

**IN THE COURT OF SH. AKASH JAIN
ADDITIONAL CHIEF METROPOLITAN MAGISTRATE-01
NEW DELHI DISTRICT, PATIALA HOUSE COURTS: NEW
DELHI**

CC No:- 21216/16

In Re:

Union of India v. Puneet

Extradition Inquiry Report

1. Vide this order, I shall dispose of the present inquiry initiated on receipt of a request from the Ministry of External Affairs, Government of India vide Order bearing No. T-413/48/2009 dated 08.06.2010 made under Section 5 of The Extradition Act, 1962 (hereinafter referred to as the 'Act') for inquiring into the allegations of commission of offences by Mr. Puneet i.e. Fugitive Criminal (hereinafter referred to as 'FC') within the territory of Government of the Commonwealth of Australia (hereinafter referred to as 'Requesting State').

INDIAN LEGAL NEWS

Brief History of Proceedings

2. In the intervening night of 30.09.2008/01.10.2008, FC was allegedly driving a Holden Commodore Sedan bearing no. UUS 909 in a drunken state and in rash and negligent manner and while driving the said vehicle in aforesaid manner, FC had hit two pedestrians walking on the city road, South Bank in the State of Victoria, Australia. As a result of the impact, one of the pedestrian namely Dean Byron Hofstee (hereinafter referred to as 'Hofstee') died and serious injuries were caused to other pedestrian namely, Clancy Coker (hereinafter referred to as 'Coker').

AKASH
JAIN

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:09:43
+0530

3. On 01.10.2008, FC was charged with Culpable Driving causing death of Hofstee and negligently causing serious injuries to Coker. He was thereafter, produced before the Melbourne Magistrate's Court where he was granted bail on his own undertaking with a number of conditions.
4. On 17.04.2009, FC pleaded guilty in the County Court at Melbourne in the State of Victoria to the offences of culpable driving and negligently causing serious injury. The proceedings thereafter got adjourned and bail of FC got extended. FC was asked to appear at a plea hearing on 20.08.2009 in the County Court. FC though failed to appear at the said hearing, as a result of which a warrant of arrest was issued against him by County Court for offences of culpable driving and negligently causing serious injury.
5. FC reportedly left Australia on 12.06.2009 using passport of another Indian National namely, Sukhcharanjit Singh. Thus, on 02.10.2009, Magistrate's Court at Melbourne issued a warrant of arrest against FC in respect of the offence of improper use of a foreign travel document.
6. Vide Note Verbale no. 367/09 dated 06.10.2009, a request for provisional arrest of FC was made by the Requesting State to the Government of Republic of India (hereinafter referred to as 'Requested State') as the FC was reportedly wanted by Authorities in Requesting State to face prosecution for the offences of Culpable driving under Section 318(1) of the Crimes Act, 1958 (Victoria); Negligently causing serious

injury under Section 24 of the Crimes Act, 1958 (Victoria) and Improper use or possession of a foreign travel document under Section 21(2) of the Foreign Passports (Law Enforcement and Security) Act 2005, (Commonwealth).

7. Thereafter, two requests for urgent provisional arrest of FC were received from the Requesting State vide Note Verbale no. 412/2009 dated 09.11.2009 and Note Verbale No. 17/10 dated 13.01.2010 respectively.
8. A formal request for extradition of FC dated 03.02.2010 along with supporting documents in six parts were received from the Requesting State. All the six parts are signed by Acting Assistant Secretary, International Crime Co-operation Authority, International Crime Co-operation Division, Attorney General's Department, Commonwealth of Australia. The documents bear seal of Attorney General's Department. The aforesaid request for extradition of FC was received from Requesting State through Diplomatic channel on three counts signed by Acting Minister for Home Affairs SENATOR THE HON CHRIS EVANS on 13.01.2010 at Canberra, Australia.
9. On receipt of order of Ministry of External Affairs, Govt. of India bearing No. T-413/48/2009 dated 08.06.2010, made under Section 5 of the Act, Ld. Predecessor Court, issued warrant of arrest against FC under Section 6 of the Act. Despite issuance of repeated warrants against FC at his Panchkula, Haryana address, the FC could not be apprehended. As per report dated 13.02.2011, father of FC gave an affidavit

that FC was no more residing in India and had left for Australia. As such, the inquiry proceedings were adjourned sine-die on 04.10.2012 till FC got traced.

10. On 05.12.2013 an application was moved by Union of India before this Court for issuance of production warrants against FC as it was reported that a communication was sent by Punjab police, Patiala that FC had been arrested on 29.11.2013 and was sent to judicial custody.
11. Consequently, production warrants were issued against the FC by Ld. Predecessor Court vide order dated 05.12.2013 and FC was produced from Central Jail, Patiala, Punjab before this Court. Copy of documents received from Requesting State were supplied to the FC and FC was remanded to judicial custody by this Court.

INDIAN LEGAL NEWS

Charges against FC

12. The Requesting State has sought extradition of FC, so that he could face prosecution in Australia for following offences:

(a) **Section 318 of Crimes Act, 1958**

318 Culpable driving causing death:-

(1) Any person who by the culpable driving of a motor vehicle causes the death of another person shall be guilty of an indictable offence and shall be liable to level 3 imprisonment (20 years maximum) or a level 3 fine or both

(2) For the purposes of subsection a person drives a motor vehicle if he drives the motor vehicle—

AKASH
JAIN

Digitally
Signed by
AKASH JAIN
Date:
2021.08.12
18:10:32
+0530

(a) **recklessly**, that is to say, if he consciously and unjustifiably disregards a substantial risk that the death of another person or the infliction of grievous bodily harm upon another person may result from his driving;
or

(b) **negligently**, that is to say, if he fails unjustifiably and to a gross degree to observe the standard of care which a reasonable man would have observed in all the circumstances of the case; or

(c) **whilst under the influence of alcohol to such an extent as to be incapable of having proper control of the motor vehicle; or**

(d) *whilst under the influence of a drug to such an extent as to be incapable of having proper control of the motor vehicle.*

(2A) *Without limiting subsection (2)(b), negligence within the meaning of that subsection may be established by proving that—*

(a) *a person drove a motor vehicle when fatigued to such an extent that he or she knew, or ought to have known, that there was an appreciable risk of him or her falling asleep while driving or of losing control of the vehicle; and*

(b) *by so driving the motor vehicle the person failed unjustifiably and to a gross degree to observe the standard of care which a reasonable person would have observed in all the circumstances of the case.*

(3) *An indictment for an indictable offence under this section shall specify which form of culpability within the meaning of subsection (2) is charged but evidence of the whole of the circumstances shall be admissible on the trial on the indictment.*

(4) *A person who is convicted or acquitted of an indictable offence under this section shall not in respect of the death concerned subsequently be prosecuted for unlawful homicide or under this section.*

(5) *A person who is convicted or acquitted of any form of unlawful homicide not referred to in this section shall not in respect of the death concerned subsequently be prosecuted under this section and no other form of unlawful homicide shall be charged in the same indictment with an indictable offence under this section.*

AKASH
JAIN

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:10:42
+0530

(6) ****

(7) ****

(b) **Section 24 of Crimes Act, 1958**

24 Negligently causing serious injury:-

A person who by negligently doing or omitting to do an act causes serious injury to another person is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

(c) **Section 21 (2) of Foreign Passports (Law Enforcement and Security) Act 2005, Commonwealth**

21 Improper use or possession of a foreign travel document:-

1. ****

2. *A person commits an offence if:-*

(a) the person uses a foreign travel document in connection with travel or identification; and

(b) the document was not issued to the person.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

3. ****

4 ****

5 ****

Allegations against FC

13. It is alleged against the FC that on 01.10.2008 at about 12:45 AM, he was driving Holden Commodore Sedan bearing no. UUS 909 in an inebriated condition and in rash and negligent manner and while driving the said vehicle in the said manner, he caused death of Hofstee and serious injuries to Coker, both of whom were walking on the foot path at South Bank in the State of Victoria, Australia. In support of its case, the Requesting State, along with request of extradition, had

AKASH
JAIN
Digitally signed
by AKASH JAIN
Date:
2021.08.12
18:19:51
+0530

appended affidavits of various witnesses alongwith documents in 6 parts signed by Acting Assistant Secretary, International Crime Co-operation Authority, International Crime Co-operation Division, Attorney General's Department, Commonwealth of Australia. Brief account of evidence given by these witnesses is being discussed for better understanding of nature of offence.

