

HCJD/C-121  
**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**Crl. Revision. No.46/2018**

**Tahir Attique Zarif**  
*VERSUS*  
**Federation of Pakistan, etc**

Petitioner by : **Mr. Sabah Mohy-Ud-Din Khan, Advocate**  
Respondents by : **Syed Muhammad Tayyab, DAG.**  
Date of Hearing : **Rabi Bin Tariq, State Counsel**  
**21-12-2018.**

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**ATHAR MINALLAH CJ:** Through this petition, Tahir Attique Zarif s/o Attique Ur Rehman Zarif (hereinafter referred to as the "***Petitioner***") has challenged order, dated 03-05-2018, passed by the Additional Deputy Commissioner, Inquiry Magistrate, Islamabad Capital Territory, Islamabad. The latter, on the basis of an inquiry conducted by him, was satisfied that a prima-facie case was made out for extradition of the Petitioner and has, therefore, referred the matter to the Federal Government for taking a decision under section 11 of the Extradition Act 1972 (hereinafter referred to as the "***Act of 1972***").

2. The essential facts for the adjudication of the instant petition are that the Federal Government received a request from the United Kingdom through its High Commission in Islamabad for the extradition of the Petitioner. On receiving the request, the Federal Government, through a notification published in the Official Gazette on

11-07-2017, in exercise of powers conferred under Section 4 of the Act of 1972, directed that the provisions *ibid* would have effect in relation to the requesting State. The Federal Government, vide order dated 11.07.2017, appointed the Additional Deputy Commissioner (General), Islamabad Capital Territory, Islamabad as Inquiry Officer to inquire into the case and submit a report. The authenticated extradition documents were forwarded to the Inquiry Officer. In the meanwhile, another officer was posted and, therefore, vide notification dated 13-10-2017, he was nominated as the Inquiry Magistrate. The notified Magistrate, namely Shoaib Ali, Additional Deputy Commissioner, Islamabad Capital Territory, Islamabad issued warrants of arrest of the fugitive offender i.e. the Petitioner and the same were executed through the Federal Investigation Agency. The Petitioner was produced before the notified Inquiry Magistrate. The alleged offences relate to the murder of Akhtar Javeed during commission of a robbery that had taken place on 03.02.2016 at the business premises of 'Direct Source 3, 66 Rea Street South, Digbeth, Birmingham' (hereinafter referred to as the "**place of occurrence**"). As a result of thorough investigations conducted by the West Midlands Police, four (04) accused were arrested, namely, Suraj Vasantrao Mistry, Lamar Wali, Sandar Van Aalten and Asif Aurangzaib (hereinafter referred to as the "**arrested accused**"). Mistry and Wali were charged with murder, conspiracy to commit robbery and possession of firearms with intent to cause fear of violence. The other two accused were charged for conspiracy to commit robbery. It is alleged that the Petitioner was armed with a firearm and he initially tried to force the deceased to open the safe but when he fought back, he started shooting at him causing fatal firearm injuries. On 04.02.2016

i.e. the following day, the Petitioner booked a flight and subsequently flew to Pakistan on 08-02-2016 accompanied by his mother. While the latter returned after some time, the former decided to stay in Pakistan. On 09-02-2016, Sandar was convicted by the Crown Court in Birmingham following a guilty plea of conspiracy to commit robbery. He was, therefore, sentenced to six (06) years and eight (08) months imprisonment. Mistry was convicted of manslaughter, conspiracy to rob and two counts of possession of a firearm with intent to cause fear of violence and on 27.09.2016 he was sentenced to twenty three (23) years imprisonment for manslaughter, twenty (20) years imprisonment, to run concurrently, for conspiracy to rob and eight (08) years imprisonment, to run concurrently, for two offences of possession of a firearm with intent to cause fear of violence. Wali was convicted of conspiracy to rob and consequently was sentenced to seven (07) years imprisonment on 27-09-2016. The prosecution did not proceed against the fourth accused. Since the Petitioner had become a fugitive and did not return to the United Kingdom, therefore, request for his extradition was made so that he could be tried for charges of murder, conspiracy to commit robbery and two counts of possession of a firearm with intent to cause fear of violence. The request was made by the Government of the United Kingdom through its High Commission in Islamabad. The Federal Government, in exercise of powers vested under Section 4 of the Act of 1972, published a notification in the official Gazette and appointed an Inquiry Magistrate. The latter concluded the inquiry and has sent a report vide the impugned order, dated 03.05.2018. It is noted that the Petitioner was born on 18.11.1990 and holds British citizenship and a passport, which was

