

P L D 2018 Islamabad 258**Before Athar Minallah and Miangul Hassan Aurangzeb JJ****MUHAMMAD SHAHID---Appellant****Versus****FEDERATION OF PAKISTAN through Secretary Ministry of Interior,
Government of Pakistan, Islamabad and another---Respondents**

I.C.A. No.359 of 2016 in W.P. No.1611 of 2016, decided on 17th May, 2018.

(a) Extradition Act (XXI of 1972) ---

---Ss. 4 & 8---Extradition proceedings---Non-treaty State---Order of Magisterial enquiry---Government of foreign country (United Kingdom), made a request to Pakistan for the appellant's extradition for his trial on the charge of murdering eight persons in the foreign country---Appellant was arrested in Pakistan, and the enquiry Magistrate found that there was a prima facie case against the appellant warranting his extradition to the foreign country under the provisions of the Extradition Act, 1972---Appellant challenged said order by way of Constitutional petition before the High Court, which was dismissed---Held, that an extradition treaty had not been executed between Pakistan and the foreign country in question (United Kingdom)---When there was no extradition treaty between Pakistan and the foreign State, the provisions of the Extradition Act, 1972 could be made applicable for the return of persons to such a non-treaty State provided the requirements of S. 4 of the Extradition Act, 1972 were fulfilled---In the present case, the enquiry Magistrate requested the Ministry of Interior to issue a notification under S. 4 of the Extradition Act, 1972 along with the nomination of an enquiry Magistrate to conduct an enquiry under S. 7 of the said Act---Ministry of Interior did issue a notification directing that the provisions of the said Act shall have effect in relation to the foreign country with respect to the extradition of the appellant who was wanted on charges of multiple murders---Although the enquiry Magistrate was appointed three days prior to the issuance of the notification under S. 4, but this by itself did not render the entire proceedings before the enquiry Magistrate, coram non iudice or unlawful---At best, this was an irregularity which stood cured when the notification under S. 4 was issued---Number of documents were exhibited in the proceedings before the enquiry Magistrate, including the statement of the investigating officer of the case---In said statement, the appellant had been specifically implicated for conspiracy to commit arson with intent to endanger life and murder of eight persons---Investigating officer had also made mention of a confession made by the appellant to a woman about his involvement in the said offence---Additionally the appellant was also implicated by a witness in the case---Said statements were enough to show a prima facie case of the appellant's involvement in the offence that he was charged with in the foreign country---Constitutional petition filed by the appellant against his extradition had been rightly dismissed---Intra court appeal was dismissed accordingly.

(b) Extradition Act (XXI of 1972)---

---Ss. 4 & 7---Extradition proceedings---Non-treaty State---Order of Magisterial enquiry---Extradition of a person in Pakistan to a foreign State (whether or not an extradition treaty had been executed between Pakistan and such a State) could not take place outside the provisions of the Extradition Act, 1972 which were required to be strictly construed---Provisions of the Extradition Act, 1972 could be made applicable for the extradition of a person in Pakistan to a non-treaty State only after a notification in terms of S. 4 of the said Act---Neither could the Federal Government issue an order to a Magistrate of First Class to enquire into the case under S.7 nor could such a Magistrate summon or arrest a fugitive offender, without there being a notification under S. 4 of the Extradition Act, 1972---Where no notification in terms of S. 4 had been issued by the Federal Government, any proceedings taken with respect to the extradition of a person to a non-treaty State by an enquiry Magistrate nominated by the Federal Government in terms of S. 7, would be coram non iudice and without lawful authority.

Ahtabar Gul and another v. The State and another PLD 2014 Pesh. 10 and Mohammad Asim Malik v. Anwar Jalil PLD 1989 Lah. 279 ref.

(c) Constitution of Pakistan---

---Art. 15---Extradition Act (XXI of 1972), Ss. 5 & 6---Freedom of movement, etc.---Scope---Fugitive---Extradition proceedings---Article 15 of the Constitution was never intended to afford protection against extradition to citizens who were accused of serious crimes in other (foreign) countries.

