SUPREME COURT OF INDIA

Sarabjit Rick Singh
Vs.

Union of India

(S.B. Sinha and Harjit Singh Bedi JJ.)

12.12.2007

JUDGMENT:

S.B. SINHA, J

1. Leave granted.

Introduction

2. The scope and ambit of the provisions of International Treaty vis-a-vis the Extradition Act, 1962 is involved in the present appeal. Background Facts

3. Appellant herein is said to be an Indian citizen. He allegedly holds an Indian Passport. He, however, indisputably is a resident of United States of America. Allegedly he had been running an event management company and promoting clubs into organizing entertainment, cultural events and shows in various parts of the United States of America for a long time.

4. The Government of the United States of America made a formal request to the Government of India for his extradition alleging that the appellant had conspired in aiding and abetting the sale and supply of MDMA, a controlled substance and other offensive substances. He is said to be one of the members of a criminal organization involved in drug trafficking and money laundering. His organization has been found to be responsible for distributing millions of tablets of MDMA and laundering millions of dollars in drug proceeds. The organization is said to have purchased large quantities of MDMA from various sources in Netherlands and obtained them in USA through couriers and exchanged them for cash to be distributed to the lower levels of the organization, who in turn, would sell MDMA to buyers/consumers in Houston.

5. United States of America is a Treaty State. An Extradition Treaty was entered into between the Government of the Republic of India and the Government of the United States of America on or about 21st July, 1999.

Proceedings

6. A warrant of arrest is said to have been issued by the U.S. District Court for the Southern District of Texas, Housing Division for the arrest of the appellant. Pursuant to the request made by the Government of the United States of America, he was arrested on 10th November, 2002. The Government of India in exercise of its power conferred upon it under Section 5 of the Extradition Act, 1962 (for short, 'the Act') made a request to the Additional Chief Metropolitan Magistrate, New

Delhi, to make an enquiry in respect of the alleged offences levelled against him. He was produced before the said court. The documents appended to the formal request for extradition containing 154 pages were supplied to him. He was granted an opportunity to file written statement.

7. On the premise that the said formal request did not satisfy the requirements of Article 9 of the Extradition Treaty as well as Section 7 of the Act, he filed an application for supply of deficient documents and requested supply of copies thereof to lead his defence. He also filed an application for adjourning the case for three weeks to engage a counsel. According to him, he felt handicapped having not been supplied with the statute of the US Sec 846. Affidavit affirmed by one Merietta I. Geckos and enclosed with the extradition request did not contain any document in support of the statement made in the said affidavit in which he had stated about the arrest of few alleged co-defendants, but no arrest memo or transcribes of the alleged conversations with the appellant which had led to their arrest had been annexed with the affidavit. His request to supply copies of the documents however, was declined by the learned Magistrate by an order dated 1st April, 2003.

8. Extradition enquiry was directed to proceed only on the documents filed by the respondent in the trial court subject to all legal consequences. By reason of an order dated 4th February, 2004 the learned Additional Chief Metropolitan Magistrate recommended the extradition of the appellant to United States of America. A writ petition filed thereagainst by the appellant questioning the legality and validity of the said order of the Additional Chief Metropolitan Magistrate has been dismissed by a Division Bench of the Delhi High Court by reason of the impugned judgment.

Contentions

9. Mr. Viswanathan, learned counsel appearing on behalf of the appellant, inter alia, would submit that having regard to the fundamental right of the appellant as envisaged under Article 21 of the Constitution of India, it was obligatory on the part of the learned Magistrate as also of the High Court to pass an order of extradition on the basis of the material which would constitute 'evidence' and as some of the documents upon which the reliance was placed by the respondent did not satisfy the requirement of the said term within the meaning of Section 7 of the Act, the impugned judgment must be held to be perverse and in any event suffers from procedural irregularities.

10. The learned counsel would urge that the purported affidavits of the accomplice, Michael Ryan 'O' Mealey and Alan Lane Lackley, who have presumably been granted pardon could not have been relied upon by the learned Magistrate as 'evidence' for forming the basis for directing his extradition without corroboration thereof in material particulars. Summary of evidence disclosed by Mr. Keith Brown did not satisfy the statutory requirement of Section 7 of the Act which postulates an enquiry by the Magistrate into the case in the same manner as if the case were one triable by a Court of Session or High Court which would mean the provisions of the Code of Criminal Procedure 1898 being incorporated by reference in Section 7 of the Act would apply.

