

Madras High Court
Madras High Court
Subhash Chandra Kapoor vs Inspector Of Police on 3 April, 2012
DATED : 03.04.2012

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.No.8732 of 2012

and

M.P.Nos.1 and 2 of 2012

Subhash Chandra Kapoor

S/o.Parshotham Ram Kapoor,

210, West 94 Street New York,

N.Y. 10025/USA

Presently in custody

at Cologne Prison Germany

represented by Power of Attorney

Sushma Rani Sareen .. Petitioner

Vs.

1.Inspector of Police,

Idol Wing, Crime Investigation Department,

Economic Offences Wing,

No.C-48, III Floor,

Tamil Nadu Housing Complex,

IInd Avenue main Road,

Anna Nagar, Chennai-600 040.

2.The Secretary,

Ministry of External Affairs,

Through its Secretary,

172, South Block,
New Delhi-110 011.

3. The Government of Tamil Nadu,
through its Secretary,
Home Department,
Fort St. George,
Tamil Nadu.

4. The Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.

5. The Judicial Magistrate,
Jayankondam,
Tamilnadu. .. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records relating to non bailable warrant of arrest dated 20.12.2011 in C.C.No.180/2011 issued by the fifth respondent and all consequential proceedings taken thereto for causing him to be extradited and quash the same. For Petitioner : Mr.Thiyagarajan, SC

for M/s.Fox Mandal and Associates

ORDER

Sri Varadaraja Perumal Temple at Suthamalli village in Ariyalur District is a famous and ancient Vaishnavite Shrine. It was found during April, 2008 that there were theft of 18 idols from the temple. The Executive Officer of the temple appointed by the HR&CE Department had lodged a complaint on 14.4.2008 with Udayarpalayam Police Station and it was registered as Crime No.65 of 2008 under the offences involving Sections 457 and 380 IPC, pursuant to which the investigation was carried on.

2. It transpired that the Metal Idols were stolen from the temple before April, 2008. Three persons were arrested i.e., M/s.Marisamy, Sriram and Pitchaimani in suspicious circumstances by the Additional Sub Inspector of Police, Kaladi Police Station in Kerala. It was during interrogation of those persons, it transpired that 18 Antique Metallic idols were stolen from Sri Varadaraja Perumal Temple at Suthamalli village by the three of them. They exported the same illicitly through one Sanjivi Asokan A further case was registered at Kaladi Police Station in Crime No.597 of 2009. The accused were remanded by the Judicial Magistrate Court at Perumbavur. Thereafter these information were furnished to Idol Theft Wing of CID, Chennai. On

verification, it was found that the thefts were committed at Sri Varadara Perumal Temple in the State of Tamil Nadu and that the case is also pending at Udayarpalayam Police Station. Due to international ramification involved as the stolen idols were exported, the case was transferred to Idol Wing CID for further investigation. The CID had arrested these three accused through PT warrant and they were produced before the Judicial Magistrate Court, Jayamkondam. The court also gave the police custody to the investigation team.

3. During the course of the investigation, it was found that Sanjivi Asokan (arraigned as Accused No.6) had a deal with the present petitioner (arraigned as A-7) and made a criminal conspiracy when he was staying in Taj Connemara Hotel at Chennai on various dates starting from 3.5.2005 to 25.12.2006. The hotel receipts were also seized and the Car belonging to the first accused Marisamy was used by A-6 who went to Suthamalli Village and showed the temple to Marisamy for the purpose of committing theft of idols kept inside the temple. It was revealed that due to criminal conspiracy, the job was assigned to Accused No.1 Marisamy, who entered into the temple by breaking open the lock with the assistance of three other persons. One Parthiban had brought the lorry during February, 2008 and they picked up nine idols and shifted the same in the lorry to Chennai. They were handed over to Sanjivi Asokan. Next day, they picked up another nine idols in the same way and handed over it to A-6. The said idols were sold to an unknown foreigner by the first accused Marisamy from his shop at Puducherry. A-6 Sanjivi Asokan was also remanded to custody at Central Prison, Trichy since 25.3.2009 in connection with another Crime No.133/2008 of Vikramangalam Police station for the theft of eight idols in an another Sivan Temple at Sri Puranthan Village in Ariyalur District. The said Sanjivi Asokan was also produced under the PT Warrant before the Judicial Magistrate Court at Jeyankondam and remanded to custody. On 3.7.2009, the police custody was also given.

4. A further investigation of A-5 and A-6 revealed that they knowingly made forged documents in the name of Jothi Arts and Crafts without their consent as if the idols were newly made by the company and presented the forged documents of bill along with an application with a self affidavit and invoices before the Assistant Director of Handicraft Development and the Commissioner, Ministry of Textiles and obtained a Handicraft certificate on 5.3.2008 so that the metal idols came to be exported by A-6. The said forged bills were sent along with the exported idols to Hong Kong. The said idols were presented before the Sea Customs Authority, Chennai so as to export it to Arcelia Gallery and was cleared by customs on 6.3.2008 and were exported by ship to Hong Kong. They were further redirected to one Neil Perry Smith Company at U.K. by direction from the petitioner. An amount of Rs.1,01,10,418/- was remitted from New York to A-6's account at Adyar. Thereafter, on further investigation, it was established that the petitioner entered into a criminal conspiracy at Chennai and other places for committing theft of 18 Antique metallic idols from Sri Varadaraja Perumal Temple at Suthamalli village. A Non Bailable Warrant was issued to the petitioner and for recovery of stolen idols. Blue notices were sent for extradition of the petitioner to CBI, Interpol, New Delhi. It was further found that the same gang was also involved in the theft of eight Antique metallic idols stolen from Sri Pragdeeswarar Temple at Sri Purandan village in Ariyalur District. They were also exported to the U.S.