Nasrullah Khan Henjra v. Government of Pakistan, Ministry of Interior and Narcotics Control, Islamabad PLD 1994 SC 23 ref.

(d) Constitution of Pakistan---

---Art. 199---Writ of certiorari, issuance of---Scope---(Writ of) certiorari was only available to quash a decision for an error of law if the error appeared on the face of the record---Certiorari would also be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acted without jurisdiction or in excess of it, or failed to exercise it---Certiorari would also be issued when a Court or a Tribunal acted illegally in exercise of its undoubted jurisdiction, as when it decided without giving an opportunity of hearing to the parties to be heard, or violated the principles of natural justice---Court issuing a writ of certiorari acted in exercise of a supervisory and not appellate jurisdiction---One consequence of such jurisdiction was that the High Court would not review the findings of fact reached by the inferior Court or a Tribunal, even if an alternative or a different view was possible.

Malik Qamar Afzal and Barrister Masroor Shah for Appellant.

Khawaja Muhammad Imtiaz, Deputy Attorney General for Respondent No.1.

Date of hearing: 28th September, 2017.

JUDGMENT

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal, the appellant, Muhammad Shahid, impugns the judgment dated 21.06.2016, whereby Writ Petition No.1611/2016 filed by the appellant, was dismissed by the learned Judge-in-Chambers. Through the said writ petition, the petitioner had prayed for inter-alia a declaration to the effect that the extradition proceedings against him were violative of the provisions of the Constitution.

The United Kingdom of Great Britain and Northern Ireland ("U.K.") through the British High Commission, Islamabad, made a request to the Islamic Republic of Pakistan ("Pakistan") for the appellant's extradition for his trial on the charge of murdering eight persons in the U.K. On 22.01.2015, the appellant was arrested in Pakistan. Vide order dated 28.04.2016, the learned Enquiry Magistrate found that there was prima facie case against the appellant warranting his extradition to the U.K. under the provisions of the Extradition Act, 1972 ("the Extradition Act"). The appellant is presently in judicial custody in Pakistan.

3. The appellant challenged the said order dated 28.04.2016 in a petition under Article 199 of the Constitution before this Court. Vide impugned judgment dated 21.06.2016, the appellant's writ petition was dismissed. The appellant in the instant appeal has challenged the said judgment.

4. Malik Qamar Afzal and Barrister Masroor Shah, Advocates, learned counsel for the appellant submitted that the warrants of arrest against the appellant were issued in Pakistan after a lapse of more than ten years of the alleged offence; that since there is no extradition treaty between Pakistan and the U.K., the case against the appellant has to be adjudged on different parameters; that after the appellant was arrested in the U.K., he was granted bail, because no incriminating evidence had been found against him; that the arrest warrants against the appellant in Pakistan were issued prior to the appointment of the Enquiry Magistrate under section 4 of the Extradition Act; that this procedural irregularity vitiates the extradition proceedings against the appellant; that the evidence against the appellant was not enough to hold him guilty of the offence he was charged with; that the findings of the Enquiry Magistrate do not disclose a prima facie case against the appellant; that the only evidence against the appellant was the statement of the co-accused and the investigating officer; that if the appellant's trial was to take place in Pakistan, he would be in a position to enter into a compromise by paying compensation to the legal heirs of the deceased; that the appellant has acquired a National Identity Card in Pakistan and has also purchased property; that the appellant got married in Pakistan and has four young children; and that if the appellant is extradited to the U.K., it would transgress his fundamental rights guaranteed under Article 15 of the Constitution.

5. On the other hand, Khawaja Muhammad Imtiaz, learned Deputy Attorney-General, submitted that the mere fact that there is no extradition treaty between Pakistan and the U.K. does not mean that a fugitive offender having committed an offence in the U.K. cannot be extradited; that such an offender can be extradited to a country with which Pakistan does not have an extradition treaty as long as a notification is issued under

section 4 of the Extradition Act; that since a notification under section 4 of the said Act was issued by the Federal Government on 29.01.2015, the extradition proceedings against the appellant did not suffer from any legal infirmity; that since the appellant had committed an offence in the U.K., he has to be prosecuted and subjected to a criminal trial in the said country; that under section 2(1)(d) of the Extradition Act, a "fugitive offender" includes a person accused of an offence and suspected to be in any part of Pakistan; that two witnesses were produced by the appellant in his favour before the learned Enquiry Magistrate; that one of the witness was the appellant's wife whereas second one was his sister-in-law; that the appellant had got married three years after the alleged offence; that the appellant is a U.K. national and is in a position to face a trial in the said country; and that the learned Judge-in-Chambers after dealing with every aspect of the case had dismissed the appellant's writ petition. The learned Deputy Attorney-General prayed for the appeal to be dismissed.