11. The Code of Criminal Procedure 1973 repealing and replacing the Code of Criminal Procedure 1898, Mr. Vishwanathan submitted, cannot be said to have any application whatsoever under the new Code as the Magistrate has no power to discharge and only remedy available to an accused facing sessions trial is to file an application for discharge under Section 227 of the Code of Criminal Procedure, 1973 before the Trial judge.

In terms of Section 208 of the Code of Criminal Procedure, 1898 the prosecution had an obligation

to produce all such evidence in support of the prosecution. The same when read into Section 10 of the Extradition Act would lead to a conclusion that the records of the criminal case in United States were to be placed before the Magistrate so as to enable him to apply his mind thereupon so as to form an opinion that there existed a prima facie case against the appellant for passing an order of extradition. It is one thing to say, Mr. Vishwanathan, would urge, that a document has to be taken in evidence but it is another thing to say that the contents thereof are received in evidence without any formal proof. A document by reason of a provision of a statute, it was submitted, can be taken into evidence but so as to bring its contents within the meaning of the term "evidence" its contents must be proved. The failure to produce the document, it was contended, had disabled the Magistrate from exercising his power under Section 7 of the Extradition Act. Article 9 of the Indo U.S. Treaty also casts an obligation to examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him. As despite requests, the documents, being 45 in number, which had been asked for by the appellant but were not furnished, the impugned order must be held to be bad in law.

12. Mr. P.P. Malhotra, learned Additional Solicitor General, appearing on behalf of the Union of India, on the other hand, submitted that the Magistrate entrusted to make an enquiry for the purpose of passing an order under Section 7 would be entitled to take into consideration the documents which had been furnished by the Government of the United States of America in terms of the bi-lateral treaty. It was pointed out that the appellant in terms of the provisions of the said Act as also the bi-partite treaty, although was entitled to lead evidence in support of his defence as contemplated under the said Act, failed and/or neglected to do so and in that view of the matter the Magistrate was justified in passing the order of extradition. Learned counsel would contend that it was for the Government of India to satisfy itself to make a fugitive criminal available to the United States of America by answering the indictment upon satisfying itself inter alia on the basis of the report to be submitted by the learned Magistrate. Mr. Malhotra would submit that while making an enquiry in terms of the provisions of the said Act an accused is not put to trial and the Magistrate is only required to form a prima facie view on the basis of the documents supplied in terms of Section 10 of the Act. The Treaty

13. The Treaty between the Government of Republic of India and the Government of the United States of America was entered into on 21st July, 1999. It was published in the official gazette on 14th September, 1999. By reason of Article 1 thereof the Contracting States agreed to extradite to each other, pursuant to the provisions of the Treaty, person who, by the authorities in the Requesting State are formally accused of, charged with or convicted of an extraditable offence, whether such offence was committed before or after the entering into force of the Treaty.

14. Article 2 defines extraditable offenses to mean an offence punishable under the laws in both Contracting States by deprivation of liberty, including imprisonment, for a period of more than one year or by a more severe penalty. An offense shall also be an extraditable one if it consists of an attempt or a conspiracy to commit, aiding or abetting, counseling or procuring the commission of or being an accessory before or after the fact to, any offense described in paragraph 1.

15. Article 4 defines political offenses. Clause (2) of Article 4 inter alia provides that offences related to illegal drugs, shall not be treated to be political offence.

16. Article 9 provides for extradition procedures and required documents of which we may immediately notice :- "Article 9 Extradition Procedures and Required Documents :-

1. All requests for extradition shall be submitted through the diplomatic channel.

2. All requests for extradition shall be supported by : (a) documents, statements, or other types of information which describe the identity and probable location of the persons sought ;

(b) information describing the facts of the offense and the procedural history of the case ;

(c) a statement of the provisions of the law describing the essential elements of the offense for which extradition is requested ;(d) a statement of the provisions of the law describing the punishment for the offense ; and
(e) the documents, statements, or other types of information specified in paragraph 3 or paragraph 4 of this Article, as applicable.

3. A request for extradition of a person who is sought for prosecution shall also be supported by :

(a) a copy of the warrant or order of arrest, issued by a judge or other competent authority ;
(b) a copy of the charging document, if any, and (c) such information as would justify the committal for trial of the person if the offense had been committed in the Requested State.

