

ITEM NO.3

COURT NO.2

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) Nos.6828-6831/2016
(Arising out of impugned final judgment and order dated 04-03-2016
in WP No.12191/2016, 04-03-2016 in WP No.12192/2016, 04-03-2016 in
WP No.12193/2016, 04-03-2016 in WP No.12194/2016 passed by the High
Court Of Karnataka At Bengaluru)

STATE BANK OF INDIA & ORS.

Petitioner(s)

VERSUS

KINGFISHER AIRLINES LTD. & ORS.

Respondent(s)

WITH

CONTEMPT PETITION (C) Nos.421-424/2016 In SLP(C) Nos.6828-6831/2016
(IV-A)

Date : 30-11-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE BELA M. TRIVEDI

Counsel for the Parties:

Mr. Chitranshul A. Sinha, Adv.
Mr. Jaskaran Singh Bhatia, Adv.
M/s. Dua Associates, AOR

Mr. Tushar Mehta, SG
Mr. Rajat Nair, Adv.
Ms. Swati Ghildiyal, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Saurabh Mishra, Adv.
Mr. Raj Bahadur Yadav, AOR

Mr. Sanjay Kapur, Adv.
Ms. Megha Karnwal, Adv.
Mr. V.M. Kannan, Adv.
Mr. Arjun Bhatia, Adv.
Ms. Shubhra Kapur, Adv.

Ms. Fereshte D. Sethna, Adv.
Mr. Aniket Nimbalkar, Adv.
Mr. Abhishek Tilak, Adv.
Mr. Ameya Pant, Adv.
Ms. B. Vijayalakshmi Menon, AOR

Mr. E. C. Agrawala, AOR

Mr. Vipin Kumar Jai, AOR

Mr. Dheeraj Nair, AOR

UPON hearing the counsel the Court made the following
O R D E R

By judgment dated 09.05.2017 passed by this Court in I.A. Nos.9-12 and 13-16 of 2016 in SLP (Civil) Nos.6828-6831 of 2016 and I.A. Nos.1-4 of 2016 in Contempt Petition (C) Nos.421-424 of 2016 in SLP (Civil) Nos.6828-6831 of 2016, respondent no.3 Dr. Vijay Mallya was found to be guilty of having committed contempt of court. The judgment directed that the matter be listed on 10.07.2017 to hear respondent no.3 on matters in issue including one regarding the proposed punishment to be awarded to him for contempt of court. However, because of proceedings, which at the relevant time, were going on in the Courts of United Kingdom, the presence of respondent no.3 could not be secured.

In its subsequent order dated 02.11.2020, this Court noted that certain proceedings were going on in United Kingdom, though the details of such proceedings were not forthcoming. This Court rejected the submission made by Mr. E.C. