

Delhi High Court

Nina Pillai vs Union Of India on 10 January, 1996

Equivalent citations: 65 (1997) DLT 487, 1997 (40) DRJ 363

Author: M Sarin

Bench: M Rao, M Sarin

JUDGMENT Manmohan Sarin, J.

(1) The present petition has been filed by Mrs. Nina Pillai and her two minor sons, challenging the order dated 2-6-1995, passed under Section 5 of the Extradition Act, hereinafter referred to as the Act, appointing a Metropolitan Magistrate to conduct an enquiry into the case. The order had been passed pursuant to a letter of request received from Singapore High Commission for provisional arrest for purpose of extradition of late Mr. Janardhan Mohan dass Rajan Pillai (hereinafter referred to in short as Mr. Rajan Pillai). The petitioners are seeking quashing of the order dated 2-6-1995.

(2) The petitioners in addition have sought a declaration that Section 5 of the Act to the extent it permits the issuance of an order for inquiry without complying with the principles of natural justice, is ultra vires the provisions of Articles 14 and 21 of the Constitution of India. Further that Sections 3,4,5,6 and 7 of the Act do not apply to the Indian citizens. In the alternative it is prayed, that if the said Sections are held to apply to Indian citizens, the same be declared unconstitutional being violative of the fundamental rights guaranteed under Articles 5,14,19(1)(e) and Article 21 of the Constitution of India.

(3) The petitioners have impleaded besides Union of India as respondent No.1, Mr. Pranab Mukherjee, the then Minister of External Affairs as respondent No.2 and Mr. Oscar Kerkatta, Under Secretary, Ministry of External Affairs as respondent No.3. It was put to the learned counsel for the petitioner, that there was no occasion to implead the said respondent by name and in their personal capacity, specially when the only bald allegation in the petition as against the said respondents was "that the order has been passed malafide and their exist malice in fact and in law." Learned counsel thereupon fairly conceded that the said respondents may be deleted from the array of respondents. Accordingly, respondents 2 and 3 are deleted from the array of respondents. Learned counsel fairly stated that she would not press for prayer E of this writ petition regarding a declaration to entitlement of punitive damages which the petitioners reserve their right to claim separately, if so entitled at Law.

(4) Before we deal with the various submissions made by the learned senior counsel for the petitioner, Ms. Indira Jai Singh, it would be pertinent to notice certain relevant dates.

(5) Late Mr. Rajan Pillai, an Indian citizen, was convicted in Singapore on 10-4-1995 for 24 offences punishable under the Singapore Penal Code. The case was adjourned, at the request of counsel for the accused, to hear arguments on the question of sentence. Mr. Rajan Pillai instead of presenting himself for receiving sentence, left Singapore and came to India very next date and sought anticipatory bail from the Bombay High Court, which was rejected by the High Court of Bombay. The High Commission of Singapore, in the meanwhile, on 19-4-1995 presented a letter of request and sought the provisional arrest for purposes of extradition of Mr. Rajan Pillai. The Union

Government passed the order dated 2-6-1995, appointing a Magistrate under Section 5 of the Act to conduct an inquiry into the case and submit his report. This was followed by warrants of arrest, pursuant to which Mr. Rajan Pillai was arrested. It is the petitioners' grievance that Mr. Rajan Pillai was denied proper medical facilities and was assaulted in jail, culminating in his death on 7-7-1995. A Commission of inquiry has already been set up and Ms. Leela Seth, former Chief Justice of Himachal Pradesh, is inquiring into the circumstances leading to the death of Mr. Rajan Pillai.

(6) Learned counsel for the petitioners has assailed the order dated 2-6-1995, hereinafter referred to as the impugned order, as being vitiated by non- application of mind and having been passed in violation of the principles of natural justice. It is the petitioner's contention that Section 5 of the Act in so far as it permits the passing of an order of enquiry without prior notice and hearing is ultra vires.

(7) Learned counsel for the petitioners argued that the trial and conviction of Mr. Rajan Pillai was vitiated by violation of the principles of natural justice and bias against Mr. Rajan Pillai. It is claimed that the trial was contrary to the provisions of Criminal Procedure Code of Singapore. Learned counsel submitted that one Mr. Ross Johnson, Investor and Business associate of Mr. Rajan Pillai, had certain disputes with him. Mr. Ross Johnson, in spite of the settlement, pursued the criminal complaint and Mr. Pillai became a victim of Mr. Ross Johnson, who wielded great political and financial influence and wanted to eliminate Mr. Rajan Pillai. Learned counsel argued that though the disputes were civil in nature and related to certain losses incurred and payments made to companies within the same group, criminal charges were initiated against Mr. Rajan Pillai. The charge, though initially being a single one, was split into 26 charges to subject the deceased to exorbitant amount for bail. Learned counsel further urged that the evidence of principal witnesses, including Mr. Ross Johnson, was relied upon for the order of conviction but the witnesses were not made available for cross-examination. It was urged by the learned counsel that Mr. Rajan Pillai was denied a fair trial. The trial was vitiated by bias and prejudice against him and in favour of Mr. Ross Johnson. Learned counsel submitted that the order of conviction was not a judgment as it did not record reasons for the same and could not be recognised or acted upon in civilized system of criminal law. Learned counsel relied on the decision of the Hon'ble Supreme Court of India in Mukhtiar Singh Vs. State of Punjab reported as . Learned counsel also referred to the advice given by the counsel, Mr. Arun Jones, Q.C., who felt impelled to withdraw from the case when he found that Mr. Rajan Pillai was not receiving a fair trial.

(8) As regards the impugned order under Section 5 of the Act, was assailed as having been passed without application of mind and without taking into account the relevant materials. Learned counsel referred to the recitals of Annexure P-4 (Pages 57-58) wherein Mr. Rajan Pillai is accused of larceny, bribery, forgery and disobedience of the court order by leaving Singapore for Bombay as well as for offences of cheating and criminal breach of trust. Learned counsel submitted that Mr. Rajan Pillai was never convicted or prosecuted for larceny, bribery, forgery, etc. This would be evidence from Annexure P-2 (pages 48 to 50), which is the request made by the High Commission of Singapore for provisional arrest of Mr. Rajan Pillai for purposes of extradition. The language of the impugned order shows that it has been passed on the assumption as if the alleged offences are yet to be inquired into, ignoring the conviction.

(9) Learned counsel, thereafter, referred to the various representations made to the Union of India as well as Ministry of External Affairs for recalling the order dated 2-6-1995. Learned counsel submitted that it was not obligatory on the Union of India to accede to a request for extradition. The order for a magisterial inquiry under Section 5 of the Act was also purely discretionary. It was submitted that the Union of India failed to act fairly by not calling for the complete relevant details and considering the representations made for recalling the order under Section 5 of the Act. Learned counsel further argued that Section 5 and 9 were unconstitutional inasmuch as they permitted passing of an order which visits the affected persons with penal consequences without prior opportunity of hearing being given. This is because an order under Section 5 of the Act is followed with warrants of arrest. Learned counsel also submitted that the Section would not include in its ambit an Indian citizen as the reference is to a fugitive criminal of foreign State.

(10) We have given our careful consideration and thought to the submissions made by the learned counsel for the petitioner. It is clear from the scheme of the Extradition Act that pursuant to a request made under Section 4 of the Act, the order contemplated to be passed for a magisterial inquiry under Section 5 does not contemplate a pre-decisional or prior hearing. Section 5 of the Act is an enabling provision by which, a Magistrate is appointed to inquire into the case. The Magistrate on the order of inquiry being passed by Central Government issues a warrant of arrest of the fugitive criminal. The whole purpose is to apprehend or prevent the further escape of a person who is accused of certain offences and/or is convicted and wanted by the requesting State for trial or for under- going the sentence passed or to be passed. The Act contains sufficient safeguards in the procedure to be followed in the inquiry by the Magistrate to protect the fugitive criminal. The Magistrate is to receive evidence from the requesting State as well as of the fugitive criminal. The fugitive criminal is entitled to show that the offences of which he is accused or convicted are offences of a political character or not an extradition offence. Besides, the Magistrate, if he comes to a conclusion that a prima facie case is not made in support of the requisition by the requesting State, he is required to discharge fugitive criminal. The Act also has provisions under Section 25 of the Act for grant of bail. The Act under Section 29 confers wide powers on the Central Government to discharge the accused or cancel any warrants issued, if it finds that the application for surrender or return of the fugitive criminal has not been made in good faith. It may also discharge the fugitive criminal in the interest of justice or for political reasons if it is unjust or inexpedient to surrender or return the fugitive criminal. We are of the view that the challenge to Section 5 of the Act on the ground that it does not provide any pre-decisional hearing or is violative of natural justice is without any merit and misconceived and it must fail.

(11) Learned counsel for the petitioners submitted that even though Mr. Rajan Pillai was no more, the petitioners were entitled to maintain an action challenging the order under Section 5 of the Act appointing a Magistrate to inquire into the case for purpose of extradition and to submit a report. It was urged that the said order adversely affected the reputation of the petitioner. It was hampering the petitioners' business activities as financial institutions were reluctant to deal with the petitioners who were taken to be the legal representatives of a "fugitive criminal". The said order was a stigma and slur on the family, the reputation of which petitioners were entitled to have vindicated. It was affecting their day-to-day life. Besides the petitioners were challenging the constitutional validity of the Act.