14. The affidavit of Amma Bridgeman, senior constable of Victoria Police, Major Collision Investigation group sets out the relevant background to the investigation in the case to the investigation in this case. It is deposed by her that on 30.09.2008, FC had worked between 4:00 PM and 08:30 PM, by selling mobile phone plans, door to door in the Melbourne, suburb of Sunshine and at about 09:30 PM on the same day, he left his home in Newport to reach Nunawading for having dinner with his friends at a restaurant. He remained there until 12:00 midnight when the restaurant was closed and at the restaurant was observed to consume alcohol but the type and quantity of alcohol he consumed is not known. The friend of FC i.e. Sandeep was reported to be significantly affected by alcohol and FC offered to drive him home. Thereafter, FC drove Sandeep back home in a Holden Commodore Sedan bearing No. UUS 909. The said vehicle was reportedly registered in the name of one of the friend of FC namely Raval, who had given permission to FC to use the said vehicle. At about 12:45 PM, the abovesaid Sedan travelled along Alexandra Avenue under the St. Kilda Road over pass and prior to existing the same, the vehicle in question was

AKASH
JAIN

Digitally signed
by AKASH JAIN
Date:
2021.08.12
18:11:00
+0530

oversteered to the left causing it to commence to rotate in an anti-clock direction. The vehicle in question crossed into the left lane and then mounted the southern foot path of city road. Whilst on the foot path, the driver's side rear door area of the vehicle in question impacted a traffic light pole, whilst the front portion impacted a tree causing the front bumper bar to be torn from the vehicle. These impacts caused the vehicle in question to rotate further in an anti-clockwise direction with the front passenger door area impacting a second planted tree. At this time the vehicle was travelling backwards and travelled west on the foot-path striking the pedestrians namely, Hofstee and Coker and thereby killing and causing serious injuries to them respectively.

15. It is deposed by the witness that before being struck down by the vehicle in question, both the pedestrians had exited the main entrance of Mantra Hotel and were walking south-west on the southern foot path of city road, South bank. CCTV footage of the entire incident has been obtained from Mantra Hotel by Senior Sergeant Jeffrey Smith. It is further deposed by the witness that after the collision FC underwent an evidentiary breath test which revealed a blood alcohol concentration of 0.165%, while the prescribed limit in Victoria being 0.05%. It is deposed by the witness that she was notified about the collision on 01.10.2008 at 01:20 AM and she arrived at the spot at about 01:58 PM. On 03.10.2008, a post-mortem examination conducted by forensic pathologist Dr. Michael Burke concluded that cause of death of deceased Hofstee was head injury which occurred as a result of the

collision. Moreover, an examination of Coker's injuries revealed that he sustained fractured right distal tibial shaft, subarachnoid haemorrhage and large scale lacerations and abrasions as a result of collision. It is further deposed by the witness that on 12.06.2009, FC fled Australia via Singapore Airlines flight SQ228 which left Melbourne at 03:50 PM for Delhi. The witness further stated that the Air line ticket was booked by FC from sub-agent Pradeep Bhatnagar (Traveller's Manager Company) in the name of Sukhcharanjit Singh and that the passport used for the abovesaid travel belonged to Sukhcharanjit Singh. On 13.06.2009, alleged Sukhcharanjit Singh, who is also the friend of FC attended Reservoir police station in Melbourne suburb of Reservoir and reported his passport as lost. On 20.08.2009, Sukhcharanjit Singh was arrested at his home and during interview, he admitted to giving his passport to FC.

INDIAN LEGAL NEWS

16. Affidavit of witness Jeffrey Francis Smith, Acting Inspector of Police of Victoria Police Major Collision Investigation Group is also appended vide which the witness deposed that on 01.10.2008, he was on duty at the site of collision in city road and after the incident, office Manager of Mantra Motel namely, Chris Peiris downloaded the CCTV footage of the incident in a DVD and gave it to him. The witness later on handed over the said DVD to Senior Constable Bridgeman.
17. Another witness is Nicholas Stuart Goodwin who was employed as a MICA Paramedic with Ambulance Victoria. He deposed that at 12:55 AM on 01.10.2008, his team was

dispatched from their station to attend a male person believed to have been injured as a result of motor vehicle collision at City-road, South Bank. They arrived at the spot of accident at 01:03 Hrs. and found Mr. Coker there with multiple injuries. Mr. Coker also had smell of liquor in his breath. The injured was later on transferred to the MICA-2 Ambulance and transported to Alfred Hospital.

18. Affidavit of Glen Stuart Urquhart, Sergeant of Police of Victoria Police Major Collision Investigation Unit is also appended along with the request. The witness deposed that besides holding an Honours degree in Civil Engineering, he had done extensive studies in Mathematics, Physics, Structural Engineering and Surveying. He further deposed that he has been a member of Victoria Police since September, 1996 and during his tenure, he had attended more than 200 fatal vehicle collision scenes and investigated in excess of 450 collisions. He had reportedly visited the accident spot and also seen the CCTV footage of entire incident. He also conducted a skid test in a Holden Omega Sedan. After measuring the tyre scuff marks from the spot and examining vehicle in question, the witness concluded that on the given date and time of incident, the vehicle in question was travelling at a speed of about 148 Km/Hrs.
19. Another witness namely, David Armstrong, a truck driver was examined by the prosecution. He deposed that on 01.10.2008, at about 12:50 AM, he was driving west along city road next to the Alexandra Gardens and suddenly a white Holden Sedan

flew passed him at a furious speed without warning. He further deposed that the said white Holden would have been travelling at a speed around 120 Km/Hrs. Later on, he noticed that the said vehicle had crashed and a man was lying on the pavement. He then dialled '000' to report the incident.

20. Another witness examined by prosecution is Paul Kenwery, Senior Constable of Police, Melbourne West, Police Station. He deposed on the lines of statements of other police witnesses regarding occurrence of accident on 01.10.2008 on the foot path in the south side of city road and apprehension of FC from the spot. He further deposed to have interviewed FC and conducting his breath test through lion alco meter. A blood alcohol reading of .165% was recorded.
21. Affidavit of witness Pradeep Bhatnagar, Travel Agent was also appended. The witness deposed to have received a call from FC on 01.06.2009 who wanted to book an Air ticket for his friend Sukhcharanjit Singh. FC further gave him details of said Sukhcharanjit Singh and made payment through electronic transfer on 05.06.2009 and 09.06.2009 in favour of deponent's company. The witness further deposed that on 09.06.2009, FC collected e-ticket in the name of Sukhcharanjit Singh from his office.
22. Witness Trevor John Collins is Senior Constable of Victoria Police, Major Collision Investigation of Police. He deposed that on 20.08.2009 he along with other members of Major Collision Investigation Group including Senior Constable

Amma Bridgeman reached 4/6 Birdwood Street, Regent for execution of search warrant under Section 465 of Crimes Act. He further deposed regarding apprehension of Sukhcharanjit Singh from the said premises and recording his interview with the aid of Hindi speaking language aide constable Dilbar Singh.

23. Witness Morris Solomon Odell is a medical practitioner registered in State of Victoria. He deposed that he had held position of forensic physician in the Department of Forensic Medicine of Victoria Police between 1991-1995 and Clinical Division of Victorian Institute of Forensic medicine thereafter. He deposed that he had been provided with breath test reports of FC recorded at different times on 01.10.2008 i.e. at 01:16 Hrs. 0.154%, at 02:24 Hrs. 0.165%, at 05:45 Hrs. 0.109%, at 10:25 Hrs. 0.042%. He further deposed that after examining the history of case and material on record, driving skills of FC would have been adversely affected due to the effect of alcohol as blood alcohol concentration of FC after more than one hour of collision was found as 0.165%. He further deposed that FC would have been incapable of having proper control of a motor vehicle.
24. Affidavit of witness Dr. Michael Philip Burke, Medical Practitioner at Victorian Institute of Forensic Medicine is also appended along with request. The witness deposed that on 03.10.2008, he performed an external examination on the body of deceased Hofstee.

AKASH
JAIN

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:11:46
+0530

25. Witness Sanjeev Kumar is a taxi driver residing in Victoria. He deposed that he is an Indian citizen who arrived in Australia on 10.03.2009 on a spousal visa and that he had met FC in the year 2007 and had lived on rent in his house at Panchkula for 2 years. In early 2009, he and his wife moved to Australia and started living with FC and his friend Sunil Saharan at 1/3 Jubilee Street, Newport. He also started working in the same company where FC was working i.e. Gigaforce which sold mobile phones for Optus. He further deposed that he knew another friend of FC namely, Sukhcharanjit Singh as 'Sam'. The witness stated that he was aware of the fact that FC was involved in some car accident and had also accompanied FC to the Melbourne Court in April, 2009. He had also seen FC with Sam's passport and on his asking FC informed that it was for mobiles. On 11/12.06.2009, he reportedly had an argument with FC about drinking in the apartment and not paying the rent and the next morning he found FC leaving the house and telling him that he was going back to India. After 2-3 days FC had called him and said that he had reached India and to inform Sam that he had lost his passport in Queensland and he should report it to the police.

26. Finally, affidavit of prosecutor Abbey Brooke Hogan is attached, who had delineated the offences for which surrender of FC has been sought by the Requesting State. He further deposed that on 17.04.2009 FC pleaded guilty for the offences of culpable driving and negligently causing serious injury and was bailed out to appear on 20.08.2009 in the County Court at Melbourne in the State of Victoria. However, he failed to

appear before the Court on the said date, as such, warrant of arrest of FC were issued on the same date by the concerned County Court in respect of offences of culpable driving and negligently causing serious injury. Moreover, on 02.10.2009, Magistrate's Court at Melbourne issued a warrant of arrest against FC in respect of the offence of improper use of a foreign travel document. The witness further deposed that there is no statutory time limit for the commencement of prosecution of FC for the offences charged against him as in Victoria a proceeding is commenced when charge is filed. Thus, proceedings against FC have already commenced.

