

Whether a Parent can be extradited from India for not complying with the order of a foreign court with regard to a multi- jurisdiction child custody case?

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Brief of the Case:

Husband and wife, who got married in India, settled in USA and were blessed with a child. Child was born in USA and hence she is an American citizen. They could not live amicably and husband came back to India along with the child despite a USA court order granting custody to the mother in a custody case filed by the wife. The wife got a decree of divorce and the custody of the child from the USA Court. The USA Court issued an arrest warrant against the husband for disobeying the orders of the USA court. Based on the arrest warrant issued by the American Court, Interpol issued a red-corner notice and transmitted to Government of India.

Writ Petition in the High Court:

The husband filed a Writ Petition in the High Court by way of a Writ Petition challenging the said arrest warrant issued by the USA Court and the red corner notice issued by Interpol. High Court dismissed his petition stating that the Indian Court cannot do anything with the red-corner notice issued by the Interpol.

Supreme Court Appeal:

The High Court while dealing with the merits of the appeal against the High Court order considered several issues namely,

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- (a) Implication of the red corner notice issued by Interpol
- (b) Extradition Treaty between India and USA signed in 1999
- (c) Effect of Extradition Act, 1962
- (d) Effect of fundamental rights granted under Articles 21, 14 and 19 of the Constitution of India
- (e) Role of Central bureau of Investigation

The Supreme Court of India held as follows:

In Extradition matters in India the local laws have to be followed strictly since the matter questions the personal liberty of a man which is a guaranteed fundamental right in India.

- **Dual Criminality and Local laws:** Matrimonial cases generally do not satisfy the test of dual criminality, which means it is a criminal offence in both the countries. Here because of the High Court stay order of the USA court the father is in legal custody of the child. Hence in India there is no illegality committed by the father in keeping the custody of the child and consequentially dual criminality requirement is not there in the present case. Hence this case does not fulfil the requirements of the Indian statute with regard to extraditions Extradition Act, 1962 because there is no dual criminality in this case.
- **Red Corner Notice issued by Interpol & Extradition Act, 1962:** In the present case Interpol has issued red corner notice on the basis of the warrant issued by USA Court for non-compliance of the order of the USA court. The notices issued by Interpol are not considered as Administrative decisions on individual cases with transnational effect. They are not construed as an "International administrative Act". They lack a character of legislation. They do not constitute an international arrest warrant and they are not in any other form binding the individuals concerned legally. Red corner notice by itself is not an arrest

warrant it normally is a caution given to that government to keep a watch over that person and if the foreign Government requires arrest and production then that action will follow. Red corner notice by itself cannot be basis for arrest or transfer of an Indian citizen to a foreign jurisdiction, though the issue of such notice by Interpol has several consequences like, (1) the requesting country may make a deportation request (2) law enforcement agency in India is required to take follow up action with regard to arrest of fugitive criminal (3) requesting embassy may request CBI (4) Requesting embassy can contact Indian Police directly (5) Extradition proceedings may follow. Hence the red corner notice should be supported by a request from the Foreign Government to the Indian Government which is missing in this case. The Extradition Act, 1962 cannot be by passed in red corner cases concerning Indian citizens. Extradition treaty is also subject to the said 1962 Act. Hence this case does not fulfil the requirements of the Indian statute with regard to extraditions Extradition Act, 1962 even though India has signed an extradition treaty with United States of America.

- **Fundamental rights guaranteed to Indian Citizens by the Constitution of India:** In India Indian citizens are enjoying the fundamental rights guaranteed by the constitution of India which include right to personal liberty, which means the liberty of any person can be touched only by a due process of law. So simply a red corner notice, issued by Interpol on the basis of a warrant, issued by a foreign court cannot be executed as it is. This is because arrest of fugitive criminal can be made only when request to this effect is received from foreign country and not otherwise, as per the Extradition Act, 1962. Here red-corner notice is not a due process of law. Hence he cannot be extradited.

Ref: Bhavesh Jayanti Lakhani Vs State of Maharashtra Reported in (2009)
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