial."* Furthermore, in the case of Mst. Akhtar Malik Vs. Federation of Pakistan (1994 P.Cr.L.J. 229), an objection was taken on behalf of the fugitive offender that the enquiry proceedings were not conducted by the Enquiry Magistrate in accordance with Section 8 of the 1972 Act inasmuch as neither was any charge framed nor was any evidence recorded nor was any incriminatory evidence on the basis of which the fugitive offender was sought to be extradited, put to him portion-wise. The said objection was rejected by the Hon'ble Lahore High Court in the following terms:-

> ***"16. Arguments of the learned counsel for the petitioners with regard to the holding of mode of inquiry as envisaged by the Act and as held by the learned Enquiry Officer are also misconceived.***

The provisions of section 8 of the Extradition Act read with Article 9 of the Treaty clearly show that a Magisterial inquiry is to be held only to come to a prima facie conclusion as to whether a case against the petitioner for facing trial in the indictment in pursuance whereof a request for extradition has been received, is made out or not. An inquiry admittedly has a different connotation than the "trial" as is clear from the definition of the "inquiry" as given in Criminal Procedure Code, I section 4(k), whereof defines the word "inquiry" as under:--

> ***"Inquiry: includes every inquiry other than a trial conducted under this Code by Magistrate or Court."***

Arguments addressed by the learned counsel for the petitioner to the effect that inquiry has to be held in accord with commitment proceedings, is not supported by the provisions of section 8 of the Extradition Act, 1972 read with Article 9 of the Treaty which provides that the inquiry has to be held in accord with the law of the country which is to pass an order of extradition. By virtue of section 9 of the Act, authenticated documents which have been relied upon by the learned Enquiry Officer as well as the respondents for recording of the report and passing of the impugned order have been made per se admissible and, therefore, on the basis of that material learned Enquiry Officer has rightly held that there is a prima facie case against the accused for directing them to face trial. Similarly, the respondents have also rightly held that it is a fit case for passing of an order of extradition."

As mentioned above, the said judgment was upheld by the Hon'ble Supreme Court of Pakistan in the case of Nasrullah Khan Henjra Vs. Government of Pakistan *(supra)*.

44. We have also observed that in the case of Muhammad Asim Malik Vs. Anwar Jalil (PLD 1989 Lahore 279), quoted in the impugned judgment, it was held *inter alia* as follows:-

> ***"As said above, objections of the petitioner related to absence of a prima facie case for surrender of the fugitive offender; defects in the inquiry and its results and personal non-hearing by the Federal Government. Extradition is a special branch of law dealing with a special subject. Therefore, provisions of section 9 in so far as they allow the evidence of exhibits, depositions, statements on oath, duly authenticated in the manner provided therein to be received in the inquiry are an exception to the general procedure laid down in the Code of Criminal Procedure and the Evidence Act, 1872 Qanun-e Shahadat, 1984. Having regard to the object underlying the law of extradition and its kind and nature, the inquiry conducted by a Magistrate to find out the existence or otherwise of a prima facie case could not be equated with a regular trial by a Court of law. Therefore, the argument of the learned counsel for the petitioner that the provisions in Qanun-e-Shahadat prohibiting the reception of a particular kind of evidence, at inquiry, must prevail over the special provisions in the Extradition Act, with respects to him, is not correct and we see no force in it. At this stage, it may be***

observed that as to authentication of documentary evidence, learned counsel for the petitioner raised no dispute."
(Emphasis added)

45. In the case of Kamlesh Babulal Aggarwal Vs. Union of India (2008 (104) DRJ 178), it was observed as follows:-

"In our opinion, the power of the Magistrate in conducting an inquiry under Section 7 of the Act is akin to framing of the charge under Section 228 of the Code of Criminal Procedure. The requirement of Section 228 also is of a prima facie case. If the court is satisfied that a prima facie case is made out for proceeding further (trial), then a charge has to be framed. The sifting of evidence at this stage is permissible only for a limited purpose to find out a prima facie case but the court cannot decide at this stage that the witness is reliable or not."

46. It now needs to be determined whether the evidence brought before the Enquiry Magistrate was sufficient to arrive at a finding that a *prima facie* case for respondent No.1's extradition to U.K. had been made out. The allegations against respondent No.1 are detailed in the affidavit of Detective Constable Simon Murphy ("Mr. Murphy") employed by the Greater Manchester Police. Respondent No.1 is alleged to have murdered Mr. Marshall in a gang relating shooting in Manchester, U.K. Mr. Marshall was said to have been an active member of an organized criminal group called the *"Gooch Gang"* which operated in the Moss Site Area of Manchester. His body was found by a member of the public on 20.05.2015 at approximately 7:25 a.m. next to a parked car on Manor Park Road, Manchester. The post-mortem examination had established that Mr. Marshall's death was caused by at-least seven gunshot wounds. On 22.05.2015, Mr. Marshall's vehicle was discovered in Manchester. The vehicle was forensically examined on 23.05.2015. Respondent No.1's blood was discovered in the driver seat area on the back of the seat, the handbrake and the reverse of the sun visor.

47. In Mr. Murphy's affidavit (Exh.P.2 to P.6), it is also deposed that on 26.05.2015, respondent No.1 was interviewed by the police as a suspect under caution. He denied any involvement in Mr. Marshall's murder. He, however, confirmed that he had been with Mr. Marshall on the evening of 19.05.2015. He asserted that he had been dropped by Mr. Marshall at a parade of shops known

as the Quadrant. Respondent No.1 was noticed by the police officers to have an injury to his left hand. Respondent No.1 explained that the cause of injury was him playing with a flick knife while he was in Mr. Marshall's car and had accidentally cut himself. After the interview, respondent No.1 was released on police bail. A ballistics expert is said to have examined the photographs of the injury to respondent No.1's left hand and had provided a statement confirming that the injury is consistent with injuries that can be caused by the recoiling slide of a pistol. The cell site analysis of respondent No.1's phone shows that at 11:10 p.m., the cell was cited in Urmston from the same mast that services the location where Mr. Marshall's body was found.