Treaty

27. The request for extradition of FC was made by Requesting State i.e. Government of Commonwealth of Australia through diplomatic channels pursuant to notification no. G.S.R. No.1381 dated 30.08.1971. On 07.03.2011, vide notification bearing no. G.S.R. 192 (E), an extradition treaty between Republic of India and Australia was notified. The said treaty got signed at Canberra on 23.06.2008 and entered into force w.e.f. 20.01.2011 in accordance with Article 20.1 of the Treaty.
28. The Union of India (hereinafter referred to as 'UOI') examined one witness Sh. Chander Shekhar, Under Secretary, Ministry of External Affairs, New Delhi as CW-1 in support of the request for Extradition. CW-1 exhibited following documents received from the Requesting State to make out a prima-facie case for Extradition as under:-

- i. *Mark-A* : *An Extradition request received from Republic of*

- Australia vide Note Verbale no. 367/09 dated 06.10.2009 for urgent provisional arrest of FC;*
- ii. *Mark-B : The second request of urgent provisional arrest was received vide Note Verbale No. 412/2009 dated 09.11.2009;*
- iii. *Mark-C : The third request for urgent provisional arrest was received vide Note Verbale No. 17/2010 dated 13.01.2010;*
- iv. *Mark-D : The GSR No. 1381 dated 30.08.1971 of Government of India extending the provisions of the Extradition Act 1962 of The Common Wealth of Australia w.e.f. 30.08.1971;*
- v. *Ex. CW 1/1 : Document bearing the seal of Attorney General's Department;*
- vi. *Ex. CW 1/2 : Request for extradition of FC to Australia was received through diplomatic channel, on three counts signed by Senator the Hon Chris Evans, Acting Minister for Home Affairs dated 13.01.2010 at Canberra;*
- vii. *Ex. CW 1/3 : The affidavit of prosecutor dated 29.10.2009;*
- viii. *Ex. CW 1/4 : The transcript of proceedings running into seven pages dated 17.04.2009;*
- ix. *Ex. CW 1/5 : The charge and warrant of arrest issued against FC bearing No. 1867/09 running into 4 pages dated 02.10.2009;*
- x. *Ex. CW 1/6 : The charge and warrant of arrest issued against FC bearing No. 1867/09 running into 2 pages dated 02.10.2009;*
- xi. *Ex. CW 1/7 : The provision of the Crime Act 1958, No. 6231 of 1958 applicable to the FC running into 11 pages;*
- xii. *Ex. CW 1/8 : The provisions of the offences relating to foreign travel documents applicable to the FC running into 6 pages;*
- xiii. *Ex. CW 1/9 : The provisions of the Crime Act 1958 No. 62321 of 1958, specifically relating to culpable driving causing death running into 4 pages;*
- xiv. *Ex. CW 1/10 : Miscellaneous provisions with reference to the penalty scale of the sentencing Act 1991, no. 49 of 1991 running into 7 pages;*
- xv. *Ex. CW 1/11 : The supplementary affidavit of the prosecutor dated 23.12.2009 running into 3 pages;*
- xvi. *Ex. CW 1/12 : The particulars of the offence along with presentment bearing No. X-02833187 running into 11 pages;*
- xvii. *Ex. CW 1/13 : The first document of Part II of six again bearing the bearing the seal of Attorney General's Department of the said documents running into one page;*
- xviii. *Ex. CW 1/14 : The certificate under Sub-Section 43(2) pertaining to taking of evidence running into 2 pages;*
- xix. *Ex. CW 1/15 : The affidavit of Investigator dated 27.10.2009 running into 10 pages;*
- xx. *Ex. CW 1/16 : The passport of the FC bearing No. F-7657326 running into 2 pages;*

- xxi. Ex. CW 1/17 : *The Indian Driver's License of the FC bearing No. 19766/DL/PKL having date of issue 04.01.2008 running into 2 pages;*
- xxii. Ex. CW 1/18 : *The photograph of FC taken on 01.10.2008 running into 2 pages;*
- xxiii. Ex. CW 1/19 : *The warrant of arrest of FC dated 20.08.2009 issued at Melbourne County Court running into 2 pages;*
- xiv. Ex. CW 1/20 : *The warrant of arrest of FC dated 02.10.2009 bearing no. 1867/09 issued at Melbourne Magistrate Court running into 2 pages;*
- xxv. Ex. CW 1/21 : *The record of interview conducted with Senior Constable Amma Bridgeman and Sergeant Darren Williams dated 01.10.2008 running into 16 pages;*
- xxvi. Ex. CW 1/22 : *The statement of Senior Constable Amma Bridgeman dated 17.12.2008 running into 11 pages;*
- xxvii. Ex. CW 1/23 : *The affidavit of Jeffrey Francis Smith, Acting Inspector of Police of the Victoria Police Major Collision Investigation Group dated 27.10.2009 is accompanied by a statement dated 01.10.2008 and also pulanda sealed with the seal of seal of Attorney General's Department at 3 places containing 3 CDs;*
- xxviii. Ex. CW 1/24 : *The affidavit of Paramedic dated 27.10.2009 running running into 5 pages*
- xxix. Ex. CW 1/25 : *The first document of Part III of Six again bearing the seal of Attorney General's Department of the said Department of the said documents running into 1 page;*
- xxx. Mark-AA : *Original signature dated 07.10.2009 of the then Joint Secretary and bearing original diary number 1369/EXT-09 dated 07.10.2009;*
- xxxi. Mark-BB : *Original signature dated 10.11.2009 of the then Joint Secretary.*
- xxxii. Mark-CC : *Original signature dated 13.01.2010 of the then Joint Secretary bearing original diary number 151/EXT/10 dated 09.02.2010;*
- xxxiii. Ex. CW 1/26 : *The extradition request filed before this Court contains a certificate dated 29.10.2009, under Section 43(2) of the Extradition Act, 1988 of Australia by Mr. William J. G. Q'Day, Magistrate for the State of Victoria State of Victoria running into 13 pages.*
- xxxiv. Ex. CW 1/27 : *Affidavit of Stewarl Urquhart running into 13 page + 1 site plan, numbered 14, prepared by A/Sgt Urquhart before Mr. William J. G. Q'Day, Magistrate for the State of Victoria.*
- xxxv. Ex. CW 1/28 : *Affidavit of David Armstrong dated 29.10.2009 running into 9 pages before Mr. William J. G. Q' Magistrate for the State of Victoria;*
- xxxvi. Ex. CW 1/29 : *Affidavit of Paul Kenwery dated 29.10.2009 running into 45 pages before Mr. William J. G. Q'Day,*

- Magistrate for the State of Victoria;
- xxxvii. Ex. CW 1/30 : Affidavit of Pradeep Bhatnagar dated 29.10.2009 running into 24 pages before Mr. William J. G. Q'Day, Magistrate for the State of Victoria;
- xxxviii. Ex. CW 1/31 : Certificate Authenticating the documents attached by Shanon Cuthberston, Acting Assistant Secretary, Attorney General Department bearing the seal of the Attorney General Department;
- xxxix. Ex. CW 1/32 : A certificate dated 02.11.2009 under Section 43(2) of the Extradition Act, 1988 of Australia by Mr. William J. G. Q'Day, Magistrate for the State of Victoria;
- xl. Ex. CW 1/33 : Affidavit of Trevor John Collins dated 02.11.2009 running into 71 pages before Mr. William J. G. Q'Day, Magistrate for the State of Victoria.
- xli. Ex. CW 1/34 : Certificate Authenticating the documents attached by Shanon Cuthberston, Acting Assistant Secretary, Attorney General Department bearing the seal of the Attorney General Department;
- xlii. Ex. CW 1/35 : A certificate dated 27.10.2009 under Section 43(2) of the Extradition Act 1988 of Australia by Mr. Paresa Antoniadis Spanos, Magistrate for the State of Victoria.
- xliii. Ex. CW 1/36 : Affidavit of Morris Solomon Odells dated 27.10.2009 running into 8 pages before Paresa Antoniadis Spanos, Magistrate for the State of Victoria;
- xliv. Ex. CW 1/37 : Affidavit of Michael Philip Burke dated 23.10.2009 running into 7 pages before Paresa Antoniadis Spanos Magistrate for the State of Victoria;
- xlv. Ex. CW 1/38 : Certificate Authenticating the documents attached by Shanon Cuthberston, Acting Assistant Secretary, Attorney General Department bearing the seal of the Attorney General Department;
- xlvi. Ex. CW 1/39 : Certificate dated 02.11.2009 under Section 43(2) of the Extradition Act 1988 of Australia by Mr. Ronald Saines, Magistrate for the State of Victoria;
- xlvii. Ex. CW 1/40 : Affidavit of Sanjeev Kumar dated 02.11.2009 running into 10 pages before Paresa Antoniadis Spano Spanons Magistrate for the State of Victoria;
- xlviii. Ex. CW 1/41 : Notice under Section 43(1) Authorising Taking of documents in Australia dated 30.09.2009 issued by Susana Marion Ford, Acting Assistant Secretary, Attorney General Department;
- xliv. Ex. CW 1/42 : Note no. 174/2016 dated 05.05.2016 issued by (OSR) Australian High Commission, New Delhi;
- l. Ex. CW 1/43 : Authenticated copy of Note Verbale No. 367/09 dated (OSR) 06.10.2009;
- li. Ex. CW 1/44 : True and duly authenticated copy of Note Verbale No. (OSR) 412/09 dated 09.11.2009;
- lii. Ex. CW 1/45 : True and duly authenticated copy of Note Verbale No. (OSR) No. 17/2010 dated 13.01.2010
- liii. Ex. CW 1/46 : True and duly authenticated copy of Note Verbale No.

