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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 18th May, 2017

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W.P.(CRL) 1674/2012

TEJINDER SINGH & ANR.

..... Petitioners

Through: Ms. Rebecca John, Sr. Adv.
with Mr. Kushdeep Gaur, Mr.
Harsh Bora & Mr. Nikhil
Ranjan Ahuja, Advs.

versus

STATE THR. NCT OF DELHI

..... Respondent

Through: Mr.Rajesh Mahajan, ASC for
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On 29.9.1981, Flight No. IC-423 of Indian Airlines had taken off from New Delhi for Srinagar enroute Amritsar. Midair, it is stated, the petitioners herein with some other associates hijacked the aeroplane. The aircraft eventually landed in Lahore (Pakistan) where after a commando operation, the passengers and the crew were rescued and the petitioners with their associates detained.

2. On the report of Mr. G.S. Diwan, Chief Security Officer, Palam Airport, first information report (FIR) No. 105/1981 had been registered and taken up for investigation by police station Palam at

New Delhi respecting offences punishable under Sections 392/397/398 and Section 34 of Indian Penal Code, 1860 (IPC), Section 27 Arms Act and Section 10 of Indian Aircrafts Act, 1934. The petitioners meanwhile had been arrested by the law enforcement agencies in Lahore (Pakistan), FIR No. 216/1981 having been registered by police station South Cantonment, Lahore for offences under Section 402-B read with Section 34 of Pakistan Penal Code.

3. The investigation into the FIR registered at Lahore resulted in trial in criminal case No. 15/1985 in a special court at Lahore (Punjab) in Pakistan which culminated in judgment dated 20.01.1986 whereby the petitioners (and others) were held guilty and convicted for offences under Section 402-B read with Section 34 of Pakistan Penal Code and sentenced to imprisonment for life with fine of Rs. 1,000/- in default rigorous imprisonment for six months. It may be noted here that the gravamen of the charge for offence under Section 402-B read with Section 34 of Pakistan Penal Code was primarily that the petitioners, with the co-accused persons, in furtherance of their common intention, had committed the offence of hijacking the said Aircraft Boeing 737 during flight from New Delhi to Srinagar. It may also be noted here that the plea and defences urged before the said special court in Pakistan not only in the trial but also at the stage of consideration of sentence, were that the petitioners had been aggrieved with certain policies of Indian State towards the community to which they belonged and that the hijacking was staged by way of a protest.

4. The respondent-State does not dispute that the petitioners served the sentences awarded against them after conviction by the special court in Lahore, Punjab (Pakistan) in the afore-mentioned case, the said judgment and order on sentence having attained finality. It is stated that after serving the sentences both were released by the concerned authorities in Pakistan.

5. It is alleged that the second petitioner Satnam Singh surreptitiously entered India via Nepal, and thereafter he surrendered himself to the custody of the court of Additional Chief Metropolitan Magistrate (ACMM), New Delhi in the context of the case registered at Palam Airport police station. It may further be noted that in the proceedings that followed after surrender of the second petitioner, he had moved an application seeking discharge primarily on the ground that he had already served the sentence upon conviction for the corresponding offence in Pakistan and that any further proceedings here would render him subjected to double jeopardy against the fundamental rights guaranteed to him as a citizen of India.

6. The ACMM, New Delhi by her order dated 11.2.2000 upheld the above contention and ordered “discharge” of the second petitioner. Noticeably, there was no charge-sheet laid before the court of ACMM at that stage, the ACMM having acted only on the report which had been called *vis-a-vis* the status of the case on the application for discharge moved by the second petitioner.

7. Be that as it may, in the subsequent period, the presence of the first petitioner also came to be secured after his return from Pakistan

on 25.12.1997. After the ACMM, New Delhi, by her order dated 11.2.2000 had “discharged” the second petitioner, the question of further proceedings in the case arising out the above-mentioned FIR registered at Palam Airport police station came up for consideration before her successor. The record would show that some orders were passed calling for reports. The first petitioner, during the said proceedings claimed parity with the second petitioner seeking similar order of discharge. The ACMM, New Delhi, however, was of the view that he was not bound by the said earlier order of his predecessor recorded on 11.2.2000.

8. It was brought to the notice of the ACMM, New Delhi that the police had now undertaken investigation of the case from the perspective of additional offences. Eventually a report under Section 173 Cr.P.C. dated 29.9.2011 came to be submitted, upon being forwarded by Additional DCP. Anti extortion Cell of Crime Branch seeking prosecution of the petitioners for offences punishable under Sections 121, 121A, 124A and Section 120 B of Indian Penal Code (IPC). This charge-sheet sated that the other three persons, also wanted for this crime, were not traceable, they reportedly having gone abroad. The prosecution of the petitioners through the said charge-sheet of 29.9.2011 refers to a sanction having been obtained under Section 196 Cr.P.C. from the Govt. of NCT of Delhi.

9. The above said charge-sheet came up before the Court of ACMM, Dwarka on 30.8.2012 when, by a detailed reasoned order, rejecting the argument of double jeopardy, the said court decided to

“take cognizance” of above offences and proceeded to issue non-bailable warrants (NBWs) noting the fact that the matter pertains to 1981 and the offences involved are cognizable.

10. By the present petition, challenge was brought to the above said view taken by the court of ACMM. Though a number of grounds were urged, in the petition, the learned senior counsel representing the petitioners at the hearing submits that she is under instructions to withdraw the petition insofar as it challenges the order of summoning though seeking liberty to urge all the contentions as to the “validity of sanction” and “sufficiency of evidence” at the stage of consideration of the case for framing of charge. The learned senior counsel also submitted that given the previous conduct of the petitioners wherein they themselves had approached the concerned Court for closure of the proceedings arising out of the above-mentioned FIR of police station Palam Airport, there was no occasion for the ACMM to resort to the duress process by issuance of NBWs followed by proclamation under Section 82 Cr.P.C. by order dated 15.10.2012. Her submission is that given the fact that the petitioners have already undergone imprisonment for life in Pakistan for the offences for which the FIR was initially registered which offences correspond to the penal provision against hijacking in Pakistan Penal Code, and the conduct shown by approaching the court on their own, the ACMM should have taken an appropriate view and, instead of resorting to duress process, should have restricted the process in the nature of summons. She requests that while disposing of this petition and giving liberty as

noted above, the rigour of the process may be toned down so that the petitioners feel secure and do not apprehend being unduly incarcerated pending the proceedings that are bound to continue before the ACMM.

11. The learned Additional Standing Counsel for the State submitted that he leaves the above request to the discretion of the Court.

12. Having regard to the above facts and circumstances, as indeed the submissions for some relief touching upon the personal liberty, the petition is disposed of as withdrawn with liberty as noted above granted.

13. The orders of the ACMM issuing NBWs against the petitioners followed by issuance of proclamation under Section 82 Cr.P.C. with all other consequences that may be flowing therefrom by subsequent orders are hereby vacated. The petitioners have been summoned by the Court of ACMM and, therefore, they shall be obliged to appear in the said Court on 18th July, 2017, which is the date stated to be already fixed in the matter for further proceedings in that Court. Needless to add, the petitioners shall be obliged to move appropriate application seeking release on bail pending such proceedings and while according consideration to such prayer, the ACMM will be guided by the considerations on which account this Court has modified the order reducing the process from NBWs to ordinary summons.

14. The petition stands disposed of in above terms.

15. Copy of the order be given *dasti*.

R.K.GAUBA, J.

MAY 18, 2017

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