

2. The communication referred to above is in the form of a notice to the petitioner about prima facie acceptance of the report of the Magisterial enquiry with respect to the extradition.

3. Learned counsel for the petitioner has submitted that the petitioner had begun his career as a psychiatrist in the year 1967 in Canada. In the year 1975, while the petitioner was practicing as a Psychiatrist, a scandal was unearthed wherein it was reported that many Christian brothers had involved themselves in child sexual abuse. The petitioner, in his capacity as a Psychiatrist submitted a report which exposed the real state of affairs regarding the child sexual abuse. Nothing happened in the matter between 1976 to 1988. Thereafter the matter was again raked up and a Royal Commission of Enquiry was constituted. In the aforesaid enquiry, petitioner also was examined along with other witnesses and their statements were made public through live telecast. The enquiry had concluded but the petitioner had no idea that he too was found to be an accused and, therefore, was being looked for by the Canadian Government.

4. A request appears to have been made by the Canadian Government for the extradition of the petitioner.

5. Section 4 of the Extradition Act, 1962 (hereinafter called the Act) provides for requisition for surrender of a fugitive criminal by a foreign State. Section 5 of the Act delineates that the Central Government, on receipt of such requisition, may if it thinks fit, issue an order to any Magistrate who would have had the jurisdiction to enquire into the offence if it had been an offence committed within the local limits of his jurisdiction, directing him to enquire into the case.

Section 6 permits of issuance of warrant of arrest against a fugitive criminal.

6. In the light of the aforesaid provisions of the Act, the request made by the Canadian Government with regard to extradition of the petitioner was sent for a Magisterial enquiry. Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi was asked to enquire into the alleged offence wherein the petitioner participated.

7. Section 7 of the Act reads as hereunder:-

“Procedure before Magistrate.—

(1) When the fugitive criminal appears or is brought before the Magistrate, the Magistrate shall inquire into the case in the same manner and shall have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a court of Session or High Court.

(2) Without prejudice to the generality of the foregoing provisions, the Magistrate shall, in particular, take such evidence as may be produced in support of the requisition of the foreign State and on behalf of the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal is accused or has been convicted is an offence of political character or is not an extradition offence.

(3) If the Magistrate is of opinion that a prima facie case is not made out in support of the requisition of the foreign State, he shall discharge the fugitive criminal.

(4) If the Magistrate is of opinion that a prima facie case is made out in support of the requisition of the foreign State, he may commit the fugitive criminal to prison to await the orders of the Central Government, and shall report the result of his inquiry to the Central Government; and shall forward together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Central Government.”

8. During the proceedings before the Magistrate the petitioner applied for bail under Section 25 of the Act. A bench of this Court, taking into account the fact that the petitioner was in judicial custody since 31.03.2015 and also taking into consideration the fact that the Magisterial proceeding continued for 12 years when the petitioner had practiced and stayed in Canada till March, 1991, as well as the age of the petitioner, granted bail to him subject to the condition that he shall appear before the learned Magistrate in all earnestness.

9. The extradition enquiry report of the Magistrate was formulated on 31.03.2015 (Annexure B to the petition). The Magistrate conducting the enquiry was of the opinion that prima facie, a case was made out for extradition of the petitioner to the requesting State to face trial. A recommendation was, therefore, made by the learned Magistrate to Union of India for extradition of the petitioner to Canada.

10. The aforesaid report was challenged by the petitioner vide CrI.M.C No.1936/2015 before the High Court.

11. While challenging the aforesaid enquiry report, it was urged by the petitioner that the learned Magistrate holding an enquiry did not consider the import of the use of word “may” in Section 7(4) of the Indian Extradition Act, 1962 and that it further did not take into account that the petitioner is a permanent resident of Delhi; an income tax assessee and has been associated with various hospitals.

12. The High Court vide order dated 19.05.2015, taking into consideration the fact that the extradition process was pending before the Central Government after the submission of the Magisterial report,

directed the Union of India that in case it accepted the Magisterial report for extraditing the petitioner, the petitioner be summoned and given one advance notice so that he may approach the appropriate forum his remedies in accordance with law.