4. A request for extradition relating to a person who has been convicted of the offense for which extradition is sought shall also be supported by : (a) a copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person has been convicted ;
(b) information establishing that the person sought is the person to whom the conviction refers ;
(c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out ; and (d) in the case of a person who has been convicted in absentia, the documents required in paragraph 3."

17. Article 10 provides that the documents accompanying an extradition request shall be received and admitted as evidence in extradition proceedings if in the case of a request from the United States, they are certified by the principal diplomatic or principal counsular officer of the Republic of India resident in the United States or they are certified or authenticated in any other manner accepted by the laws in the Requested State.

18. Article 17 provides that a person extradited under the Treaty may not be detained, tried or punished in the Requesting State except for the offenses enumerated therein.
The Act

19. The Act was enacted to consolidate and amend the law relating to extradition of fugitive criminals and to provide for the matters connected therewith or incidental thereto.

It is a special statute.

20. "Extradition treaty" has been defined in Section 2(d) to mean a treaty or agreement made by India with a foreign State relating to the extradition of fugitive criminals, and includes any treaty or agreement relating to the extradition of fugitive criminals made before the 15th day of August, 1947, which extends to, and is binding on, India. "Fugitive criminal" has been defined in Section 2(f) to mean an individual who is accused or convicted of an extradition offence committed within

the jurisdiction of a foreign State or a commonwealth country and is, or is suspected to be, in some part of India. Section 4 occurring in Chapter II of the Act provides for requisition for surrendering of fugitive criminal of a foreign State. It also provides for the manner in which such requisition is to be made. When such a requisition is made in terms of Section 5 of the Act, 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. Section 6 empowers the Magistrate to issue a warrant for the arrest of the fugitive criminal on receipt of the order of Central Government.

21. Section 7 provides for the procedure required to be followed when a requisition for extradition is made by Treaty-State which reads as under :-

"Section 7 - 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 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, and written statement which the fugitive criminal may desire to submit for the consideration of the Central Government."

22. Section 10 deals with the receipt in evidence of exhibit, depositions and other documents and authentication thereof in the following terms :-

"Section 10 - Receipt in evidence of exhibit depositions and other documents and authentication thereof

(1) In any proceedings against a fugitive criminal of a foreign State under this chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof and official certificates of facts and judicial documents stating facts may, if duly authenticated, be received as evidence.

(2) Warrants, depositions or statement on oath which purport to have been issued or taken by any Court of Justice outside India or copies thereof, certificates of, or judicial documents stating the facts of conviction before any such Court shall be deemed to be duly authenticated if

(a) the warrant purports to be signed by a Judge. Magistrate or officer of the State where the same

was issued or acting in or of such State ;

(b) the depositions of statements or copies thereof purport to be certified under the hand of a Judge, Magistrate or officer of the State where the same were taken or acting in or for such State, to be original depositions or statements or to be true copies thereof, as the case may require ;

(c) the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a Judge, Magistrate or officer of the State where the conviction took place or acting in or for such State ; (d) the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a Minister of the State where the same were issued, taken or given."

Documents

23. The Government of the United States of America made a formal request on or about 7th January, 2003 for extradition of the appellant stating that he was wanted to stand trial in the U.S. District Court for the Southern District of Texas, Housing Division for drug trafficking and money laundering.

24. It contained a certificate of authentication by the First Secretary (Consular), Embassy of India, Washington DC in terms of the Treaty. It also contained a certificate from the Secretary of State certifying that the documents annexed thereto were under the authority of the Department of Justice of the United States of America and that such seal is entitled to full faith and credit. It also contained a certificate of the Attorney General for the United States of America stating that Ernestine B. Gilpin, whose name was signed to the accompanying paper, was at the relevant time was an Associate Director in the Office of the International Affairs, Criminal Division, Department of Justice, United States of America. The certificate issued by of Mr. Gilpin reads as under :-

"CERTIFICATE

I, Ernestine B. Gilpin, Associate Director, Office of International Affairs, United States Department of Justice, United States of America, do hereby certify that the attached affidavit, with attachments, by Marietta I. Geckos, Senior Trial Attorney, Narcotic and Dangerous Drug Section, Criminal Division, United States Department of Justice, United States of America, is authentic and was duly executed pursuant to United State laws. These documents were prepared in connection with the request for the extradition of Sarabjeet "Rick" Singh from India.