6. We have heard the contentions of the learned counsel for the appellant as well as the learned Deputy Attorney-General and perused the record with their able assistance.

7. "Extradition" has been defined in Words and Phrases (Volume 15B) as the surrender by one nation to another of an individual accused or convicted of an offence outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender. Extradition is intended to be summary and mandatory executive proceeding to preclude any State from becoming sanctuary for fugitives from justice of another State. Its effect is essentially to enlarge the territorial area for lawful arrest of a fugitive offender. The purpose of extraditing a fugitive offender to the demanding State is that he may stand trial in that State.

8. In Pakistan, extradition proceedings are regulated under the provision of the Extradition Act, which were enacted on 25.09.1972. Section 1(4) of the said Act provides that it shall apply in relation to the return of persons to and to persons returned from, (a) a treaty State, subject to a declaration under section 3, if any; and (b) a foreign State not being a treaty State, subject to a direction under section 4. Section 2(1)(f) defines a "treaty State" as a foreign State with which an extradition treaty is for the time being in operation. Section 3(1) of the said Act mandates that the Federal Government shall publish in the official Gazette a list of the foreign States with which an extradition treaty is in operation, specifying in respect of each such State the offences persons accused of which are, under the treaty, to be returned to or from that State. A requisition for the surrender of a fugitive offender can be made to the Federal Government under section 6 of the Extradition Act. Such a requisition can be made by a diplomatic representative in Pakistan of the State asking for the surrender.

9. On 22.03.2013, the U.K., through the British High Commission, Islamabad, sent a request to the Federal Government (Ministry of Foreign Affairs), for the appellant's extradition from Pakistan to the U.K. The appellant was alleged to have committed the following offences:-

"1. Conspiracy to commit arson with intent to endanger life, committed between 10.05.2002 and 13.05.2003,

2. Murder, contrary to Common Law committed on 12.05.2003."

10. The appellant was alleged to have thrown petrol bombs through the windows of House No.40, Osborne Road, Birkby, Huddersfield, England. The fire caused due to the said act resulted in the death of eight persons who were sleeping in the said house. The appellant was accused of murdering Muhammad Ateeq-ur-Rehman, Nafeesa Aziz, Tayyaba Batool, Rabia Batool, Ateeqa Nawaz, Aneesha Nawaz, Najeeba Nawaz and Zaib-un-Nisa.

11. The appellant was arrested in the U.K. on 12.05.2002 and interrogated by the police. Subsequently, he was granted bail. The forensic evidence was said to be enough to charge the appellant with the murders. Since the appellant did not appear before the police in the U.K. on 17.07.2002, it was suspected that the appellant had fled the country in order to evade justice. European arrest warrants were also said to have been issued against the appellant. In the meanwhile, one of the appellant's co-accused was convicted of murder and two accomplices of manslaughter. It took the authorities in the U.K. almost a decade to find out that the appellant was in Pakistan.

12. Along with the said extradition request, documents including an arrest warrant, deposition of fact and law, evidence of identity and exhibits were also provided. The British High Commission, Islamabad, requested the Ministry of Foreign Affairs to forward the said extradition request to the Ministry of Interior for the necessary action under the Extradition Act.

13. Where requisition is made under section 6 of the Extradition Act, the Federal Government is empowered under section 7 of the said Act to issue an order to a Magistrate of the First Class (who would have had the jurisdiction to enquire into the extradition offence to which the requisition relates if it had been an offence committed within the local limits of his jurisdiction) to enquire into the case.