29. CW-1 got duly cross-examined by Ld. Counsel for FC. During his cross-examination, CW-1 stated that he was not the part of decision-making process involved in the Extradition request received in the present case from Requesting State. He further stated that the documents exhibited in the present case were not received/signed/written in his presence and that the same were received as it is from Australian Government. He pointed out that signatures appearing at point A on order dated 08.06.2010 of Ministry of External Affairs are of Mr. D. K. Ghosh. He denied the suggestion of Ld. Counsel for FC that Ministry of External Affairs had not filed on record all the documents received from the Requesting State. He further denied the suggestion of Ld. Counsel for FC that the Extradition request is based on the false and fabricated documents. He further denied the suggestion that the Extradition request was received by Indonesian Authorities. He further denied the suggestion that the present proceedings had been launched malafidely without verifying the correctness of documents. He further denied the suggestion that the Extradition request against FC was proceeded on account of media pressure created in Australia and for political purpose.
30. After examination of CW-1, UOI closed its evidence and the matter proceeded for recording of evidence on behalf of FC. FC examined 3 witnesses in support of his case. DW-1 is Jayant Dagore who did not depose regarding facts of the

present case. His testimony revolved around alleged discrimination faced by him in obtaining visa in Australia. A copy of newspaper cutting of Herald Sun in 1994 is Mark DW-1/A. DW-1 further deposed regarding discrimination faced by him at his work place on account of his colour, race and religion and that he was beaten by one Michael Shelton consequent to which he suffered serious injuries at his neck and spine. Copy of statement of Michael Shelton recorded by HR Manager is Mark DW1/B, Medical advise given to DW-1 post assault is Mark DW-1/C to DW-1/E. He also deposed regarding one stray incident of violence against him on account of his race and colour in Australia. The photographs showing the assault are Mark DW-1/F (colly) and copy of media reports are Mark DW-1/G (colly).

31. DW-2 is Ms. Anna Maria D'Annibale who deposed that she is an Australian citizen and knew DW-1 for 15 years and that he was assaulted at his work place in Australia by one Michael Shelton and received permanent neck and spine injuries. She further deposed that the said assault was a result of racial discrimination against Indians and the said Michael Shelton was not arrested by Australian police despite complaint made by DW-1. She further deposed that Indians living in Australia usually get racially abused and police does not help them.
32. During recording of testimonies of DW-1 and DW-2, it was objected by Ld. Counsel for UOI that the statements of both the witnesses have no bearing on the facts of the present case and that their statements were merely hearsay. During cross-

examination, both the witnesses denied the suggestion of Ld. Counsel for UOI that their respective testimonies are concocted and false. DW-2 though admitted that she has no personal knowledge of the facts of the present case.

33. DW-3 is Pankaj Monga who is friend of FC and had stayed with him at Melbourne, Australia from 30.04.2009 to 04.06.2009. Copy of his passport is Ex. DW-3/A. He deposed that he visited Australia in the year 2009 and stayed with FC from 20.05.2009 to 04.06.2009. He deposed that FC informed him that he was being targeted by the local people on account of his involvement in the car accident case. He further deposed that on 21.05.2009, FC was beaten by 3-4 Australian boys in his presence and the matter was reported to police as well, but no action was taken. He further deposed that 4-6 such incidents had happened with FC during his stay by the local people on account of newspapers/media campaign against him. During cross-examination by Ld. Counsel of UOI, DW-3 denied the suggestion that the statement made by him was a concocted and fabricated story. He further denied the suggestion that his entire statement was hearsay and was given at the instance of FC after receiving incentives from him.

Arguments

34. No other witness was examined by FC in support of his case and the matter proceeded for final arguments. Ld. Counsel for FC argued that a bare reading of Section 318 of Crimes Act, 1958 makes it absolutely clear that the death of a person in a

vehicular accident due to recklessness/negligence/under the influence of liquor/under the influence of drugs is considered as Culpable Driving and that sub-section (4) and (5) of Section 318 of Crimes Act, creates offence of Homicide as an exception to the offence of Culpable Driving. It is further argued by Ld. Counsel for FC that in Indian Law as well, death caused by rash or negligent Act not amounting to culpable homicide is covered under Section 304-A of Indian Penal Code, 1860 (IPC), while offence of culpable homicide is defined under Section 299 of IPC and punishable under Section 304 of IPC. Thus, it is argued that the offence of Section 318 of Crimes Act is at par with provision of Section 304-A of IPC which is only punishable upto 2 years of imprisonment. Moreover, the other offences charged against FC i.e. Section 24 of Crimes Act and Section 21(2) of the Foreign Passports Act (Law Enforcement and Security) Act 2005 are pari materia with Section 279 r/w Section 338 of IPC and Section 12 (1) (d) of Passports Acts under Indian Law, both of which offences do not carry imprisonment more than 2 years.

35. It is further argued by Ld. Counsel for FC that the Extradition of FC was sought by the Requesting State pursuant to G.S.R. No.1381 dated 30.08.1971 under Extradition Act, 1962 (Act), wherein Section 2(c)(ii) provides that Extradition offence means the offence, in relation to a foreign state other than a Treaty State or in relation to a commonwealth country, an offence specified in the Second Schedule. The Second Schedule of Act (prior to Amendment Act of 1993) does not

mention the offences of Section 304-A/279/338 of IPC and Section 12(1)(d) of Passports Act.

36. It is further argued by Ld. Counsel for FC that even if it is considered that the amended Act is applicable to the present proceedings, Section 2 (c)(ii) of amended Act provides that, 'an extradition offence, in relation to foreign state being a treaty state, is 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 include a composite offence'.
37. It is further argued by Ld. Counsel for FC that under Extradition Act, 1988 of Australia, extradition offence is defined as an offence for which the maximum penalty is death or imprisonment, or other deprivation of liberty for a period not less than 12 months. Thus, even as per the law of Extradition of Requesting State, extradition is permissible only with respect to offences for which penalty is for a period not less than 12 months. Since, the offences made out against the FC under Indian Law i.e. Section 279/338/304-A IPC and Section 12(1)(d) of Passports Act do not carry any mandatory minimum sentence of one year and are punishable for any period of imprisonment upto 2 years, thus, the offences in question do not fall under the category of 'Extradition offence'.
38. It is further argued by Ld. Counsel for FC that The London Scheme of Extradition as well as Extradition Treaty between

AKASH
JAIN

Digitally signed
by AKASH JAIN
Date:
2021.08.12
18:13:10
+0530

Requesting State and Requested State provide for following circumstances where extradition request of FC may be refused:

- (i) *extradition although purporting to be made for an extradition offence was in fact made for the purpose of prosecuting or punishing the person on account of race, religion, sex, nationality or political opinions, or*
- (ii) *that the person may be prejudiced at trial or punished, detained or restricted in personal liberty by reason of race, religion, sex, nationality or political opinions.*
- (iii) *the passage of time since the commission of the offence, or*
- (iv) *sufficient cause having regard to all the circumstances be unjust or oppressive or too severe a punishment for the person to be extradited or, as the case may be, extradited before the expiry of a period specified by that authority.*
- (v) *the person sought has, under the law of either the requesting [or requested] country become immune from prosecution or punishment because of [any reason, including] lapse of time*
- (vi) *surrender is going to cause serious consequences for the person because of that person age or state of health.*

39. It is argued by Ld. Counsel for FC that the FC had been targeted by the local media and local community of Australia on account of his race and nationality which is evident from the testimony of DW-3. It is further argued by Ld. Counsel for FC that discrimination and violence against Indians on account of their race and nationality is very common in Australia and Wikipedia and Google is full of such cases. In support of his arguments, Ld. Counsel for FC relied upon the testimonies of DW-1 and DW-2.

40. It is argued by Ld. Counsel for FC that plenty of social media campaigns had been initiated against FC in Australia and even Melbourne Lord Mayor publicly called FC as 'maggot' and made threatening remarks against him, which clearly show that FC will not be given a fair trial and justice in Australia. It is

further argued that the trial and sentencing will be prejudiced against FC.