issued on 15.10.2013. He is a naturalised British citizen and the address on his passport is recorded as 104 Osmaston Park Road, Derby DE24 8EX.

3. Mr. Sabah Mohy-Ud-Din, ASC has argued on behalf of the Petitioner and has contended that; it is obvious from the record that the vehicles used during commission of the offence were not owned by or registered in the name of the Petitioner; in the facts and circumstances of the case, the eye witnesses could not have identified the Petitioner because the alleged offenders had covered their faces; the cell phone data could not be relied upon because it was inconclusive regarding the commission of the offence; the presence of the petitioner in the area around the place of occurrence is not sufficient to connect him with the alleged offence; cell phone data in the absence of direct evidence merely tantamounts to circumstantial evidence and cannot be relied upon; prima facie, a case was not made out and, therefore, on the basis of the documents brought on record, the Inquiry Magistrate could not have sent his report recommending the extradition of the Petitioner; the documents placed before the Inquiry Magistrate were not authenticated as required under subsection 1 (d) of Section 9 of the Act of 1972; the provisions of the Act of 1972 are to be strictly construed in view of the fundamental rights guaranteed under Article 15 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**"); reliance has been placed on "Muhammad Asim Malik vs. Anwar Jalil and 4 others" **PLD 1989 Lahore 279**, the CCTV also cannot be treated as a conclusive piece of evidence for forming an opinion that a prima facie

case was made out; reliance has been placed on "Nasarullah Khan Henjra vs. Government of Pakistan, Ministry of Interior and Narcotics Control (Interior Division), Islamabad and 3 others", **1998 SCMR 1072**, "Mirza Iftikhar Mehmood vs. Area Magistrate, Police Station Nekapura, Sialkot and 3 others", **PLD 2009 Lahore 215**, "Mah Gul vs. The State", **2009 SCMR 4**, "Muhammad Jamil vs. Muhammad Akram and others", **2009 SCMR 120**, "Bashir Ahmad and others vs. The State and another", **2018 MLD 1072** and "Nargis Shaheen vs. Federation of Pakistan and 5 others", **PLD 1993 Lahore 732**.

4. Mr. Rabi Bin Tariq, State Counsel, has contended that; the inquiry was conducted in accordance with the provisions of the Act of 1972; the request was entertained by the Federal Government and in order to give effect thereto a notification was duly published in the official Gazette under section 4 of the Act of 1972; the Inquiry Magistrate was only required to inquire into the matter and not conduct a trial as suggested by the learned counsel for the Petitioner; the Inquiry Magistrate, after carefully perusing the authenticated record, had concluded that a prima facie case was made out.

5. Syed Muhammad Tayyab, Deputy Attorney General, has adopted the arguments advanced by the learned State Counsel and has stated that the impugned order is well reasoned and has been passed in accordance with the provisions of the Act of 1972 and, therefore, does not require interference.

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6. The learned counsel for the Petitioner and the learned Law Officers have been heard and the record has been carefully perused with their able assistance.

7. The Petitioner is a naturalized citizen and was duly issued a passport by the Government of the United Kingdom. It appears from the record that he and another co-accused, namely Mistry, were engaged in business. The alleged offences had taken place at the place of occurrence on 03.02.2016. The Petitioner booked a flight on the following day and subsequently boarded the flight destined for Pakistan on 08.02.2016. Since then he has not returned to the United Kingdom and, therefore, a request for his extradition was received by the Federal Government through the High Commission of the United Kingdom in Islamabad. There is no extradition treaty between Pakistan and the United Kingdom and, therefore, in exercise of powers conferred under Section 4 of the Act of 1972, a notification was published in the official Gazette and an inquiry officer was duly notified. It has been argued by the learned counsel appearing on behalf of the Petitioner that the documents placed before the Inquiry Magistrate were not authenticated as required under the Act of 1972 and that a prima facie case was not made out. In order to answer the questions raised on behalf of the Petitioner it would be beneficial to examine the provisions of the Act of 1972.