True copies of these documents are maintained in the official files of the United States Department of Justice in Washington, D.C. "

25. One Marietta I. Geckos has affirmed an affidavit stating about :-

i) prosecutor's background and experience ;

ii) procedural history ;

iii) the charges and potential sentences ;

iv) penalties ;

v) statutory provisions ;

vi) exhibits ; and

vii) his professional opinion on the charges and made his conclusion as under :-

26. Indictments against the appellant are 27 in number which can briefly be classified as

a) conspiracy

b) possession of drugs ;

c) drug trafficking ;

d) money laundering ; and

e) use of telecommunication facilities for drug trafficking. Report of the Learned Magistrate

27. Admittedly the learned Magistrate did not find any prima facie case in regard to Count Nos. 9, 16, 17, 19, 20, 22 and 23. Allegations against the Appellant

28. Documents received from the Government of United States of America show that the substance recovered and described as MDMA or ecstasy was 3,4-Methylendeioxymethamphetamine. The chemical composition of the drug described as MDMA finds place at Serial No.80 in the schedule. The list also describes MDMA at Serial No.15 as 3,4-Methylendeioxymethamphetamine. The last entry states "SALTS & PREPARATION OF ABOVE". The article recovered is a psychotropic substance under the Narcotic Drugs and Psychotropic Substances Act, 1985, possession whereof by itself contributes an offence. The quantity of the drug recovered answers the description of commercial quantity. In India, an accused found guilty of the commission of the said offence, may be punished with rigorous imprisonment for a minimum period of 10 years which may extend to 20 years besides fine.

29. The chemical reports also show that the drug is a controlled drug. Procedure

30. Article 9(3) of the Treaty says that the request for extradition should be supported by such information as would justify the committal for trial of the person if the offense had been committed in the Requested State. Section 7 of the Extradition Act prescribes that 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 same were one triable by a Court of Sessions or High Court.

31. Difference between incorporation by reference and a mere citation is now well known in view of the decisions of this Court in Karnataka State Road Transport Corporation vs. B.A. Jayaram and Ors. [1984 Supp. SCC 244] and Nagpur Improvement Trust Vs. Vasantrao and Ors. and Jaswantibai and others [(2002) 7 SCC 657]. Incorporation by reference provides for a legislative device where the legislature instead of repeating the provisions of the statute incorporates it in another statute.

32. We may, however, notice that in M/s. Girnar Traders vs. State of Maharashtra and others [2007 (10)) SCALE 391], the question has been referred to a larger bench. We would, however, proceed on the assumption that the doctrine of incorporation of reference as said to be containing in Section 7 of the Act would apply in the instant case. We may, however, hasten to add that the said Act being a self contained Code, the provisions thereof must be applied on their own terms. Application of the Statutory provisions

33. Sections 208 and 209 of the Code of Civil Procedure, 1898 contemplate taking of such evidence as may be produced in support of the prosecution or on behalf of the accused that may be called for by the Magistrate. Compliance of the principle of natural justice or the extent thereof and the requirement of law is founded in the statutory scheme. The Magistrate is to make an enquiry. He is not to hold a trial. Code of Criminal Procedure makes a clear distinction between an enquiry, investigation and trial. Authority of the Magistrate to make an enquiry would not lead to a final decision wherefor a report is to be prepared. Findings which can be rendered in the said enquiry may either lead to discharge of the fugitive criminal or his commitment to prison or make a report to the Central Government forwarding therewith a written statement which the fugitive criminal may desire to submit for consideration of the Central Government. Sub-section (2) of Section 7 envisages taking of such evidence as may be produced in support of the requisition of the foreign State as also on behalf of the fugitive criminal. It is open to the fugitive criminal to show that the offence alleged to have been committed by him is of political character or the offence is not an extraditable offence. He may also show that no case of extradition has been made out even otherwise. The Magistrate, therefore, in both the situations is required to arrive at a prima facie finding either in favour of fugitive criminal or in support of the requesting state. [See Sohan Lal Gupta (dead) through LRs. And others vs. Asha Devi Gupta (Smt) and others : (2003)7 SCC 492].

34. What would constitute "evidence" came up for consideration before this Court in Ramnarayan Mor and another vs. State of Maharashtra [1964] 5 SCR 1064 to hold that the documents also formed part of the evidence within the meaning of Section 207A (6) of the Code of Criminal Procedure 1898.

