



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 22.06.2022

ORDER PRONOUNDED ON : 28 .06.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P. (MD) .No.13937 of 2011

and

MP(MD) .No. 2 of 2011

S.Ramesh

...Petitioner

Vs

1.Union of India Represented by
The Secretary to the Government of India
Ministry of External Affairs
Patiala House Annex
Tilak Marg
New Delhi 110 001

2.The Extradition Magistrate
The Additional Chief Metropolitan Magistrate -01
Patiala House Courts
New Delhi

...Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the first respondent in appointing the second respondent as the Extradition Magistrate by his proceedings in T 413/44/2010 dated 15.09.2010 and to quash the same and direct the first respondent to appoint a Magistrate in Tamil Nadu under Section 5 of the Extradition Act.

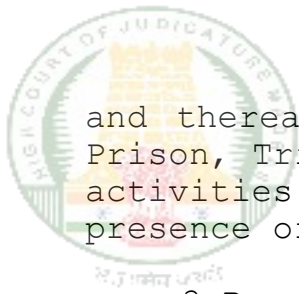
For Petitioner	: Mr.M.Karunanithi
For R1	: Mr.R.Murugappan
For R2	: No appearance

ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein under which the second respondent was appointed as an Extradition Magistrate and for further direction to appoint a Magistrate in the State of Tamil Nadu under Section 5 of the Extradition Act.

2.The petitioner was arrested by CBCID, Thanjavur Police on 08.07.2010 and produced before the Judicial Magistrate, Thiruvaiyaru

<https://hcservices.ecourts.gov.in/hcservices/>



and thereafter remanded to judicial custody and lodged in Central Prison, Trichy. The petitioner was arrested for his alleged criminal activities in Singapore. The Republic of Singapore wanted the presence of writ petitioner for prosecuting him.

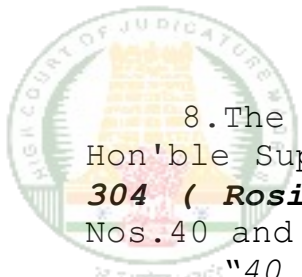
3. Based upon the said request made by the Republic of Singapore, the first respondent herein by invoking powers under Section 5 of Indian Extradition Act 1962, requested the Additional Chief metropolitan Magistrate No.1, Patiala, House Courts, New Delhi to inquire into the extradition as to the extraditability of the offence involved, by determining whether a prima facie case exists in terms of Extradition Act, 1962 and other applicable laws. This order of the first respondent herein is under challenge in the present writ petition.

4. The main ground on which the writ petition has been filed is that the writ petitioner was arrested in Pattukkottai in Thanjavur District and he was remanded by the Judicial Magistrate at Thiruvaiyaru and he was lodged in Central Prison, Trichy. His contention is that he does not know Hindi and the enquiry relating to extradition proceedings, if conducted before the second respondent herein, it would greatly prejudice him. He had further contended that his name is S.Ramesh and he has been mistaken for one Durairaj who is alleged to have committed some offence in Singapore.

5. The writ petitioner has also contended that the proceedings in the Criminal Court in the State of Tamil Nadu are being conducted in Tamil pursuant to the Tamil Nadu Official Languages Act, 1956 and hence, the impugned order appointing the second respondent herein where the proceedings would be conducted in Hindi or English would put him to great prejudice.

6. The petitioner has further contended that under Section 34 of Extradition Act, the Central Government has got powers to prosecute a person in India for the offence committed abroad. In view of the above circumstances, he contended that the impugned order is violative of Article 14, 21 and 22 of the Constitution of India and the same deserves to be set aside.

7. Per contra, the learned Standing Counsel appearing for the first respondent herein had contended that the Indian Extradition Act, 1962, is a special enactment and it has overriding effect over the other enactments. Hence, the petitioner cannot contend and demand that he should be enquired by the Judicial Magistrate in the State of Tamil Nadu. He had further contended that the first respondent is at liberty to request any one of the Magistrates in India to conduct the enquiry and the same cannot be restricted to any Judicial Magistrate within whose jurisdiction the petitioner is alleged to have been apprehended.



8.The learned Standing Counsel relied upon the Judgment of the Hon'ble Supreme Court in a judgment reported in **1994 SCC (Criminal) 304 (Rosiline George Vs. Union of India and others)** in Paragraph Nos.40 and 41 read as follows:

"40.We may take up the last contention raised by Mr.G.L.Sanghi. Relying upon Sections 177, 188 and 190 of the Code of Criminal Procedure, 1973, the learned counsel contended that the inquiry under the Act could only be conducted by the Magistrate concerned at Ernakulam in whose jurisdiction George was apprehended. We see no force in the contention. Section 2(g) and 5 of the Act are as under:

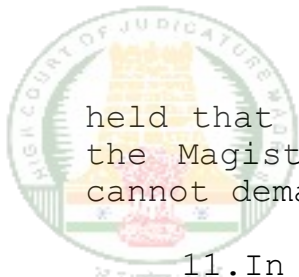
"2(g) ' magistrate' means a magistrate of the first class or a presidency magistrate;

5.Order for magisterial inquiry.- Where such requisition is made, the Central Government may, if it thinks fit, issue an order to any magistrate who would have had jurisdiction to inquire into the offence if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case".

41.It is obvious from the plain language of Section 5 of the Act that the Central Government can direct any Magistrate to hold inquiry provided the said Magistrate would have had jurisdiction to inquire into the offence if it had been an offence committed within the local limits of his jurisdiction. It is not disputed that the offences alleged to have been committed by George in the letter of request by the State of America would, if committed in the local limits of the Magistrate, have given the Magistrate Jurisdiction to enquire into the same. The Act, being a special provision dealing with the extradition of fugitive criminals, shall exclude from application the general provisions of the Code of Criminal Procedure, 1973. In any case, Section 5 of the said code gives overriding effect to the special jurisdiction created under any special or local laws. Sections 177, 188 and 190 of the Code have no application to the proceedings under the Act. We see no force in the contention of the learned counsel and reject the same".

9.The Hon'ble Supreme Court while considering a similar submission has held that the Indian Extradition Act, 1962 being a special provision dealing with extradition of fugitive criminals, shall exclude the application of the general provisions of the Code of Criminal Procedure, 1973. The Hon'ble Supreme Court has further held that Section 5 of the code gives overriding effect to the special jurisdiction created under any special or local laws.

10.Based on the above said findings, the Hon'ble Supreme Court has rejected the contentions that the request for enquiry under Section 5 of the Extradition Act can be made only to a Judicial Magistrate having jurisdiction over the area in which the writ petitioner was apprehended. The Hon'ble Supreme Court has further



held that the Central Government is at liberty to choose any one of the Magistrates to deal with fugitive criminals and the fugitive cannot demand that any particular magistrate should be appointed.

11. In view of the Judgment of the Hon'ble Supreme Court, the prayer in the writ petition is devoid of any merit and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

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/07/2022

Sub Assistant Registrar(CS)

Msa

+1 CC to M/s.M. KARUNANITHI, Advocate (SR-28679[F] dated 29/06/2022)

+1 CC to M/s.R. MURUGAPPAN, Advocate (SR-28799[F] dated 29/06/2022)

W.P. (MD) .No.13937 of 2011

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28.06.2022

AC (CO)

KB (05.07.2022) 4P 3C