41. It is also argued by Ld. Counsel for FC that in terms of Section 468(2)(c) of Code of Criminal Procedure, the period of limitation for taking cognizance against FC is 3 years and the alleged incident happened on 01.10.2008. As such, the limitation period to take cognizance of the offences against FC has expired long ago.
42. It is further argued by Ld. Counsel for FC that FC had faced extradition proceedings for last 7 years and has no money to fight litigation in a foreign country. It is further submitted that FC has a chronic kidney disease, a minor son and marital discord with his wife who has also filed multiple complaints against him in India and that his matrimonial life will be ruined if he is sent back to Australia.
43. It is further argued by Ld. Counsel for FC that the Extradition Request and accompanied documents received in the present case do not have the notice in writing in terms of Section 43 of Extradition Act, 1988 of Australia whereby the Attorney General authorizes a Magistrate/Federal Circuit Judge to take evidence for use in any proceedings for the surrender of a person to Australia.
44. It is finally argued by Ld. Counsel for FC that FC had already spent almost 18 months in custody in India for an offence which is punishable upto 2 years in India and is ready to face

prosecution in India as his extradition would have serious impact on his health, both physically and mentally.

45. Per contra, it is argued by Ld. Counsel for UOI that scope of present extradition inquiry is very narrow and limited in terms of judgment of Hon'ble Supreme Court of India in ***Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417***. It is argued that this Court has to examine only three requirements in present proceedings i.e.

- (i) *whether the offence involved is an extraditable offence?*
- (ii) *whether a prima-facie exists against the FC?*
- (iii) *whether the extradition request and documents received are duly authenticated?*

46. It is argued by Ld. Counsel for UOI that the FC had nowhere challenged the fact of driving vehicle in question on the given date, time and place of incident. It is further argued that the FC had not challenged the factum of hitting two pedestrians namely, Hofstee and Coker with the vehicle in question, causing death and serious injuries to them respectively. It is argued that FC was heavily intoxicated at the time of incident in question and was driving the vehicle in rash and negligent manner, as such, in terms of law laid down in the cases of ***State v. Sanjeev Nanda, (2012) 8 SCC 450***, ***State of Maharashtra v. Salman Salim Khan, (2004) 1 SCC 525*** and ***Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648***, Section 304 Part II IPC is made out against the FC (which is punishable upto 10 years of imprisonment) with respect to Section 318 of Crimes Act, 1958 of Victoria. As

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:13:52
+0530

regards, Section 24 of the Crimes Act, it is argued that Section 279 and 325 of IPC are made out against the FC. Moreover, with respect to Section 21(2) of the Foreign Passports (Law Enforcement and Security) Act 2005, Commonwealth, Section 12(1)(d) of Passports Act is attracted. Hence, the offences involved in the present inquiry proceedings are extraditable offences.

47. It is further argued by Ld. Counsel for UOI that a voluminous record in six parts was received from Requesting State along with the request for extradition of FC. The affidavits of prosecutor Abbey Brooke Hogan delineate the summary of offences, transcript of court proceedings dated 17.04.2009 where FC pleaded guilty, warrant of arrest dated 02.10.2009 and 20.10.2009 along with relevant extracts of offences complained against the FC. Amma Bridgeman, Jeffrey Francis Smith and Nicholas Stuart Goodwin conducted the investigation and interviewed the FC, collected the CCTV footage of entire incident and examined injured pedestrian Coker. Expert witness Glen Urquhart estimated speed of the vehicle in question at the time of collision and witness Paul Kenwery administered breath alcohol test upon FC, travel agent Pradeep Bhatnagar procured ticket of FC for India and Dr. Morris Solomon Odell explained the effect of 0.165% of blood alcohol level on motor skills of a person.

48. It is argued by Ld. Counsel for UOI that the testimonies of all the aforesaid witnesses clearly establish a prima-facie case

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:14:04
+0530

against the FC and thereby successfully fulfilling the second requirement.

49. It is further argued by Ld. Counsel for UOI that all the documents exhibited in the testimony of CW-1 are duly authenticated in compliance of Section 10 of Extradition Act, 1962 and bear proper seal and signature on the respective pages. Moreover, the authenticity of documents received in the Extradition inquiry have nowhere been challenged by the FC throughout entire proceedings. Thus, the third requirement also stands duly fulfilled and clear case to extradite FC to face trial in Requesting State is made out.

Analysis and findings

50. I have heard rival contentions on behalf of both UOI as well as FC and carefully perused the record. I have also gone through the detailed written submissions filed on behalf of FC as well as UOI.

51. The term 'Extradition' has not been defined under the Act. However, a comprehensive definition of extradition has been given in *Gerhard Terlinden v. John C. Ames* in which Chief Justice Fuller defined extradition 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 to punish him, demands the surrender..."

52. In the case of *Abu Salem Abdul Qayoom Ansari v. State Of Maharashtra & Anr*, (2011) 11 SCC 214, Hon'ble Supreme

Court of India had observed that though extradition is granted in implementation of the international commitment of the State, the procedure to be followed by the courts in deciding whether extradition should be granted and on what terms, is determined by the municipal law of the land. It was further emphasized that extradition is founded on the broad principle that it is in the interest of civilized communities that criminals should not go unpunished and one State should ordinarily afford another State necessary assistance towards bringing offenders to justice.

53. The relevant legal provisions of the Act, for deciding the present inquiry proceedings are reproduced as under:

Section 5. Order for magisterial inquiry:-

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

Section 6. Issue of warrant for arrest:-

On receipt of an order of the Central Government under section 5, the magistrate shall issue a warrant for the arrest of the fugitive criminal.

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 is accused or has been convicted is an offence of political character or is not an extradition offence.

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

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

54. The scope of inquiry to be conducted by a Magistrate under the Act was comprehensively discussed by Hon'ble Delhi High Court in the case of ***Smt. Nina Pillai and Others v. Union of India and Others***, ILR 1997 Delhi 271. The relevant excerpts are reproduced as under:

“... 9. We have given our careful consideration and thought to the submissions made by the learned Counsel for the petitioner. It is clear from the scheme of the Extradition Act that pursuant to a request made under section 4 of the Act, the order contemplated to be passed for a Magisterial inquiry under section 5 does not contemplate a pre-decisional or prior hearing. Section 5 of the Act is an enabling provision by which, a Magistrate is appointed to inquire into the case. The Magistrate on the order of inquiry being passed by Central Government issues a warrant of arrest of the fugitive criminal. The whole purpose is to apprehend or prevent the further escape of a person who is accused of certain offences and/or is convicted and wanted by the requesting State for trial or for undergoing the sentence passed or to be passed. The Act contains sufficient safeguards in the procedure to be followed in the inquiry by the Magistrate to protect the fugitive criminal. The Magistrate is to receive evidence from the requesting State as well as of the fugitive criminal. The fugitive criminal is entitled to show that the offences of which he is accused or convicted are offences of political character or not an extradition offence. Besides, the Magistrate, if he comes to a conclusion that a prima facie case is not made in support of the

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:14:36
+0530

requisition by the requesting State, he is required to discharge fugitive criminal....

*.... 11. We may notice here that upon receiving information with sufficient particulars from a requesting State that a fugitive criminal is wanted for any alleged offence committed in the requesting State or for undergoing trial or sentence, the Central Government passes an order under section 5 of the Act, appointing a Magistrate to inquire into the case. The Criminal Procedure Code also provides for the arrest of a person without warrant who is concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned in the offence, under section 41 of the Code. Accordingly, on credible information being received from a requesting State, with sufficient particulars, about a person having been involved in any offence, the said person could be arrested in India without warrant. **It is now fairly well-settled that the Magisterial inquiry which is conducted pursuant to the request for extradition is not a trial. The said enquiry decides nothing about the innocence or guilt of the fugitive criminal. The main purpose of the inquiry is to determine whether there is a prima facie case or reasonable grounds which warrant the fugitive criminal being sent to the demanding State. The jurisdiction is limited to the former part of the request and does not concern itself with the merits of the trial, subject to exceptions, as outlined in the preceding paragraph 7, in which case the request for extradition is denied by the Central Government...***

INDIAN LEGAL NEWS

55. Further, in the case of ***Kamlesh Babulal Aggarwal v. Union of India & another***, 2008 (104) DRJ 178, it was observed:

*“... 15. In our opinion, the power of the Magistrate in conducting an inquiry under Section 7 of the Act is akin to framing of the charge under Section 228 of the Code of Criminal Procedure, 1973. At the stage of the framing of charge even a strong suspicion founded upon material and presumptive opinion would enable the court in framing a charge against the accused. At that stage, the court possess wider discretion in the exercise of which it can determine the question whether the material on record is such on the basis of which a conviction can be said reasonably to be possible. **The requirement of Section 228 also is of a prima facie case. Sufficiency of evidence resulting into conviction is not to be seen at that stage and which will be seen by the trial court. At that stage meticulous consideration of materials is uncalled for. The persons who are not examined by the original investigating agency may be examined by another investigating agency to***

make the investigation more effective. The materials so obtained could also be used at trial. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed. The sifting of evidence at this stage is permissible only for a limited purpose to find out a prima facie case but the court cannot decide at this stage that the witness is reliable or not. At the stage of framing of charge, evidence is not to be weighed. The court is not to hold an elaborate inquiry at that stage.