5. Subsequent to the investigation, a final report was filed in 18.7.2011 by the Inspector of Police, Idol Wing CID, Chennai. The Judicial Magistrate, Jeyamkondam took up the case in C.C.No.180/2011 and issued non bailable warrant to arrest the petitioner for having committed various offences including Sections 457(2), 380(2), 465, 468, 471, 411 read with 120-B IPC. Pursuant to an information given to CBI, the nationalized Crime Bureau, the petitioner was arrested at Cologne Airport at Germany, to whom a Red Corner notice was issued by the Interpol, New Delhi. Thereafter, an affidavit was also filed by the Superintendent of Police, Commercial Crime Investigation Wing, In-charge of Idol Wing CID requesting the learned Magistrate to permit them to send the affidavit to Germany along with extradition documents to the Ministry of New Delhi to be forwarded to the Germany with a view to extradite the petitioner to India, so as to subject him to face the trial at Judicial Magistrate Court at Jeyamkondam. The learned Magistrate forwarded the letter to the Ministry of External Affairs and requested them to execute the non bailable warrant against the petitioner.

6. The Ministry of External Affairs, Government of India also gave a request for extradition of the petitioner from the Federal Republic of Germany based on the records. A letter was also given to the Government of

Germany to their foreign office satisfying the conditions for extradition. It is at this stage, the petitioner has come to this court seeking to challenge the non bailable warrant dated 20.11.2011.

7.The contention raised was that the non bailable warrant was issued by the learned Magistrate in a mechanical fashion. The petitioner is the citizen of USA. The Magistrate, Jeyamkondam and External Affairs Ministry have failed to note the other accused in Crime No.65/2008 have been enlarged on bail. Therefore, the extradition of the petitioner was bad in law. The petitioner is entitled for right to life and liberty. He was falsely implicated. Therefore, it was prayed that the order of the Judicial Magistrate should be quashed. The attempt to extradite the petitioner based upon the confession statement of the co-accused was bad. The allegation that he had entered India frequently from 2005 to 2008 was not borne out by records as the petitioner never visited India after 2006, whereas the alleged offence was committed on 13.4.2008. At no point of time he exported any antique idols. What was exported by him was the brand new idols and after getting proper approval. Reliance was placed upon Section 25 of the Evidence Act to contend that no statement made by the accused before the police officer can be used in any manner.

8.However, this court is not inclined to entertain the writ petition for more than one ground. The contention raised that the confession of the co-accused cannot be relied cannot be accepted. The confession of the co-accused if it implicated him, it is also admissible in evidence and that stage will come only during trial. But so far as the recovery of idols is concerned, the investigation wing has ample materials to show that idols have been stolen from Sri Varadaraja Perumal Temple at Suthamalli village. The confession given by the accused led to recovery of several materials and to that extent, a confession made will be admissible.

9.In this context, it is necessary to refer to a judgment of the Supreme Court in Sarabjit Rick Singh Vs. Union of India reported in (2008) 2 SCC 417 and in paragraphs 38,42,45,54 and 55, it was observed as follows :
"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 enquiry 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 him to ask question in respect of which the accused may offer explanation, such a detailed procedure is not required to be adopted in an enquiry envisaged under the said Act. If evidence stricto sensu is required to be taken in an enquiry 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 enquiry. 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.

42.Existence of prima facie case or bringing on record credible evidence at the stage of commitment is again a requirement of a statute. Section 7 speaks of manner, the jurisdiction and power of the Magistrate. It does not set the standard of proof. What is necessary for passing a judicial order may not stricto sensu be necessary for making a report.

45.Consistent view of the courts of India in this behalf, however, appears to be that an enquiry conducted pursuant to the order of the Central Government is only to find out whether there was a prima facie case against the fugitive criminal for extradition to the treaty country. Mode and manner of enquiry has nothing to do with the rule in regard to standard of proof. (See Charles Gurmukh Shobhraj vs. Union of India 1986 RLR 7 : 1986 (29) DLT 410 and Nina Pillai vs. Union of India 1997 Cri LJ 2358 (Del), Cri LJ paras 9 and 11.)

54.Section 10 of the Act provides as to what would be received in evidence. The marginal note although may not be relevant for rendition of decisions in all types of cases but where the main provision is sought to be interpreted differently, reference to marginal note would be permissible in law. [See Deewan Singh vs.

Rajendra Pd. Ardevi (2007) 10 SCC 528 : 2007 (1) Scale 32]

55.The use of the terminology 'evidence' in Section 7 of the Act must be read in the context of Section 10 and not dehors the same. It is trite that construction of a statute should be done in a manner which would give effect to all its provisions."

10.If the extradition proceedings are initiated, it is open to the petitioner to object the same before the jurisdictional court. In fact, after production, the procedure to be followed by the Magistrate is set out under Section 7 of the Extradition Act. The Act also provides for the release of persons arrested on bail under Section 25. Exception under which a fugitive criminal need not be surrendered or returned is set out under Section 31. The Ministry of Foreign Affairs has set out the justification for making the petitioner surrender by guaranteeing fair trial through due process of law in India. Hence it is not a fit case where this court has to exercise its power under Article 226 of the Constitution to set aside the nonailable warrant issued by the trial court. There is no prima facie case made out for entertaining the writ petition.

11.In view of the above, the writ petition will stand dismissed. However, there will be no order as to costs. Consequently connected miscellaneous petitions stand closed. 03.04.2012

Index : Yes

Internet : Yes

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Note to Registry : Issue order copy on 09.04.2012.

To

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Idol Wing, Crime Investigation Department,

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No.C-48, III Floor,

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K.CHANDRU, J.

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