Supreme Court of India
Daya Singh Lahoria vs Union Of India And Ors on 17 April, 2001
Author: Pattanaik
Bench: G.B. Pattanaik, U.C. Banerjee

CASE NO.:
Writ Petition (crl.) 256 of 2000

PETITIONER:
DAYA SINGH LAHORIA

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 17/04/2001

BENCH:
G.B. Pattanaik & U.C. Banerjee

JUDGMENT:

With Special Leave Petition (Crl.) Nos. 2697-2698 of 2000.

JUDGMENT PATTANAIK,J.

L...I...T.......T.......T.......T.......T.......T.......T..J The Writ Petition and the Special Leave Petitions raised the common question, and as such were heard together and are disposed of by this common judgment. The grievance of the petitioner Daya Singh Lahoria, in the Writ Petition is, that the Criminal Courts in the country have no jurisdiction to try in respect of offences which do not form a part of the extradition judgment by virtue of which the petitioner has been brought to this country and he can be tried only for the offences mentioned in the Extradition Decree. The petitioner has also prayed for quashing of the FIR and charge sheet against him which are not included in the extradition judgment of the USA Court. It appears, that the United States District of Texas Fort Worth Division issued the judgment of certification of extraditability and the said decree certifies to sustain under Extradition Treaty between the United States and the United Kingdom and Northern Ireland with the Government of Republic of India and specifies the offences for which the accused, mentioned in the extradition order could be tried. It is the contention of the petitioner that he cannot be tried for the offences other than the offences mentioned in the extradition order as that would be a contravention of Section 21 of the Extradition Act as well as the contravention of the provisions of the International Law and the very Charter of Extradition Treaty.

The Special Leave Applications are directed against the order of Rajasthan High Court wherein the High Court refused to entertain a Habeas Corpus Petition and decide the question as to the jurisdiction of the Designated Court under the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987, on the ground that an objection to the said jurisdiction could be made under Section 18 of the Act before the very Designated Court and an application for issuance of a Writ of Habeas Corpus would not lie. The question for consideration in the said Special Leave Petitions, therefore, is whether an accused, who is being tried in respect of offences under the Extradition Treaty can be tried for any other offence which does not form a part of the decree in view of the specific provision contained in Section 21 of the Extradition Act, 1962.

To consolidate and amend the law relating to the extradition of fugitive criminals and to provide for matters connected therewith, or incidental thereto, the Extradition Act of 1962 has been enacted. Prior to the enactment of the aforesaid law of extradition applicable to India was found scattered in the United Kingdom Extradition Act of 1870, the Fugitive Offenders Act, 1881 and the Indian Extradition Act, 1903. The expression extradition means, surrender by one State to another of a person desired to be dealt with for crimes of which he has been accused and which are justiciable in the Courts of the other States. The rights of a citizen not to be sent out to foreign jurisdiction without strict compliance with law relating to extradition is a valuable right. This Extradition Act is a special law dealing with criminals and accused of certain crimes and it prescribes the procedure for trial as well as the embargo in certain contingencies. The expression extradition offence has been defined in Section 2 (c) of the Act to mean, in relation to a foreign State, being a treaty State, an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence. The expression extradition Treaty has been defined in Section 2(d) to mean, a treaty (agreement or arrangement) made by India with a foreign State relating to the extradition of fugitive criminals and includes any treaty relating to the extradition of fugitive criminals made before the 15th day of August, 1947, which extends to, and is binding on, India. The expression foreign State is defined in Section 2(e) includes any State outside India and includes every constituent part, colony or dependency of such State. Section 21 of the Extradition Act is relevant for our purpose. Section 21, as it stood in the Extradition Act of 1962 is extracted hereinbelow in extenso:

Section 21: Accused or convicted person surrendered or returned by foreign State or Commonwealth country not to be tried for previous offence:- Whenever any person accused or convicted of an offence, which if committed in India, would be an extradition offence, is surrendered or returned by a foreign State or Commonwealth country, that person shall not, until he has been restored or has had an opportunity of returning to that State or country, be tried in India for an offence committed prior to the surrender or return, other than the extradition offence proved by the facts on which the surrender or return is based.