16. Section 7(3) and (4) of the Act in fact require a prima facie case only "in support of requisition". Reading the said provision Along with Section 29, we feel that the ambit of inquiry under Section 7 is in fact narrower than Section 228 CrPC and is limited to find that the fugitive is not being targeted for extraneous reasons..."

56. A conjoint reading of aforesaid statutory provisions and judgments of Superior Courts, it is clear that this Court while conducting an inquiry under Extradition Act, 1962 has to examine following aspects:

- (a) *Whether the offence for which extradition of FC is sought is an extraditable offence;*
- (b) *Whether a prima-facie case exists against the FC in support of the requisition of the Requesting State;*
- (c) *Whether the extradition request and documents received are duly authenticated;*
- (d) *Whether the offence for which extradition of FC is sought is a political offence.*

57. It is also trite to say, that this Court does not have to decide that FC is innocent or guilty but only has to see that the material is sufficient to send the FC for trial. Scope of inquiry under the Act is very limited and court cannot sift the evidence against FC and decide its veracity and credibility.

58. **Whether the offence for which extradition of FC is sought is an extraditable offence:**

AKASH
JAIN

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:15:07
+0530

It is argued by Ld. Counsel for FC that pursuant to charges levelled against FC by Requesting State, following offences under Indian Law are made out:

Description of the offence committed	Law of Australia	Law of India
Culpable Driving contrary to the Crimes Act, 1958.	Section 318 of the Crimes Act, 1958 Victoria.	Section 304-A of the Indian Penal Code (Causing death by negligence).
Negligently causing serious Injury.	Section 24 of the Crimes Act.	Section 279 of the Indian Penal Code (Rash driving or riding on a public way).
Improper Use and possession of a foreign travel document.	Section 21 of Foreign Passports (Law Enforcement and Security Act) 2005.	Section 12 (1)(d) of Passports Act, 1967.

59. On the other hand, it is argued by Ld. Counsel for UOI that instead of Section 304-A of IPC, Section 304 Part II IPC is made out in terms of facts of the present case. Moreover, in addition to Section 279 of IPC, Section 325 of IPC is also made out as grievous injuries have been caused upon one of the injured person.
60. In order to appreciate the contentions of both the parties, I deem it expedient to reproduce relevant legal provisions in context of facts of the present case under both Australian and Indian Law which read as under:

Australian Law

(a) Section 318 of Crimes Act, 1958

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:16:00
+0530

318 Culpable driving causing death:-

(1) Any person who by the culpable driving of a motor vehicle causes the death of another person shall be guilty of an indictable offence and shall be liable to level 3 imprisonment (20 years maximum) or a level 3 fine or both

(2) For the purposes of subsection a person drives a motor vehicle if he drives the motor vehicle—

(a) **recklessly**, that is to say, if he consciously and unjustifiably disregards a substantial risk that the death of another person or the infliction of grievous bodily harm upon another person may result from his driving; or

(b) **negligently**, that is to say, if he fails unjustifiably and to a gross degree to observe the standard of care which a reasonable man would have observed in all the circumstances of the case; or

(c) **whilst under the influence of alcohol to such an extent as to be incapable of having proper control of the motor vehicle; or**

(d) **whilst under the influence of a drug to such an extent as to be incapable of having proper control of the motor vehicle.**

(2A) Without limiting subsection (2)(b), negligence within the meaning of that subsection may be established by proving that—

(a) a person drove a motor vehicle when fatigued to such an extent that he or she knew, or ought to have known, that there was an appreciable risk of him or her falling asleep while driving or of losing control of the vehicle; and

(b) by so driving the motor vehicle the person failed unjustifiably and to a gross degree to observe the standard of care which a reasonable person would have observed in all the circumstances of the case.

(3) An indictment for an indictable offence under this section shall specify which form of culpability within the meaning of subsection (2) is charged but evidence of the whole of the circumstances shall be admissible on the trial on the indictment.

AKASH
JAIN

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:16:07
+0530

(4) *A person who is convicted or acquitted of an indictable offence under this section shall not in respect of the death concerned subsequently be prosecuted for unlawful homicide or under this section.*

(5) *A person who is convicted or acquitted of any form of unlawful homicide not referred to in this section shall not in respect of the death concerned subsequently be prosecuted under this section and no other form of unlawful homicide shall be charged in the same indictment with an indictable offence under this section.*

(6) ****

(7) ****

(b) Section 24 of Crimes Act, 1958

24 Negligently causing serious injury:-

A person who by negligently doing or omitting to do an act causes serious injury to another person is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

(c) Section 21 (2) of Foreign Passports (Law Enforcement and Security) Act 2005, Commonwealth

21 Improper use or possession of a foreign travel document:-

1. ****

2. *A person commits an offence if:-*

(a) the person uses a foreign travel document in connection with travel or identification; and

(b) the document was not issued to the person.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

3. ****

4 ****

5 ****

Indian Law

(a) Section 279 of Indian Penal Code, 1860

AKASH
JAIN
Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:16:13
+0530

279. Rash driving or riding on a public way:-

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(b) Section 304-A of Indian Penal Code, 1860

304-A. Causing death by negligence:-

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(c) Section 299 of Indian Penal Code, 1860

299. Culpable homicide:-

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

(d) Section 304 of Indian Penal Code, 1860

304. Punishment for culpable homicide not amounting to murder:-

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:16:18
+0530

(e) Section 325 of Indian Penal Code, 1860

325. Punishment for voluntarily causing grievous hurt:-

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(f) Section 338 of Indian Penal Code, 1860

338. Causing grievous hurt by act endangering life or personal safety of others:-

Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

(g) Section 12(1)(d) Passport Act, 1967

12. Punishment for voluntarily causing grievous hurt:-

(1) Whoever—

(d) knowingly uses a passport or travel document issued to another person;

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs. 5,000/- or with both.

61. At the outset, in order to ascertain extraditability of offences in question, the most important requirement is that the conduct of FC must constitute an illegal/criminal act under the law of both the Requesting State as well as Requested State. This rule is known as ‘Double Criminality Rule’. While there is no challenge to the fact that the conduct of FC is a criminal offence in both Australia as well as India, the only contention raised on behalf of FC is nomenclature of offences in India vis à vis offences qua which FC is charged in Australia.

Digitally
signed by
AKASH
JAIN
Date:
2021.08.12
18:16:27
+0530

62. At this stage, it is apt to refer to Article 2(2) of Extradition Treaty signed between Australia and Republic of India:

2. *For the purpose of this Article, in determining whether an offence is an offence against the law of both Contracting States:*

a. it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology: and

b. the totality of the acts or omissions alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting States, the constituent elements of the offence differ.

63. Thus, totality of acts alleged against the FC are to be taken into consideration and it does not matter if the constituent elements of the offences between the two States differ. Therefore, the argument of Ld. Counsel for FC that UOI has not denominated the offences of Culpable Driving (in Australia) with same terminology by keeping it under the category of Culpable Homicide, is without any consequence.

64. Nevertheless, Section 318 of Crimes Act, 1958 provide for death of a person in a vehicular accident due to recklessness /negligence /under the influence of liquor /under the influence of drugs and further its sub-section (4) and (5) creates offence of homicide as an exception to this offence. The punishment prescribed under this section is imprisonment for a period upto 20 years or fine or both. Under Indian Law, Section 279 IPC r/w Section 304-A IPC ordinarily deal with death of a person

caused by a motor vehicle driven in rash or negligent manner. While, Section 304 Part-II of IPC deals with death of a person caused with the knowledge of offender that he is likely by such act would cause death.

65. In the case of *Alister Anthony Pareira v. State of Maharashtra (supra)*, Hon'ble Supreme Court of India had held that a person must be **presumed to have had the knowledge** that his act of driving the vehicle in a high speed after consuming liquor beyond the permissible limit, is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the road. It was further held that, in a case where negligence or recklessness is the cause of death or nothing more, Section 304-A IPC may be attracted, but **where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part-II IPC is attracted.**

66. Further, in the case of *State v. Sanjeev Nanda (supra)*, Hon'ble Supreme Court of India concurred with the aforementioned findings and held that the accused in the said case was driving his vehicle in a rash and negligent manner in a high speed and in an inebriated state which resulted in the death of six persons, as such, the accused shall be deemed to have sufficient knowledge that his action was likely to cause death and is liable to be punished for an offence under Section 304 Part-II IPC.

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:16:52
+0530

AKASH
JAIN

67. In terms of judgment of *Kamlesh Babulal Aggarwal (supra)*, the power of a Magistrate in conducting an inquiry under Section 7 of the Act is akin to framing of the charge under Section 228 of the Code of Criminal Procedure, 1973. The requirement of Section 228 also is of a prima facie case. Sufficiency of evidence resulting into conviction is not to be seen at that stage and which will be seen by the trial court and at that stage meticulous consideration of materials is uncalled for. Moreover, ambit of inquiry under Section 7 is narrower than Section 228 of Cr.P.C. Coming to the facts of the present case, had offence in question being committed in India, where accused being heavily intoxicated and driving the vehicle in rash and negligent manner and caused death and serious injuries to two pedestrians on footpath, prima-facie charge under Section 304 Part-II of IPC would have been framed by the Court in lieu of ratio of aforesaid judgments. The circumstances and manner of the collision, amount of alcohol consumed by FC which allegedly rendered him incapable to drive motor vehicle in question properly could only be considered during trial after appreciation of complete evidence. Thus, keeping in view the totality of circumstances prima-facie offence under Section 304 Part-II of IPC is made out in the facts of the present case vis à vis Section 318 of Crimes Act, 1958. This section is punishable for imprisonment for a period upto 10 years or fine or both. This offence fulfils the principle of dual criminality and hence, is an extraditable offence.