14. After the Ministry of Foreign Affairs appears to have forwarded the said extradition request to the Ministry of Interior, the latter, vide order dated 17.07.2013, in exercise of its power conferred by section 7 of the Extradition Act, directed Ms. Marriam Khan, Additional Deputy Commissioner (G), Islamabad, to enquire into the case.

15. Section 8(1) of the Extradition Act empowers the Magistrate inter alia to issue warrants for the arrest of the fugitive offender if the case appears to be one in which, according to the law of Pakistan, warrants would ordinarily issue. On 19.08.2013, the Enquiry Magistrate issued non-bailable warrants of arrest against the appellant. The said warrants were sent by the Enquiry Magistrate through the Director General, Federal Investigation Agency ("F.I.A."), with a request to depute an officer for an early execution of the appellant's arrest. On 22.01.2015, the appellant was arrested by the police from his house in Jhelum in the Province of Punjab. Subsequently, the appellant was brought to Islamabad.

16. It is an admitted position that, till date, an extradition treaty has not been executed between Pakistan and the U.K. If there is no extradition treaty between Pakistan and a foreign State, the provisions of the Extradition Act can be made applicable for the

return of persons to such a non-treaty State provided the requirements of section 4 of the Extradition Act are fulfilled. Unless and until a notification in terms of section 4 of the Extradition Act is issued by the Federal Government, a person accused of an offence at places within or within the jurisdiction of a non-treaty State cannot be extradited to such a State under the provisions of the said Act. In this regard, section 4(1) and (2) of the Extradition Act are reproduced herein below:-

"4 (1) Where the Federal Government considers it expedient that the persons who, being accused or convicted of offence at places within, or within the jurisdiction of, a foreign State, are or are suspected to be in Pakistan should be returned to the State, notwithstanding that there is no extradition treaty with that State, it may, by notification in the official Gazette, direct that the provisions of this Act, shall, with respect to such offences and subject to such modifications, exceptions, conditions and qualifications, if any, as may be specified therein, have effect in relation to that State.

(2) Where a direction under subsection (1) in relation to a foreign State is in force, the provisions of this Act shall, with respect to the offences specified in that direction, have effect in relation to such State as if it were a treaty State."

17. Since there is no extradition treaty between Pakistan and the U.K., the Enquiry Magistrate, vide letter dated 27.01.2015 requested the Ministry of Interior to issue a notification under section 4 of the Extradition Act along with the nomination of an Enquiry Magistrate to conduct an enquiry under section 7 of the said Act.

18. Vide notification dated 29.01.2015, issued by the Ministry of Interior, Government of Pakistan, in exercise of the powers conferred by section 4 of the Extradition Act, directed that the provisions of the said Act shall have effect in relation to the U.K. with respect to the extradition of the appellant who was wanted on charges of multiple murder.

19. Earlier vide order dated 26.01.2015, the Ministry of Interior, Government of Pakistan, in exercise of its powers conferred under section 7 of the Extradition Act, had appointed Mr. Abdul Sattar Esani, Additional Deputy Cmmmissioner. Islamabad, as the Enquiry Magistrate to enquire into the matter regarding the requisition for the appellant's surrender and furnish his findings.

20. Section 8(2) of the Extradition Act provides that when the fugitive offender appears 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 and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive offender, including any evidence to show that the offence of which the fugitive offender is accused or alleged to have been convicted is an offence of a political character or is not an extradition offence. Section 10(b) of the Extradition Act provides that if, after the enquiry, the Magistrate is of the opinion that a prima facie case has been made out in support of a requisition, he shall (i) report the result of his enquiry to the Federal Government; (ii) forward, together with such report, any written statement which the

fugitive offender may desire to submit for the consideration of the Federal Government; and (iii) subject to any provision relating to bail, commit the fugitive offender to prison to await the orders of the Federal Government. If upon receipt of the report and statement of the fugitive offender, the Federal Government is of the opinion that the fugitive offender ought to be surrendered, it may issue a warrant for the custody and removal of the fugitive offender and for his delivery at a place and to a person to be named in the warrant. The proviso to section 11 of the Extradition Act provides that a fugitive offender shall not be so delivered until after the expiration of 15 days from the date he has been taken in custody under such warrant.