(12) We may notice here that upon receiving information with sufficient particulars from a requesting State that a fugitive criminal is wanted for any alleged offence committed in the requesting State or for undergoing trial or sentence, the Central Government passes an order under Section 5 of the Act, appointing a Magistrate to inquire into the case. The Criminal Procedure Code also provides for the arrest of a person without warrant who is concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned in the offence, under Section 41 of the Code. Accordingly, on credible information being received from a requesting State, with sufficient particulars, about a person having been involved in any offence, the said person could be arrested in India without warrant. It is now fairly well-settled that the Magisterial inquiry 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 criminal. The main purpose of the inquiry is to determine whether there is a *prima facie* case or reasonable grounds which warrant the fugitive criminal being sent to the demanding State. The jurisdiction is limited to the former part of the request and does not concern itself with the merits of the trial, subject to exceptions as outlined in the preceding paragraph 7, in which case the request for extradition is denied by the Central Government.

(13) It is not necessary to deal with all the submissions made with regard to "injustice" meted out to late Mr. Rajan Pillai or the "alleged mistrial" or the validity of the judgment/order of conviction passed by the Singapore Court. Besides, we are of the view that Mr. Rajan Pillai having expired, the inquiry under Section 5 of the Act stands abated. In fact, the request for return of the fugitive criminal itself does not survive. Learned counsel for the petitioner in this connection has relied on J.T. 1996 (9) S.C. 218 in support of her contention that the proceedings do not necessarily abate with the death of a party. The cited case is of an appeal in a divorce case, where the husband had died but the wife was permitted to challenge the *ex-parte* decree of divorce. It was observed that if either of the spouses had died pending trial, then the personal cause of action would die with the person and the proceedings would not abate only if the right to sue survived. However, once a decree gets passed, it dissolves the marriage but crystallizes the other rights and liabilities of the parties, including the property rights. The Court, therefore, held that the proceedings could be continued against the legal representatives of the deceased spouse, who may be interested in supporting the decree of divorce. The cited case does not give any assistance to the petitioner. It may be noticed that the request of extradition emanates and flows from the order of conviction passed by the Court in Singapore. If indeed the petitioners are interested in vindicating the honour of the deceased or the reputation of family, by removing the slur on the name of the deceased, then, it is for the petitioners to challenge the said order of conviction in Singapore Court, as permissible under the Law. It would also be open to the petitioners to seek such other remedies as may be available to them under the Singaporean Law for the alleged malicious prosecution and the mis-trial faced by the deceased. There is no doubt that in so far as order for magisterial enquiry, for the purpose of extradition of Mr. Rajan Pillai, deceased, is concerned, the same stands abated. Learned counsel for the petitioner referred to Section 394 of the Code of Criminal Procedure to canvass that wherever the proceedings are to abate there is a specific provision for that purpose. The submission being that the appeals would not abate but for the said provision. The plea is wholly misconceived and, in any case, it would not apply to a case for extradition, which is concerned solely with the fugitive criminal and not with his legal representatives.

(14) A further contention was raised that the Act cannot be applied to extradite an Indian citizen and if the provisions of the Act do permit such extradition, the said provisions are violative of Article 14, 19(1)(e) and 21 of the Constitution of India. The argument is misconceived as a fugitive criminal under the Extradition Act is defined as "an individual who is accused or convicted of an extradition offence committed within the jurisdiction of a foreign state." The definition does not exclude an Indian citizen. Simply because the Indian Penal Code provides that an Indian citizen could be tried for an offence committed beyond India in accordance with the provisions of the Code, cannot be used as an argument to challenge the provisions of the Extradition Act. The Common Law countries as well as India recognise the principle of territoriality of a criminal act and recognise the rule that persons accused of crime should be tried at or near the place where the offence was committed. It is believed to be essential for administration of justice that persons accused of the crime should be tried at or near the place where the crime was perpetrated and if they have managed to escape from that place they should be sent back when the requesting State requires their surrender for the purpose of justice. This principle finds recognition in the Extradition Act enacted by the Parliament. There is no merit in the contention that the provisions of Extradition Act are violative of Articles 14, 19(1)(e) and 21 of the Constitution of India and such challenge must fail.

(15) Having regard to the totality of the circumstances, we are of the view that this is even otherwise not a fit case to be entertained in the exercise of discretion under Article 226 of the Constitution of India. In view of the foregoing discussion, the petition is dismissed.