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:16:57
+0530

AKASH
JAIN

68. With respect to Section 24 of the Crimes Act, 1958, which provides for serious injuries caused to a person owing to a negligent act and which is punishable for imprisonment for a period upto 10 years, Section 279 r/w Section 338 of IPC is prima-facie an equivalent offence under Indian Law which is punishable upto 2 years of imprisonment or fine upto Rs. 1,000/- or both. This offence fulfils the principle of dual criminality and hence, is an extraditable offence.
69. So far as, Section 21(2) of the Foreign Passports (Law Enforcement and Security) Act 2005, Commonwealth is concerned, which is punishable for imprisonment for a period upto 10 years, Section 12(1)(d) of Passports Act, 1967 is prima-facie an equivalent offence which is punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs. 5,000/- or with both. This offence also fulfils the principle of dual criminality and hence, is an extraditable offence.
70. It is argued by Ld. Counsel for FC that the extradition of FC was sought by the Requesting State pursuant to G.S.R. No.1381 dated 30.08.1971 under the old Extradition Act, 1962, wherein Section 2(c)(ii) provided that Extradition offence means the offence in relation to a foreign state other than a Treaty State or in relation to a commonwealth country, an offence specified in the Second Schedule. The Second Schedule of Extradition Act, 1962 (prior to Amendment Act of 1993) though did not mention the offences of Section 304-

AKASH
JAIN

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:17:03
+0530

A/279/338 of IPC and Section 12(1)(d) of Passports Act, as such, the offences in question are not extraditable offences.

71. The aforesaid argument of Ld. Counsel for FC is though not tenable as the Extradition Act, 1962 was duly amended in the year 1993 which is much prior to the request of extradition made by the Requesting State i.e. on 03.02.2010. Moreover, Hon'ble Delhi High Court vide order dated 06.11.2017 in the case of ***Puneet v. Union of India, W.P.(CRL) 1633/2017 and CRL. M.A. 9059/2017*** had held that the treaty arrangement with Australia, which was of the year 1971, was only being replaced by extradition treaty vide notification dated 07.03.2011. Therefore, the notification of year 2011 does not affect the applicability of Extradition Act upon the Requesting State. Even otherwise, it has already been observed above that Section 304 Part-II of IPC is applicable on the facts of the present case as opposed to Section 304-A of IPC, which was duly mentioned in the list of extradition offences in the Second Schedule in the pre-amended Extradition Act, 1962.
72. It is alternatively argued by Ld. Counsel for FC that if it is considered that the amended Extradition Act is applicable to the present proceedings, Section 2 (c)(ii) of amended Act provides that, 'an extradition offence, in relation to foreign state being a treaty state, is 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 include a composite offence'.

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:17:09
+0530

73. It is further argued by Ld. Counsel for FC that under Extradition Act, 1988 of Australia as well, extradition offence is defined as an offence for which the maximum penalty is death or imprisonment, or other deprivation of liberty for a period not less than 12 months. Thus, even as per the law of Extradition of Requesting State, extradition is permissible only with respect to offences for which penalty is for a period not less than 12 months. It is argued that since the offences made out against the FC under Indian Law are Sections 279/338/304-A IPC and Section 12(1)(d) of Passports Act which do not carry any mandatory minimum sentence of one year and are punishable for any period of imprisonment upto 2 years, the offences in question do not fall under the category of 'Extradition offence'. Ld. Counsel for FC further relied upon the judgment of *Ravindra Narayan Joglekar v. Encon Exports Pvt. Ltd. Ors.*, 2008 All MR CRI 2032, wherein pursuant to extradition request for an offence under Section 138 of Negotiable Instruments Act, 1881 which is punishable upto two years, Hon'ble Bombay High Court held that since the offence in question did not prescribe the minimum imprisonment of more than one year, the FC was justified in contending that the authorities erred in initiating extradition proceedings against him.
74. With respect to the above contentions of Ld. Counsel for FC, it is imperative to refer to Section 2 (c) of Extradition Act, 1962 (post amendment), which reads as under:

2 (c) "extradition offence" means--

AKASH
JAIN
Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:17:15
+0530

(i) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;

(ii) in relation to a foreign State other than 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;

75. Suffice it to say, it has already been held by Hon'ble Delhi High Court in the case of *Puneet v. Union of India (supra)*, that the previous extradition arrangement with Requesting State i.e. G.S.R. No.1381 dated 30.08.1971 has been replaced by extradition treaty between both the countries vide notification bearing no. G.S.R. 192 (E) dated 07.03.2011. Thus, Section 2(c)(i) of the Extradition Act, would be applicable in the facts of the present case instead of Section 2(c)(ii), which clearly defines extradition offence, in relation to a treaty State, as an offence as provided in the extradition treaty between the two States.

76. Now, Article 2(1) of the Treaty between Australia and the Republic of India defines extraditable offences as offences which are punishable under the laws of both Contracting States by imprisonment for a maximum period of at least one year or by a more severe penalty. It further provides that where the request for extradition relates to a person convicted for such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.

77. The terminology used to define 'extradition offence' in the Treaty i.e. **an offence punishable with imprisonment for a**

maximum period of at least one year or by a more severe penalty, is thus, different from language used in Extradition Act, 1962 i.e. **an offence punishable with imprisonment for a term which shall not be less than one year**. Since, the offences prima-facie made out against FC under Indian Law are under Section 304 Part-II IPC, Section 279/338 IPC and Section 12(1)(d) of Passports Act, which are punishable with imprisonment for a period more than one year and upto 10 years, they fulfil the criteria of 'extradition offence' as defined in the Treaty. The judgment of *Ravindra Narayan Joglekar (supra)*, relied upon by Ld. Counsel for FC would not apply to the facts of the present case as the offence in question involved in the said case was Section 138 of Negotiable Instruments Act, 1881 which is punishable upto two years.

78. **Whether the extradition request and documents received are duly authenticated:**

Section 10 of the Act deals with authentication of exhibits, depositions and other documents received from a foreign State.

It reads as under:

Section 10. Receipt in evidence of exhibits, 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 statements 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--

AKASH
JAIN

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:17:27
+0530

(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 for such State;

(b) the depositions or 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 the 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.

79. In the present case, the formal request for extradition of FC was received from Requesting State on 03.02.2010 along with supporting documents in six parts containing affidavits /depositions of various witnesses, warrants, documents, copies and statements which are duly signed by the witnesses and certified under the hand of concerned Magistrate. Moreover, all the aforesaid documents in six parts are signed by Acting Assistant Secretary, International Crime Co-operation Authority, International Crime Co-operation Division, Attorney General's Department, Commonwealth of Australia and the documents bear seal of Attorney General's Department. The aforesaid request for extradition of FC was received from Requesting State through Diplomatic channel on three counts signed by Acting Minister for Home Affairs SENATOR THE HON CHRIS EVANS on 13.01.2010 at Canberra, Australia. Therefore, the extradition request and documents received are duly authenticated in terms of Section 10 of the Act.

AKASH
JAIN

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:17:34
+0530

80. During recording of statement of CW-1, Ld. Counsel for FC objected to exhibition of certain documents regarding mode of proof and also for certain documents being photocopy. However, as these documents form part of record which was duly certified by the Officer of State in terms of Section 10 (2) (b) of the Act, they shall also be deemed to be duly authenticated.
81. Moreover, in the case of *Sarabjit Rick Singh (supra)*, considering the aspect of recording of evidence and mode of proof in inquiry proceedings, it was held by Hon'ble Supreme Court of India that strict formal proof of evidence in an extradition proceeding is not the requirement of law. While conducting an inquiry 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. The relevant excerpts from the judgment are reproduced as under:

"... 36. 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.

37. 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....

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

... 63. 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 that 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..."

82. It is also argued by Ld. Counsel for FC that the extradition request in the present case is not accompanied with notice in writing under Section 43 of Extradition Act, 1988 of Australia which was a condition precedent for the Magistrate/Federal Circuit Judge to take evidence for the use in any proceedings for surrender of the person to Australia.

83. Section 43 of Extradition Act, 1988 of Australia reads as under:

43 Evidence for purposes of surrender of persons to Australia:

(1) Where the Attorney-General suspects that a person is an extraditable person in relation to Australia (whether or not the Attorney-General knows or suspects the person to be in a particular country or has made a request under section 40 or otherwise in relation to the person), the Attorney-General may, by notice in writing in the statutory form expressed to be directed to any magistrate or eligible Federal Circuit Court Judge, authorise the taking of evidence for use in any proceedings for the surrender of the person to Australia.