21. In the proceedings before the learned Enquiry Magistrate, the appellant denied all allegations against him. In his defence, the appellant produced three witnesses, whose statements were recorded. One of the witnesses was the appellant's wife and the other one was his sister-in-law. The appellant had got married three years after the offence that the appellant was alleged to have committed. In the said proceedings, the appellant had also taken the position that efforts were afoot for a compromise with the legal heirs of the deceased persons. On behalf of the State, the prosecutor from the Special Investigation Unit of the F.I.A. tendered several documents in evidence.

22. The learned Enquiry Magistrate, after conducting an enquiry, submitted an enquiry report dated 28.04.2016 regarding the appellant's extradition from Pakistan to the U.K. In the said report, the learned Enquiry Magistrate concluded that since there was sufficient incriminating documentary evidence available on the record, a prima facie case for the appellant's extradition to the U.K. had been made out. The case was forwarded by the learned Enquiry Magistrate to the Federal Government with the observation that it was the latter's prerogative under section 13 of the Extradition Act, to extradite the appellant.

23. On 30.04.2016, the appellant filed a petition under Article 199 of the Constitution before this Court. In the said petition, the petitioner had prayed for the following declaratory relief:-

- a) The acts executing an invalid arrest warrant of requesting State are an act without lawful authority.
- b) The authority and acts to raid, seize, confine, detention and process extradition proceedings against the petitioner are illegal and unlawful acts being without lawful authority.
- c) The conclusion/finding "prima facieness" of the alleged acts against the petitioner by the learned Executive Magistrate is arbitrary being without any rational basis and hence the impugned act is an act without lawful authority. The notification under Section 4 being invalidly sub-legislation is in-effective against the rights of the petitioner and any proceedings continued thereafter are [coram-non-judicel]
- d) Petitioner is entitled to be discharged on the basis of lack of prima-facieness of case act of extradition being unjust/oppressive and does not meet the

test of Article 10-A of the Constitution of Pakistan.

e) Call for the record and orders.

f) Cost of the petition.

24. Vide impugned judgment dated 21.06.2016, the said writ petition was dismissed. The instant appeal against the said judgment was filed on 25.06.2016 and was taken-up for hearing on 27.06.2016. On the said date, this Court observed that the learned Deputy Attorney-General shall assist the Court on the next date of hearing. Along with the instant appeal, the appellant also filed an application for the suspension of the impugned judgment. The order sheet reveals that at no material stage was either the operation of the impugned judgment suspended or the extradition proceedings stayed.

25. The Enquiry Magistrate, in the enquiry under section 8 of the Extradition Act, is required to form an opinion whether a prima facie case had been made out in support of the requisition of a fugitive offender. As per the Black's Law Dictionary (Eighth Edition) "prima facie" means "at first sight; on first appearance but subject to further evidence or information", and "prima facie case" means "the establishment of a legally required rebuttable presumption". In the case of Sui Gas Transmission Company v. Sui Gas Employees Union (1977 SCMR 220), it has been held that 'prima facie' case is spelt-out if a serious question of fact or law is raised in the plaint on which the parties will go to trial. In the case of Mst. Naz Shaukat Khan v Mrs. Yasmin R. Minhas (1992 CLC 2540), Wajihuddin Ahmed J. (as he then was) had the occasion to hold as follows:-

"Needless to add that prima facie case, as understood at law, does not imply an indefeasible case. It signifies only an arguable matter, involving serious or substantial questions of fact and law, which on proceeding to trial is capable of and has a possibility of success."

26. In the case at hand, a number of documents were exhibited in the proceedings before the Enquiry Magistrate. These documents included Exh.PG-7 to Exh.PG-17, which is the Investigating Officer, Sukhbir Singh's statement. In this statement, the appellant has been specifically implicated for conspiracy to commit arson with intent to endanger life and murder. In the said statement, the Investigating Officer stated that on 12.05.2002, the appellant along with three others threw petrol bombs through the windows of House No.40, Osborne Road, Birkby, Huddersfield, England, which resulted in the death of eight persons. The Investigating Officer had also made mention of a confession made by the appellant to Bibi Parveen about his involvement in the said offence. Additionally, Exh.PG-85/86, which is the statement of one Azmat Pervez also shows the appellant's involvement in the commission of the said offence. The appellant was also implicated by a witness, namely, Philip George Forest.