8. The Act of 1972 was published in the Official Gazette on 25.09.1972 with the object and purpose to consolidate and amend the law relating to the extradition of fugitive offenders. Subsection (4) of Section 1 provides that the provisions of the Act of 1972 would apply in

two eventualities, firstly, in case of a treaty State, subject to a declaration made under Section 3 and, secondly, to a non treaty State, subject to a direction under Section 4. Clause (a) of subsection (1) of Section 2 defines the 'extradition offence' while 'fugitive offender' and 'treaty State' are defined in clauses (d) and (f) respectively. Section 3 is in relation to the obligations in relation to a treaty State while Section 4 empowers the Federal Government to direct that the provisions of the Act of 1972 will apply and have effect in relation to a particular State notwithstanding that there is no extradition treaty with such State. Subsection (2) of Section 4 explicitly provides that where a direction under subsection (1) in relation to a foreign State is in force, then the provisions of the Act of 1972 shall have effect in relation to such State as if it were a treaty State. Subsection (1) of Section 5 provides that subject to the provisions of subsection (2) *ibid* every fugitive offender shall be liable to be apprehended and surrendered in the manner provided under the Act of 1972. Subsection (2) of Section 5 describes the categories of fugitive offenders who cannot be surrendered. Section 6 describes the mode for making requisition for surrender of a fugitive offender. Section 7 empowers the Federal Government to issue an order to enquire into the case to any Magistrate of the First Class upon a requisition made under Section 6. Sections 8 and 9 describe the manner in which an inquiry is to be conducted. The said provisions, *inter alia*, provide that exhibits and depositions, warrants and statements on oath etc are required to be authenticated and the competent authorities for the purposes of such authentication have also been explained therein. Section 10 provides for the consequences which would ensue after an enquiry has been concluded by the Inquiry

Magistrate. If the latter is of the opinion that a prima facie case is not made out in support of the requisition for surrender of the fugitive offender, then he or she orders discharge of the fugitive offender and accordingly informs the Federal Government through a report. Conversely, if the Magistrate forms an opinion that a prima facie case is made out then it becomes mandatory for the latter to report the result of his/her enquiry to the Federal Government and forward, together with such report, any written statement which the fugitive offender may have submitted for the consideration of the Federal Government. Section 11 empowers the Federal Government to form an opinion after receipt of the report and statement contemplated under clause (b) of section 10 whether the fugitive offender should be surrendered.

9. A plain reading of the provisions of the Act of 1972 unambiguously shows that the powers relating to extradition of a fugitive offender may be exercised by the Federal Government in case of a State with which it has a treaty as well as a non-treaty State, provided in the latter case an order is passed under section 4 *ibid* and in this regard a comprehensive procedure has also been prescribed. As noted above, the Magistrate is appointed under Section 7 to inquire into the matter on the basis of documents authenticated by competent forums/authorities of the requesting State described under Section 9.

10. The august Supreme Court in the case titled "Nasrullah Khan Henjra vs. Government of Pakistan, Ministry of Interior and Narcotics Control, Islamabad", **PLD 1994 SC 23** has eloquently highlighted the significance of the enactment of the Act of 1972,



particularly in the context of the fundamental right guaranteed under Article 15 of the Constitution. While referring to the nature of the inquiry which is required to be conducted under Section 8 (2) of the Act of 1972, the august Supreme Court has observed and held that if, after considering the material placed before the Inquiry Magistrate, the latter forms an opinion that 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 to await the orders of the Federal Government. The expression 'prima facie case' has been defined in the Black's Law Dictionary Eighth Edition, which is as follows:-

**"Prima facie case. 1.** The establishment of a legally required rebuttable presumption. [Cases: Evidence 53, 85. C.J.S. Evidence §§ 2, 130–132, 134–135, 1341.] **2.** A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor. [Cases: Evidence 584(1). C.J.S. Evidence §§ 226, 729, 1300–1305, 1320, 1324, 1326–1327, 1342, 1345.]"