35. In a proceeding for extradition no witness is examined for establishing an allegation made in the requisition of the foreign State. The meaning of the word "evidence" has to be considered keeping in view the tenor of the Act. No formal trial is to be held. Only a report is required to be made. The Act for the aforementioned purposes only confers jurisdiction and powers on the Magistrate which he could have exercised for the purpose of making an order of commitment. Although not very relevant, we may observe that in the Code of Criminal Procedure, 1973, the powers of the committing Magistrate has greatly been reduced. He is now required to look into the entire case through a very narrow hole. Even the power of discharge in the Magistrate at that stage has been taken away.

36. Law in India recognizes affidavit evidence. (See Order IXX of the Code of Civil Procedure and Section 200 of the Code of Criminal Procedure). Evidence in a situation of this nature would, thus, in our opinion mean, which may be used at the trial. It may also include any document which may lead to discovery of further evidence. Section 3 of the Indian Evidence Act which defines "evidence" in an enquiry stricto sensu may not, thus, be applicable in a proceeding under the Act.

37. 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 standing 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.

38. Reliance has been placed by Mr. Vishwanathan, learned counsel for the appellant, on Land Acquisition Officer and Mandal Revenue Officer vs. V. Narasaiah : (2001) 3 SCC 530 wherein interpreting Section 51-A of the Land Acquisition Act this Court held that the certified copy of a registered sale deed would be admissible in evidence. The said decision, we may notice, has been approved by the Constitution Bench of this Court in Cement Corporation of India Ltd. vs. Purya and others: (2004) 8 SCC 270. It may be true that a document does not prove itself. Its contents, unless admitted, should be proved in terms of the provisions of the Evidence Act, unless the contents of the documents are said to be admissible by reason of a provision of a statute, as for example Section 90 of the Evidence Act. But what misses the aforementioned submission/contention is that whereas the contents of the document is to be proved for the purpose of trial but not for the purpose of arriving at an opinion in regard to existence of a prima facie case in an enquiry. Strict formal proof of evidence in an extradition proceeding is not the requirement of law. While conducting an enquiry the Court may presume that the contents of the documents would be proved and if proved, the same would be admitted as evidence at the trial in favour of one party or the other. We, therefore, are unable to accept the submission of Mr. Vishwanathan that even at this stage the affidavits by way of evidence of the accomplices Michael Ryan 'O' Mealey and Alan Lane Blackley who had been arrested and pleaded guilty and had been cooperating with DEA Agent were required to be excluded from consideration by the learned Magistrate without any corroboration.

39. Our attention has been drawn to a decision of this Court in Ramgopal Ganpatrai Ruia and another vs. The State of Bombay: [1958] SCR 618 wherein this Court upon noticing the decisions of the Bombay High Court in Queen Empress v. Namdev Satvaji [(1887) I.L.R. 11 Bom. 372 and of the Allahabad High Court in Lachman v. Juala : [(1882) I.L.R. 5 All. 161] held that the Magistrate should commit the accused for trial if he is satisfied that sufficient grounds for doing so have been made out. It is difficult to apply those crucial words "sufficient grounds" in an extradition case.

Therein, this Court considering the evidence brought on records, posed a question as to whether the same constituted a prima facie case, or that the voluminous evidence adduced therein was so incredible that no reasonable body of persons could rely upon it.

40. 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.

41. Reliance has also been placed on Rajpal Singh and others vs. Jai Singh and another : (1970) 2 SCC 206 wherein this Court opined : "Though the language of Section 209 differs from that in Section 207A, it is well settled that under neither of them has the Magistrate the jurisdiction to assess and evaluate the evidence before him for the purpose of seeing whether there is sufficient evidence for conviction. The reason obviously is that if he were to do that he would be trying the case himself instead of leaving it to be tried by the Sessions Court, which alone has under the Code the jurisdiction to try it. As stated earlier, both the parties led evidence. Instead of finding out whether there was sufficient evidence to make out a prima facie case, what the Magistrate did was to evaluate the evidence by an elaborate assessment of it and held, as if he was trying the case, that between the two versions the evidence of witnesses examined by the appellants was preferable to that led by the complainant, that the defence evidence was more probable and that there were inconsistencies and improbabilities in the prosecution evidence, and finally that that evidence was interested and liable, therefore, to be discarded. There may perhaps be some force in what the Magistrate has said about the evidence, but it is clear that there was something which could be said on both the sides. The Magistrate, therefore, ought to have left the case for the Sessions Court to decide and come to its conclusion which of the two rival versions was acceptable on the facts and circumstances of the case."