27. We have had the occasion of going through some of the material that was produced and exhibited before the learned Enquiry Magistrate. In particular, the statements of Parveen Bibi, Intizar Hussain and Arif Mohammed Siddiq as well as that of Sukhbir Singh would be enough to show a prima facie case of the appellant's involvement in

the offence that he was charged with in the U.K. Sukhbir Singh of the West Yorkshire Police in his witness statement deposed inter-alia as follows:-

"I knew that a number of individuals had been convicted in connection with the deaths. However, one individual, namely the accused Shahid Muhammad born 7 July 1982 had absconded before he could be brought to justice."

28. Portions of Parveen Bibi's witness statement are reproduced herein below:-

"We were working until about 2pm (1400) and I went for my break. I started my break in the staff room and someone told me Shaied IQBAL was outside in the dining area. I went into the dining area and saw Shaied IQBAL and Shahid MOHAMMED (Junior) they were stood by the toilet door by the kids area. It shook IQBAL's hand and Shahid's, stood with them was Mobeen. I asked him straight away, "Who was it?" and he calmly replied, "Me , Go-Go, BUBBLY, KALU and ANWAR and INITI also JUNIOR. I knew he meant himself, Shahid MOHAMMED, Shakil SHAZAD, Anwar HUSSAIN, Nassar HUSSAIN (KALU) and INTIZAR. I have met all of them numerous times and know them but know IQBAL, Shahid MOHAMMED and Nassar HUSSAIN really well. I thought crazy mother fuckers, I said, "Shaied you killed five little girls." He replied, "I didn't mean it to happen but I can't change it now."

I asked him "How?" and he replied, "PETROL BOMBS."

Myself and Mobeen said that they wouldn't get away with it.

I said quite seriously, "Shaied you killed five little girls". He said to Mobeen, "I can't change it now, it's happened". She was getting more upset. I said to him, "Shaied how did you do it?"

He replied without hesitation "Petrol bombs". I asked, "Who was it?"

I remember Shaied began to use his hands and counted out on each finger, "ME, GO-GO, BUBBLY, KALU, ANWAR, INTI, and JUNIOR".

I know all of them, GO-GO is Amjad MOHAMMED.

BUBBLY is Shakil SHAZAD

KALU is Nazar HUSSAIN

ANWAR is Anwar HUSSAIN

INTI is Intizar

JUNIOR is Shahid MOHAMMED

He also said, "It was all of us".

29. On the examination of the said documents, it cannot be said that the learned Enquiry Magistrate erred in forming an opinion that a prima facie case had been made out in support of the appellant's requisition. In holding so, we derive guidance from the law laid down in the following judgments:-

i) In the case of Nasarullah Khan Hanjra v. Government of Pakistan, Ministry of Interior (1998 SCMR 1072), it has been held inter-alia that the scope of an enquiry before the enquiry officer under section 8 of the Extradition Act was to find a prima facie case against the person whose extradition was sought.

ii) In the case of Nasrullah Khan Henjra v. Government of Pakistan, Ministry of Interior and Narcotics Control, Islamabad (PLD 1994 SC 23), it has been held as follows:-

"If after considering the material before him the Magistrate forms the opinion that a prima facie case has not been made in support of the requisition for the surrender of the fugitive offender he must discharge him and make a report to that effect to the Federal Government. But if on the other hand he comes to the conclusion that a prima facie case has been made out in support of the requisition he is required to send inter alia a report to the Federal Government and commit the fugitive offender to prison to await the orders of the Federal Government."

iii) In the case of Mst. Akhtar Malik v. Federation of Pakistan (1994 PCr.LJ 229), the Division Bench of the Hon'ble Lahore High Court held inter-alia that the provision of section 8 of the Extradition Act requires that a magisterial inquiry is to be held only to come to a prima facie conclusion as to whether or not a case is made out against a person whose extradition is sought for facing a trial abroad; and that the word "inquiry" has been defined in section 4(k) of the Code of Criminal Procedure, 1898, and has different connotations than the word "trial". Furthermore, it was held as follows:-