(2) Where the Attorney-General authorises the taking of evidence under subsection (1), a magistrate or eligible Circuit Court Judge

take the evidence on oath or affirmation of each witness appearing before the magistrate or Judge to give evidence in relation to the matter and the magistrate or Judge shall:

(a) cause the evidence to be reduced to writing and attach a certificate, in the statutory form, in relation to the taking of the evidence; and

(b) cause the writing and the certificate to be sent to the Attorney-General.

(3) At a proceeding in relation to a person before a magistrate or eligible Federal Circuit Court Judge under this section, a legal or other representative of the person is not entitled to appear.

(4) A notice given under subsection (1) is not a legislative instrument

84. A careful perusal of the aforesaid provision affirms that the issuance of notice under Section 43 is discretionary and not mandatory. Even otherwise, it is nowhere mentioned in the Section that the notice in writing, if issued by the Attorney General, has to be appended along with the request of extradition. The requirement of sending the written notice is merely a procedural requirement for the courts of Requesting State and the present Court is only required to see if the documents received along with the extradition request are duly certified and authenticated in terms of Section 10 of the Act, which condition is duly fulfilled in the present case.

85. **Whether a prima-facie case exists against the FC in support of the requisition of the Requesting State:**

Having carefully perused the material furnished by Requesting State on record, which includes detailed affidavits/depositions of witnesses, transcripts, documents and statements which have been found to be duly certified and authenticated in terms of Section 10 of the Act, this Court is of the view that prima-

facie exists against the FC in support of the requisition of the Requesting State.

86. **Whether the offence for which extradition of FC is sought is a political offence.**

Section 7(2) of the Act provides that FC may lead evidence to show that the offence of which he is accused or has been convicted is an offence of political character or is not an extradition offence. Nothing substantial is though brought on record by the FC to show that the offences in question are of political character. Also, vide Article 4(2)(c) of the Treaty executed between both the Contracting States, offence of Culpable Homicide is not regarded as an offence of political character.

87. Nonetheless Ld. Counsel for FC had cited Article 13 and 14 of London Scheme of Extradition and Article 4 of the Treaty to highlight possible grounds on which extradition may be refused by this Court. He specifically emphasized on following points as under:

- (i) *extradition although purporting to be made for an extradition offence was in fact made for the purpose of prosecuting or punishing the person on account of race, religion, sex, nationality or political opinions, or*
- (ii) *that the person may be prejudiced at trial or punished, detained or restricted in personal liberty by reason of race, religion, sex, nationality or political opinions.*
- (iii) *the passage of time since the commission of the offence, or*
- (iv) *sufficient cause having regard to all the circumstances be unjust or oppressive or too severe a punishment for the person to be extradited or, as the case may be, extradited before the expiry of a period specified by that authority.*
- (v) *the person sought has, under the law of either the requesting [or requested] country become immune from*

AKASH
JAIN

Digitally signed
by AKASH JAIN
Date:
2021.08.12
18:18:02
+0530

- prosecution or punishment because of [any reason, including] lapse of time*
- (vi) *surrender is going to cause serious consequences for the person because of that person age or state of health.*

88. To bring home point (i) & (ii), Ld. Counsel for FC has relied upon the testimony of DW-3 regarding FC being targeted by local media and local community of Australia on account of race and nationality of the FC. Ld. Counsel for FC has further relied upon the testimony of DW-1 and DW-2 to evince the factum of widespread discrimination and violence against Indians on account of their race and nationality in Australia. Ld. Counsel for FC had further placed on record certain news stories about such discrimination from Google and Wikipedia. It is also argued by Ld. Counsel for FC that plenty of social media campaigns were initiated against FC in Australia and even Melbourne Lord Mayor publicly called FC as ‘maggot’ and made threatening remarks against him, which clearly show that FC will not be given a fair trial and justice in Australia.
89. While, testimonies of DW-1 and DW-2 are not pertaining to facts of the present case, DW-3 could not bring any substantial evidence on record to show that FC is being prosecuted in the present case on account of his race, religion or nationality. Merely stating that there has been a racial bias and political motivation without cogent proof will not serve the case of FC.
90. There is further no evidence on record to show that FC has been falsely implicated in this case. FC has nowhere disputed the fact that he was driving the vehicle in question on the given date, time and place of incident, when the vehicle hit the

two pedestrians. Moreover, the fact that FC was granted bail by the concerned County Court immediately after the incident, shows that FC was not prejudiced by the concerned authorities on account of his race, religion or nationality. Thus, defence taken by the FC under Article 4 (3)(b) of Treaty for refusing extradition on the ground of prejudice likely to caused to FC on account of his race, sex, religion, nationality or political opinion is without any merit.

91. Another argument made by Ld. Counsel for FC that FC has become immune from prosecution or punishment because of lapse of time in terms of Section 468 (2)(c) of Code of Criminal Procedure is not tenable as Section 468 (2)(c) prescribes for bar to take cognizance after lapse of the period of limitation which is three years in case of an offence punishable with imprisonment for a term exceeding one year but not exceeding three years. Since, one of the offence in question i.e Section 304 Part-II of IPC is punishable with imprisonment for a period upto 10 years, the present limitation bar is not applicable in the facts of this case. Even otherwise, the trial of the FC has to take place in Requesting State where there is no statutory time limit for commencement of prosecution for the offences of culpable driving, negligently causing serious injury or improper use or possession of a foreign travel document. In terms of affidavit of prosecutor Abbey Brooke Hogan, in State of Victoria a proceeding is commenced when a charge is filed and proceedings against FC have already commenced there.

AKASH
JAIN

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:18:14
+0530

92. With respect to arguments of Ld. Counsel for FC that FC had already spent almost 18 months in custody in India, faced extradition proceedings for last 7 years and has no money to fight litigation in foreign country, it is held that the same are no grounds for refusing his extradition in terms of statutory provisions and Treaty obligations. The plea of period of incarceration already undergone by FC in India, may be raised by him before the concerned courts in Requesting State.
93. Ld. Counsel for FC has finally contended that FC has a marital discord with his wife, who has also filed multiple complaints against him in India and that FC has a chronic kidney disease and allowing of request of extradition is likely to have serious consequences on his health. It is though pertinent to note that nothing substantial is brought on record by the FC to show that his extradition would have serious consequences on his health. Even otherwise, it is well settled that the scope of inquiry by this Court under Section 7 of the Act is limited to ascertain whether the offences in question are extraditable; whether a prima-facie case exists against the FC in support of requisition of the Requesting State; whether the documents received are duly authenticated and whether the offence for which extradition of FC is sought is a political offence. It is not within the jurisdiction of this Court to conduct a trial or to return a finding of guilt in respect of the offences for which FC is wanted for extradition. The final decision to extradite FC to Requesting State effectively rests with Central Government in terms of Section 8 of the Act. Thus, the aforesaid grounds regarding pendency of cases against FC in India and alleged

health condition of FC may be moved by FC before appropriate authority.

Conclusion

94. After considering the entire facts, circumstances of the present case, duly authenticated documents received in support of the extradition request and provisions of Extradition Treaty executed between both Requesting and Requested State, I conclude my inquiry report with the following observations:
- (i) That with respect to charge of Culpable Driving under Section 318(1) of the Crimes Act, 1958 (Victoria), the offence under Section 304 Part-II of IPC is made out and is an extraditable offence;
 - (ii) That with respect to the charge of Negligently causing serious injury under Section 24 of the Crimes Act, 1958 (Victoria), the offence under Section 279 r/w Section 338 of IPC is made out and is an extraditable offence;
 - (iii) That with respect to the offence of improper use of a foreign travel document under Section 21(2) of the Foreign Passports (Law Enforcement and Security), Act 2005 (Commonwealth), the offence under Section 12(1)(d) of Passports Act is attracted, which is an extraditable offence.
 - (iv) That the extradition request and documents received are duly authenticated in terms of Section 10 of the Act.
 - (v) That there is a prima-facie case against the FC for initiating a trial qua offences mentioned above at points (i), (ii) & (iii).

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:18:44
+0530

95. In view of my report, I hereby recommend to the Union of India the extradition of FC Puneet to the Requesting State i.e. Government of the Commonwealth of Australia for facing trial for the offences of:

- (i) Culpable Driving under Section 318(1) of the Crimes Act, 1958 (Victoria);
- (ii) Negligently causing serious injury under Section 24 of the Crimes Act, 1958 (Victoria);
- (iii) Improper use of a foreign travel document under Section 21(2) of the Foreign Passports (Law Enforcement and Security) Act 2005 (Commonwealth).

96. A copy of this report be sent to the UOI through the Ld. Counsel and one copy be given to FC free of costs. The copy of this report be also uploaded on the website as per rules. The FC is also being informed of his right to file written statement/representation in terms of Section 17(3) of The Extradition Act, 1962.

**ANNOUNCED THROUGH VIDEO
CONFERENCING ON 12.08.2021**

**AKASH
JAIN**

Digitally
signed by
AKASH JAIN
Date:
2021.08.12
18:18:51
+0530

**(AKASH JAIN)
ACMM-01, NEW DELHI DISTRICT
PATIALA HOUSE COURTS, NEW DELHI**