48. As per the contents of the said affidavit, respondent No.1 was due to surrender himself on 23.07.2015 to the police in Manchester but he failed to do so. Respondent No.1 is said to have been in a relationship with a woman named Debbie Sanyalou (**"Ms. Sanyalou"**). On 18.11.2015, the police is said to have visited Ms. Sanyalou's address. At the time of the visit, she was said to have been engaged in a face time conversation with respondent No.1. The IP address of this call was traced to Lahore, Pakistan. On 17.02.2016, Ms. Sanyalou is said to have traveled to Lahore via Amsterdam. Since she had never traveled to Lahore prior to this and had no known contacts in Lahore, the police believed that the purpose of this visit was to visit respondent No.1.

49. Jacqueline French (**"Ms. French"**) had carried out an examination of the blood swab left on the driver's seat back, which was sampled and sent for DNA profiling. The purpose of the examination was to determine from whom the blood in the vehicle could have originated. The profile obtained is said to have matched the DNA profile of respondent No.1 such that he could be the source of the blood in the vehicle. Ms. French, in her affidavit (Exh.P.32 to P.33), deposed that it had been estimated that the chance of obtaining the matching of the DNA profiles if the blood had originated from someone other than and unrelated to respondent No.1 to be in the order of 1 in 1 billion. Her conclusion

was that the blood found on the left shoulder of the driver's back seat of the vehicle could have originated from respondent No.1.

50. Andre Horne (“Mr. Horne”), in his affidavit (Exh.P.27 to P.28) deposed *inter alia* that on 04.09.2015, he had received a request from Greater Manchester Police to examine a photograph of the left hand of a person with an injury to the inside of the left thumb and that he was asked whether he was familiar with such injuries and whether he would comment on how such an injury may have been caused. Mr. Horne's comments were that the injury may have been caused by the recoiling slide of a pistol. He also explained that the slides of some pistols have sharp edges capable of causing cutting injuries and that this type of injury occurs most often when the weak hand is used to support the shooting hand by gripping the wrist of the shooting hand from the rear. He also deposed that the injury may also be caused to a strong hand if the pistol is gripped in an unnatural way or if it is forced into an unnatural position during a defensive act by the victim. Mr. Horne's conclusion was that the injury observed to the left thumb of respondent No.1 was consistent with being caused by the slide of a semi-automatic pistol if the pistol was gripped with the thumb in the way of the recoiling slide. He, however, qualified this by deposing that the possibility that the injury had been caused in another way could not be excluded. It may be mentioned that as per the contents of Mr. Horne's affidavit, he has a certificate in forensic fire arm and tool mark examinations for specialists. He has also completed an Advance Programme in Forensic Criminalistics majoring in Forensic Ballistics.

51. The documents filed along with respondent No.1's extradition request before the Enquiry Magistrate include the affidavit sworn by Ms. Fiona Barrett, who is a Crime Scene Investigator for the Greater Manchester Police. She holds a Diploma in Crime Scene Examination from the University of Durham. In her affidavit (Exh.P.29 to P.31), she has deposed *inter alia* that on 23.05.2015, she had examined a vehicle connected with the scene of a reported murder and that in conjunction with two other forensic scientists, she made an examination of the

vehicle and took photographs and recovered tape lifts, swabs, blood swabs, a footwear mark, floor mats, a bullet head, etc. from the vehicle. It may be mentioned that one of the blood swabs (i.e. FMB/17) recovered by Ms. Fiona Barrett from the vehicle was the one with which Mr. Ahsan's DNA profile had matched.

52. Along with the extradition request, the affidavits of Phillip Lumb (who had carried out a post mortem examination of the body of Andre Marshall-Smith), Arron Cooper (who had heard the gunshots when he was at his house, which was in close proximity to Manor Avenue), Rachel Xu (who was the first person to discover Andre Marshall-Smith's body, and informed the Police), and Seanie Lynch (who lived in the neighborhood where the gunshots were fired) were also filed.

53. Having gone through the documents filed in the proceedings before the Enquiry Magistrate, it is our considered view that *prima facie* the abovementioned duly authenticated documents are sufficiently clinching enough to rope in respondent No.1 in the commission of the alleged offence for the purposes of the present request.

54. In the impugned judgment dated 15.05.2019, the learned Judge-in-Chambers had directed the F.I.A. to submit the complete documentary record after obtaining a report from NADRA as to whether respondent No.1 had changed his personal details and identity in order to conceal his presence in Pakistan. It is pertinent to bear in mind that neither in the proceedings before the Enquiry Magistrate nor in the grounds of his writ petition did respondent No.1 take the position that his name was not Mr. Abdul Qadir Ahsan or that he was not in fact the person whose extradition has been sought. Therefore, we are of the view that a direction to the F.I.A. to inquire into whether respondent No.1 had changed his identity was not warranted.

55. When the appeal was fixed for rehearing, learned counsel for respondent No.1 submitted that respondent No.1 was fed up of being in jail and that he was ready to be extradited to U.K. This confirms that it was indeed respondent No.1, who was the person whose extradition had been sought.

56. In view of the above, the instant appeal is allowed and judgment dated 15.05.2019 is set-aside, and consequently writ petition No.4606/2018 filed by respondent No.1 is dismissed. There shall be no order as to costs.

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE) **(JUDGE)**

Qamar Khan