"Arguments addressed by the learned counsel for the petitioner to the effect that inquiry has to be held in accord with commitment proceedings, is not supported by the provisions of section 8 of the Extradition Act, 1972 read with Article 9 of the Treaty which provides that the inquiry has to be held in accord with the law of the country which is to pass an order of extradition. By virtue of section 9 of the Act, authenticated documents which have been relied upon by the learned Enquiry Officer as well as the respondents for recording of the report and passing of the impugned order have been made per se admissible and, therefore, on the basis of that material learned Enquiry Officer has rightly held that there is a prima facie case against the accused for directing them to face trial."

(iv) In the case of Mohammad Asim Malik v. Anwar Jalil (PLD 1989 Lahore 279), the Division Bench of the Hon'ble Lahore High Court held as

follows:-

"Next comes the question as to whether a prima facie case was made out for extraditing of the fugitive offender. Section 10 of the Extradition Act has two limbs. Its first limb is that, in case the Magistrate to whom the inquiry was entrusted finds that no prima facie case was made out in support of the requisition, it is open to him to discharge the offender and make a report to that effect to the Federal Government, and that is the end of it. Conversely, if the Magistrate is of the opinion that prima facie case was made out in support of the requisition, he is enjoined by law to send his report to the Federal Government along with the written statement which the offender may have filed for consideration of the Federal Government. Key words in the section are 'a prima facie case in support of the requisition'. The phrase 'prima facie case' is not a term, of art and, in law, signifies adequate to establish a fact or raise a presumption of fact unless rebutted. Therefore, the only prerequisite for the inquiry Magistrate is to ascertain whether on the material placed before him, in accordance with the requirements of the Extradition Act, a prima facie case as understood in legal parlance was made out. Obviously, the Magistrate was not expected to return a verdict of guilt upon the offender. What he was obligated to find was, whether a triable case was made out."

30. The findings of the learned Judge-in-Chambers while dismissing the appellant's writ petition are in consonance with the abovementioned case law. In this regard, paragraph 17 of the impugned judgment, is reproduced herein below:-

"17. The learned Inquiry Magistrate after taking into consideration the material placed in the form of documents concluded that a prima facie case exists against the petitioner. The material placed in the form of documents was in accordance with law on the subject as the provisions of Section 8 of the Extradition Act do not require the necessity of recording of oral evidence by the prosecution. Of some material in the form of evidence is already placed on record by the prosecution, it can be taken into consideration for coming to the prima facie conclusion with regard to the factum of commission of offence. In the present case, besides the fact that the proceedings in question are in nature of inquiry to be held to see as to whether a prima facie case is made out against the accused to face trial in criminal case pending in the Court of foreign country. The documents relied by the prosecution are, per se, evidence under the provisions of the Act and are admissible which can be looked into by the Government while passing an Extradition order, therefore, the contention of the learned counsel that no evidence is available and that inquiry proceedings were conducted in contravention of the law, is devoid of force. In such like cases, the Inquiry officer is not bound to hold inquiry exactly in accordance with the mode of trial of Sessions cases."

31. As mentioned above, extradition of a person in Pakistan to a foreign State (whether or not an extradition treaty has been executed between Pakistan and such a State) cannot take place de hors the provisions of the Extradition Act, which are required to be strictly construed. Since the provisions of the Extradition Act can be made applicable

for the extradition of a person in Pakistan to a non-treaty State only after a notification in terms of section 4 (ibid) is issued neither can the Federal Government issue an order to a Magistrate of First Class to enquire into the case under section 7 of the said Act nor can such a Magistrate summon or arrest a fugitive offender, without there being a notification under section 4 (ibid). It is our view that any proceedings taken with respect to the extradition of a person to a non-treaty State by an Enquiry Magistrate nominated by the Federal Government in terms of section 7 (ibid), would be coram non judice and without lawful authority, where no notification in terms of section 4 (ibid) has been issued by the Federal Government. In holding so, we derive guidance from the law laid down in the following judgments:-