The said decision, thus, is an authority for the proposition that at that stage the Magistrate was not required to evaluate the evidence so as to arrive at a finding that the accused is or is not guilty. Evaluation of evidence or appreciation thereof, in our opinion, is not within the domain of the Magistrate at that stage.

42. Decision of the Queen's Bench Division in "Re Tomlin's application" disposed of on 18th November, 1994 has been relied upon to say that the court was under an obligation to see that the evidence of the witnesses be not unfairly admitted. Queen's Bench Division therein excluded the hearsay evidence in regard to the contents of a document. Contention in regard to unfair admission of the document, however, was not pursued. The said principle would apply in a case where there is no evidence to establish that the crime has been committed by the defendants or where a judge comes to the conclusion that the prosecution evidence taken at its face value would not lead to conviction. Approach of the English Courts is to lay test as in the case of the submission of the defendant at the end of the prosecution evidence i.e. end of trial, the defendant would not be called upon either to explain the prosecution case or to enter into his defence. There may not be any dispute in regard to the said proposition of law.

43. 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 and others : 1986 RLR 7 : 1986 (29) DLT 410 and Nina Pillai vs. Union of India : 1997 Crl. L.J. 2359 paragraphs 9 and 11).

44. Counsel for both the parties have relied upon the decision of this Court in Rosiline George vs. Union of India and others : (1994) 2 SCC 80. This Court therein noticed a commitment of this country to honour the international obligations arising out of the 1931 treaty. For the said purpose even the international statute like the Fugitive Offenders Act, 1881 was held not to be applicable. Municipal law of the land undoubtedly would apply. Section 10 of the Act provides that the

documents are liable to be treated and received as evidence. What is, therefore, necessary for the purpose thereof is to supply the copies of the documents to the fugitive criminal. In Rosiline George this Court held :-:

"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 offence 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 inquire into the same. The Act, being a special provisions 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."

Statute 846 issue

45. Mr. Vishwanathan complained that copy of Statute 846 was not supplied. The effect of the said statute was stated as under :- " In order to convict a person of conspiracy in violation of 21 USC 846, the government must prove the following to the satisfaction of the jury beyond a reasonable doubt : First, that two or more persons made an agreement to commit the crime which is stated to have been the object of the conspiracy, and second, that the defendant somehow knew the purpose of the agreement and joined in it with the intent to further the illegal purpose. The government need not prove that the alleged conspirators entered into any formal agreement, nor that they directly stated between themselves all the details of the scheme. Similarly, the government need not prove that all the details of the scheme were agreed upon or carried out, nor must it prove that all of the persons alleged to have been conspirators were such, or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives."

In regard thereto, no grievance was made in the High Court. No ground has also been taken in this behalf in the special leave petition. No prejudice is shown to have been caused. It might have been better if the statute itself has been reproduced but then it has clearly been stated what was required to be proved and what was not required to be proved. We must bear in mind that the High Court was dealing with a writ petition filed by the appellant herein under Article 226 of the Constitution of India and not an appeal from the order of the learned Magistrate.

The superior courts while entertaining a writ petition exercises a limited jurisdiction of judicial review, inter alia, when constitutional/statutory protection is denied to a person. But when it is required to issue a writ of certiorari, the order under challenge should not undergo scrutiny of an appellate court. Jurisdiction of the superior court in this behalf being limited inter alia to the question of jurisdiction, it was obligatory on the part of the petitioner to show that a jurisdictional error has been committed by the court while exercising the statutory powers. Contention in regard to prejudice in such a situation is required to be considered. A person informed in law and having taken all possible objections evidently knew that non disclosure of the Statute 846 in verbatim did not prejudice him. Had he been prejudiced he would have taken the said point at the outset. He did not do so. We are, therefore, of the opinion that it is not possible for us to allow the appellant to raise such a contention for the first time before us.

Information viz-a-viz Evidence

46. The provisions of a statute, it is trite law, must be harmoniously construed. When a statute is required to be read with an International Treaty, consideration of the provisions contained in the latter is also imperative. On a conjoint reading of Section 7 and Section 10 of the Act read with paragraphs 2 and 3 of Article 9 of the Treaty, we are of the opinion that the word "information" occurring in Section 7 could not mean an evidence which has been brought it on record upon strict application of the provisions of the Evidence Act. The term "information" contained therein has a positive meaning. It may in a sense be wider than the words "documents and the evidence", but when a document is not required to be strictly proved upon applying the provisions of the Indian Evidence Act or when an evidence is not required to be adduced strictly in terms thereof, the use of the word "information" in Section 10 of the Extradition Act as also Articles 9(2) and 9(3) of the Treaty becomes relevant. Documentary evidence, no doubt form part of a judicial record; but then even in a court governed by Criminal Procedure Code 1973 documents are to be supplied only when the cognizance of the offence is taken. At this stage, therefore, the requirement of sub-section (5) of Section 173 of the Code of Criminal Procedure was not necessary.