13. The matter is still pending consideration before the High Court and Crl.M.C No.1936/2015 has been put up for further consideration/final hearing on 21.01.2016.

14. The written statement filed by the petitioner in support of his claim has also been sent to the Central Government, along with the report, for a decision regarding extradition of the petitioner to Canada.

15. The communication of the Central Government dated 04.12.2015, which has been impugned in the present petition is in fact a communication of the decision of the Central Government of it having accepted the Magisterial report which prima facie found substance in the requisition of the Government of Canada.

16. Learned senior counsel appearing for the petitioner has, therefore, submitted that the present communication, being in the nature of a decision to extradite the petitioner is assailable.

17. He further submits that since the correctness of the Magisterial enquiry was still pending adjudication before this Court, no such decision by the Central Government could have been taken, accepting the report of the Magistrate which had recommended for extraditing the petitioner.

18. Mr.Sanjay Jain, Additional Solicitor General on the other hand submitted that only in deference to the order dated 19.05.2015 of this Court passed in Crl.M.C No.1936/2015 that an advance notice has

been given to the petitioner intimating him that the opinion/recommendation of the Magistrate is likely to be accepted by the Central Government.

19. Learned Additional Solicitor General has also argued that in an enquiry conducted by a Magistrate under Section 7 of the Act, the Magistrate is required to take only such evidence as may be produced before him, in support of the requisition and on behalf of a fugitive criminal including such evidence to show that the offence of which the accused is charged is an offence of political character or is not an extraditable offence. From the materials gleaned during the enquiry, the concerned Magistrate is to form an opinion whether prima facie case is made out or not in support of the requisition for extradition. In case no prima facie case is made out, the person charged with the offence and sought to be extradited is required to be discharged. In case prima facie opinion is made out, the concerned person is to be committed to prison to await the orders of the Central Government. The Magistrate is required to send his report to the Central Government. In case the concerned person wishes to file his written statement, that also is required to be forwarded for consideration to the Central Government.

20. The power which is to be exercised by the Central Government is set out in Section 29 of the Act. Section 29 of the Act reads as hereinafter:-

“29. Power of Central Government to discharge any fugitive criminal.— If it appears to the Central Government that by reason of the trivial nature of the case or by reason of the application for the surrender or return of a fugitive

criminal not being made in good faith or in the interests of justice or for political reasons or otherwise, it is unjust or inexpedient to surrender or return the fugitive criminal, it may, by order, at any time, stay any proceedings under this Act and direct any warrant issued or endorsed under this Act to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged.”

21. Thus if it appears to the Central Government that the offences are not extraditable offences or the requisition has not been made in good faith or it is inexpedient to accept the requisition, the concerned person would be discharged by the Central Government. It was thus contended by the learned Additional Solicitor General that though a decision had to be taken by the Central Government by independently taking into account the Magisterial report, representation of the petitioner and other relevant considerations namely whether the offence is extraditable or whether the offences are in the nature of military offence or a political character or so trivial that it would be inexpedient to extradite the person concerned, but such administrative decisions may not be interfered with.

22. Learned senior advocate appearing for the petitioner, on the other hand, submits that since the Central Government was required to take a call on the issue by independently assessing requisite variables, any decision by the Central Government in that regard would be clothed with the character of a quasi judicial order and, therefore, it would be subject to scrutiny and would be assailable.

23. After having heard the learned counsels for the parties and taking into consideration the relevant facts, this Court is inclined to

stay the extradition process till the time CrI.M.C No.1936/2015, which is scheduled to be listed for final hearing on 21.01.2016 is finally disposed of.

24. In case it is desired by the Central Government to put in their response in the meanwhile, the same may be filed on or before the next date.

25. No notice is required to be issued to be Union Government as Mr.Sanjay Jain, Additional Solicitor General has already appeared.

26. The petitioner shall not be extradited in the meanwhile.

27. List this matter along with CrI.M.C No.1936/2015 on 21.01.2016.

Dasti.

ASHUTOSH KUMAR, J

DECEMBER 09, 2015

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