11. The august Supreme Court in the case titled "Noor Muhammad vs. The State and others", **PLD 2007 SC 9** has observed and held as follows:-

*"The proceeding under section 204 or 203 depends upon the existence or non-existence of sufficient ground which have been taken by the Courts as the existence of*

*prima facie case, the two expressions i.e., the existence of sufficient ground and prima-facie case have been construed by the Courts interchangeably. In the case of "Sher Singh v. Jatendranath Sen" (AIR 1931 Cal. 607), it was held "a prima facie case only means that there is ground for proceeding. It is not the same thing as proof which comes later when the Court has to find whether the accused is guilty or not guilty". There is a marked distinction as to the approach of appraisal of material on record i.e. averments made in the complaint and the statement made on oath by the complainant, at the time of holding of a preliminary inquiry for determining as to whether the process to be issued against the accused or not and at the regular hearing of the criminal case leading to determining the guilt or innocence of the accused. The Court is not expected to examine the material minutely whereas at the stage of trial it appraise the evidence thoroughly and record its findings on the basis of such appraisal and that any benefit of doubt arising out of such inquiry should be given to the accused. It is not the stage where a material available on the record is assessed in depth but a prima facie case has to be made out to proceed further with the matter for issuance of the process."*

12. The august Supreme Court in the case titled "Muhammad Azim Malik vs. Government of Pakistan" **PLD 1989 SC 519** has

elaborately discussed the distinction between conducting an inquiry and a trial. The Lahore High Court in the case reported as "Muhammad Asim Malik vs. Anwar Jalil and 4 others", **PLD 1989 LHC 279** has held that the phrase 'prima facie case' is not a term of art and, in law, it signifies adequate to establish a fact or raise a presumption of fact unless rebutted. It is a substantial question bonafidely raised, which at first sight needs to be further investigated and decided. The prerequisite for an Inquiry Magistrate is, therefore, to ascertain whether, based on the material placed before him or her in accordance with the requirements of the Act of 1972, a prima facie case as understood in its legal parlance has been made out. The Inquiry Magistrate is by no stretch of the imagination expected to give a verdict of holding the fugitive offender as guilty. An inquiry officer is merely expected to form an opinion as to whether a triable case is made out.

13. In the facts and circumstances of the case in hand there is no force in the argument raised by the learned counsel for the Petitioner that the Inquiry Magistrate had erred in concluding that a prima facie case was made out. After carefully perusing the record the contention that the documents placed before the Inquiry Magistrate were not authenticated in the manner prescribed under section 7 of the Act of 1972 is also misconceived. The documents were received by the Federal Government through the High Commission of the United Kingdom and this Court is satisfied that they have been duly authenticated by the competent forums/Courts. As noted above, the other co-accused of the Petitioner were proceeded against and tried for the offences and were handed down convictions and sentenced by a

competent court in the United Kingdom. The CCTV footages, data relating to cellular phones in the use of the Petitioner, details regarding movements with other co-accused and other authenticated material were taken into consideration and based thereon the learned Inquiry Magistrate has formed an opinion that a prima facie case was made out in favour of the requisition. The impugned order has not been found to suffer from any legal infirmity nor the procedure adopted by the Federal Government or the Inquiry Magistrate, as the case may be, has been found to be in violation of the provisions of the Act of 1972.

14. In view of the above discussion the impugned order, dated 03.05.2018, has been passed in consonance with the provisions of the Act of 1972 and, therefore, no interference is warranted.

15. The instant petition is without merit and thus accordingly dismissed.

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(CHIEF JUSTICE)

Announced in the open Court on 20.03.2019.

(CHIEF JUSTICE)

*Approved for reporting.*

\*Asif Mughal/