- (i) In the case of Ahtabar Gul and another v. The State and another (PLD 2014 Peshawar 10), the petitioners, who were Afghan nationals, were arrested in Pakistan and were to be extradited to Afghanistan under the provisions of the Extradition Act. Since an extradition treaty had not been executed between Pakistan and Afghanistan and since the Federal Government had not issued a notification under section 4 of the Extradition Act providing for the provisions of the said Act to have effect in relation to Afghanistan, and with respect to the offences alleged to have been committed by the petitioners, the Hon'ble Peshawar High Court directed that the petitioners be forthwith released.
- (ii) In the case of Mohammad Asim Malik v. Anwar Jalil (PLD 1989 Lahore 279), it has been held that it is a valuable right of a citizen that he should not be sent out to a foreign jurisdiction without the law relating to extradition being strictly observed and complied with. Furthermore, it was held that the Courts must give strict interpretation to the provisions of the Extradition Act and jealously guard a citizens' right not to be sent abroad against his will.

32. Under the provisions of the Extradition Act, a person accused or convicted of offences in States with whom Pakistan has not executed an extradition treaty can be extradited to such a State if a notification is issued directing that the provisions of the Extradition Act shall have effect in relation to that State with respect to such offences. True, an extradition treaty has not been executed between Pakistan and the U.K., but in the case at hand, a notification under section 4 of the Extradition Act was issued on 29.01.2015 by the Federal Government with respect to the offence alleged to have been committed by the appellant in the U.K. The order to appoint an Enquiry Magistrate was made a few days before the notification under section 4 of the Extradition Act. The Enquiry Magistrate was appointed vide order dated 26.01.2015, whereas the notification under section 4 of the Extradition Act was issued on 29.01.2015 (i.e. three days later), but this by itself does not render the entire proceedings before the Enquiry Magistrate, coram-non-judice or unalwful. At best, the order appointing an Enquiry Magistrate a few days prior to the notification under section 4 of the Extradition Act, was an irregularity which stood cured when the said notification was issued.

33. As regards the appellant's arrest in Pakistan, the same was effected on 22.01.2015. This was also a few days prior to the issuance of the notification under section 4 of the

Extradition Act as well as the issuance of the order to the Enquiry Magistrate to enquire into the case regarding the appellant's requisition. It is not disputed that the appellant was arrested pursuant to the warrants of arrest issued on 19.08.2013. Therefore, we are of the view that the appellant's detention between 22.01.2015 and 29.01.2015 was without lawful authority.

34. As regards the contention of the learned counsel for the appellant that if the appellant is extradited it would be a transgression of his fundamental right guaranteed under Article 15 of the Constitution, suffice it to say that in the case of *Nasrullah Khan Henjra v. Government of Pakistan, Ministry of Interior and Narcotics Control, Islamabad (Supra)* it was held inter-alia that Article 15 of the Constitution never intended to afford protection against extradition to citizens who were accused of serious crimes in other countries. Furthermore, it was held that by virtue of item No.3 of the Federal Legislative List (Part-I) of the Constitution, the Parliament has been specifically empowered to make laws on the subject of extradition including the surrender of criminals and accused persons to governments outside Pakistan.

35. The appellant in his writ petition had sought the issuance of a writ of certiorari with respect to the Enquiry Magistrate's report dated 28.04.2016. It is well settled that certiorari is only available to quash a decision for an error of law if the error appears on the face of the record. Certiorari will also be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. Certiorari will also be issued when a Court or a Tribunal acts illegally in exercise of its undoubted jurisdiction, as when it decides without giving an opportunity of hearing to the parties to be heard, or violates the principles of natural justice. The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the High rCourt will not review the findings of fact reached by the inferior Court or a Tribunal, even if an alternative or a different view was possible. In the case at hand, the essential prerequisites for issuing a writ of certiorari have not been satisfied.

36. In view of the aforementioned, we do not find any merit in this appeal, which is accordingly dismissed with no order a sto costs.

MWA/62/Isl. Appeal dismissed.

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