This section is based on Section 19 of the United Kingdom Extradition Act, 1870. The original Act of 1962 was amended by Act 66 of 1993. Under the 1962 Act, a distinction had been maintained between Commonwealth countries and foreign States and the foreign States were considered as treaty States. The extradition with Commonwealth countries were separately governed by the Second Schedule of the Act and the Central Government was given power under Chapter III to

conclude special extradition arrangements with respect to Commonwealth countries only. The amended Act of 1993 enables India to conclude extradition treaty with foreign State, including the Commonwealth countries, without treating them structurally different. It provides for extra-territorial jurisdiction over foreigners for crimes committed by them outside India and it incorporates composite offences in the definition of extradition offence. It excludes political offences as a defence in cases of offences of a serious nature and it covers extradition requests on the basis of international convention. It also enables the Central Government to make and receive requests for provisional arrest of fugitives in urgent cases pending the receipt of the formal extradition request. Section 21 of 1962 Act was substituted by Act 66 of 1993, as follows:

Section 21 Accused or convicted person surrendered or returned by foreign State not to be tried for certain offences. - Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State, such person shall not, until he has been restored or has had an opportunity of returning to that State, be tried in India for an offence other than

(a) the extradition offence in relation to which he was surrendered or returned; or

(b) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or

(c) the offence in respect of which the foreign State has given its consent.

The provision of the aforesaid Section places restrictions on the trial of the person extradited and it operates as a bar to the trial of the fugitive criminal for any other offence until the condition of restoration or opportunity to return is satisfied. Under the amended Act of 1993, therefore, a fugitive could be tried for any lesser offence, disclosed by the facts proved or even for the offence in respect of which the foreign State has given its consent. It thus, enables to try the fugitive for a lesser offence, without restoring him to the State or for any other offence, if the State concerned gives its consent. In other words, it may be open for our authorities to obtain consent of the foreign State to try the fugitive for any other offence for which the extradition decree might not have mentioned, but without obtaining such consent, it is not possible to try for any other offence, other than the offence for which the extradition decree has been obtained. The Extradition Treaty contains several articles of which Article 7 is rather significant for our purpose, which may be quoted hereinbelow in extenso:-

Article 7. A person surrendered can in no case be kept in custody or be brought to trial in the territories of the High Contracting Party to whom the surrender has been made for any other crime or offence, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the territories of the High Contracting Party by whom he has been surrendered.

This stipulation does not apply to crimes or offences committed after the extradition.

The aforesaid Article unequivocally indicates that the person concerned cannot be tried for any other crime or offence than those for which the extradition shall have taken place until he has been restored or has had the opportunity of returning to the territories of the High Contracting Party by whom he has been surrendered. The provisions of Section 21 of the Extradition Act is in consonance with the aforesaid Article of the Extradition Treaty. In the modern world interdependence of States is natural and essential and consequently the importance of extradition and problems of extradition would arise. It has become so easy of a fugitive to escape from the law of the land and if law has to take its course and pursue the offender, extradition proceedings are a necessary instrument to secure the return of the offender to the altar of law. Laxity in the extradition efforts would only increase the offenders appetite to commit crimes with impunity by fleeing to a foreign territory where he cannot be touched except through extradition. There is a natural tendency on the part of the State of asylum to facilitate the surrender of the fugitive. But extradition of a fugitive is not that smooth as one thinks. The liberty of an individual being an inalienable right, many States, particularly the United States of America and the United Kingdom, prescribe that no fugitive will be extradited in the absence of an extradition treaty between the two countries. But extradition is always necessary and no fugitive should be given the impression that he can commit an offence and flee from the country by taking shelter in a foreign country. At the same time surrender must be preceded by proper precautions to the effect that nobody is denied the due process of law and nobody is being made a victim of political vindictiveness. Extradition is practised among nations essentially for two reasons. Firstly, to warn criminals that they cannot escape punishment by fleeing to a foreign territory and secondly, it is in the interest of the territorial State that a criminal who has fled from another territory after having committed crime, and taken refuge within its territory, should not be left free, because he may again commit a crime and run away to some other State. Extradition is a great step towards international cooperation in the suppression of crime. It is for this reason the Congress of Comparative Law held at Hague in 1932, resolved that States should treat extradition as an obligation resulting from the international solidarity in the fight against crime. In Oppenhiem, International Law the expression is defined as Extradition is a delivery of an accused or a convicted individual to the State on whose territory he is alleged to have committed or to have been convicted of a crime, by the State on whose territory the alleged criminal happens for the time to be. There is no rule of international law which imposes any duty on a State to surrender a fugitive in the absence of extradition treaty. The law of extradition, therefore, is a dual law. It is obtensibly a municipal law; yet it is a part of international law also, inasmuch as it governs the relations between two sovereign States over the question of whether or not a given person should be handed over by one sovereign State to another sovereign State. This question is decided by national courts but on the basis of international commitments as well as the rules of international law relating to the subject. A number of attempts have been made, to conclude a convention governing extradition requests among nations. The Pan American Conference of 1902 produced a treaty of extradition signed by twelve States but it was not ratified. In 1933 the Seventh Pan American Conference concluded an Extradition Convention which was ratified by a number of States, including United States of America but the League Codification Committee had doubted the feasibility of the general convention on extradition. In 1935, the Havard Law School brought out a draft convention on the subject. The International Law Association has also considered legal problems relating to extradition in the conference held at Warsaw. In 1928 the draft convention on extradition was approved but nothing has materialised in concluding a universal convention on