Section 10 of the Extradition Act speaks of certification of facts. Such certification is found in the affidavit of Mr. Gilpin. How such certificate of fact is to be furnished does not appear from the provisions of the said Act and the affidavit may serve the said purpose. It is not, therefore, possible to hold that the report of the learned Magistrate is vitiated on the premise that he has failed to apply a mandatory provision thereof.

Jurisdictional Issue

47. Section 208 of the Old Code of Criminal Procedure is not required to be applied in its entirety. The said provision were required to be applied as far as practicable. The provisions of the Act confer power and jurisdiction upon the Magistrate as the case is not brought before it by the prosecutor or the complainant, but an enquiry is entrusted to the designated court by the Central Government. A power was, therefore, required to be conferred under a statute to the Magistrate, so that, it may have the requisite power and jurisdiction to make an enquiry. Its function are quasi judicial in nature; its report being not a definitive order. Further section does not stop at that. It refers to the committal proceeding only for the manner in which the same is to be conducted. While a court would commit an accused in terms of Section 208, it was required to arrive at a finding for the said purpose. It postulates that a finding has to be arrived at only for the purpose of discharge of an accused or his extradition upon formation of a prima facie view. The legal principle in this behalf has clearly been laid down in sub-sections (2), (3) and (4) of Section 7 of the Extradition Act. The said sub-sections cannot be ignored. Unlike Section 208 of the Code, no witnesses need be examined and cross-examined. If the State has been able to prima facie establish that a case has been made out for bringing an accused to trial, it will be for the accused to show that no such case is made out of the offences complained or for extradition.

48. In a case of this nature the second part of Section 10 of the Act would apply which does not contemplate production of any oral evidence by the Central Government. No fact needs to be proved by evidence. What is necessary is to arrive at a prima facie case finding that a case has been made out for extradition from the depositions, statements, copies and other informations which are to be gathered from the official certification of facts and judicial documents that would include the

indictment by the Grand Jury.

49. 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 and Ors. vs. Rajendra Pd. Ardevi and Ors. 2007 (1) SCALE 32]

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

In Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424] this Court stated: "...If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act...."

[See also Chairman, Indore Vikas Pradhikaran vs . Pure Industrial Cock and Chem. Ltd. and others : AIR 2007 SC 2458]

Section 7 of the Act should not be read, thus, in isolation and the literal interpretation, as was sought to be resorted to by Mr. Viswanathan, would render the statute unworkable. See M/s. Girnar Traders (supra)

The Act is a special statute. It shall, therefore, prevail over the provisions of a general statute like the Code of Criminal Procedure.

All the evidences envisaged under Section 10 of the Act have been produced before the learned Magistrate. The statute speaks of information specified therein to be the evidence for the purpose of the provisions of the said Act.

The term "information" although is of wide import, must be read in the context of which it has been used.. Information may include statement which falls short of confession as well as statement which amounts to confession. [See R.V. Babulal ILR 6 All 509 at 537]

In Commissioner of Income Tax vs. A. Raman and Co. [AIR 1968 SC 49], the expression 'information' has been held to mean instruction or knowledge derived from an external concerning facts or particulars, or as to law relating to a matter bearing on the assessment.

We may also notice that in Hirachand Kothari vs. State of Rajasthan [AIR 1985 SC 998] this Court held that a statement by the referee as to the truth or otherwise regarding a question in a dispute, when the court needs information on such question, is information.

51. Section 10 of the Act clearly provides that any exhibit or deposition which may be received in evidence need not be taken in the presence of the person against whom they are used or otherwise. It also contemplates the copies of such exhibits and depositions and official certificates of facts and

judicial documents stating facts would, if duly authenticated, be received as evidence.

52. We, therefore, are of the opinion that an information need not be a documentary evidence or an oral evidence as is understood under the Indian Evidence Act.

53. For the reasons aforementioned, we are of the opinion that no case has been made out for interference with the impugned judgment. The appeal is dismissed.