extradition. Notwithstanding the fact that most States earnestly believe in the efficacy and usefulness of extradition proceedings which each State has to resort to at one time or the other, The Asian-African Legal Consultative Body also prepared a draft convention on extradition at its meeting in Colombo in 1960. In September 1965, the Commonwealth Conference of Law Ministers and Chief Justices expressed the desire for a Commonwealth Convention on Extradition. In March 1966, the Commonwealth Law Ministers reached an agreement in London for the speedy extradition of fugitives between Commonwealth Countries. But in the absence of any extradition convention, nations have resorted to bilateral extradition treaties by which they have agreed between themselves to surrender the accused or convict to the requesting State in case such a person comes under the purview of the given treaty. Bilateral treaties at the international level are supplemented by national laws or legislation at the municipal level. Extradition treaties between nations, draft conventions and national laws and practices have revealed that some customary rules of international law have developed in the process. The doctrine of speciality is yet another established rule of international law relating to extradition. Thus, when a person is extradited for a particular crime, he can be tried for only that crime. If the requesting State deems it desirable to try the extradited fugitive for some other crime committed before his extradition, the fugitive has to be brought to the status quo ante, in the sense that he has to be returned first to the State which granted the extradition and a fresh extradition has to be requested for the latter crime. The Indian Extradition Act makes a specific provision to that effect. In view of Section 21 of the Indian Extradition Act of 1962 an extradited fugitive cannot be tried in India for any offence other than the one for which he has been extradited unless he has been restored to or has had an opportunity to return to the State which surrendered him. The doctrine of speciality is in fact a corollary to the principles of double criminality, and the aforesaid doctrine is premised on the assumption that whenever a State uses its formal process to surrender a person to another state for a specific charge, the requesting State shall carry out its intended purpose of prosecuting or punishing the offender for the offence charged in its request for extradition and none other. (see M.Cherif Bassiouni International Extradition and World Public Order). In the book International Law by D.P. OCONNELL, the principle of Speciality has been described thus;

According to this principle the State to which a person has been extradited may not, without the consent of the requisitioned State, try a person extradited save for the offence for which he was extradited. Many extradition treaties embody this rule, and the question arises whether it is one of international law or not.

The United States Supreme Court, while not placing the rule on the plane of international law, did in fact arrive at the same conclusion in the case of United States vs. Rauscher 1019 US 407. The Supreme Court denied the jurisdiction of the trial court even though the Treaty did not stipulate that there should be no trial and held :-

The weight of authority and sound principle are in favour of the proposition that a person who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty can only be tried for one of the offenses described in that treaty and for the offense with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given him, after his release or trial upon such charge, to return to the country from whose asylum he

had been forcibly taken under those proceedings.

In view of the aforesaid position in law, both on international law as well as the relevant statute in this country, we dispose of these cases with the conclusion that a fugitive brought into this country under an Extradition Decree can be tried only for the offences mentioned in the Extradition Decree and for no other offence and the Criminal Courts of this country will have no jurisdiction to try such fugitive for any other offence. This Writ Petition and Special Leave Petitions are disposed of accordingly.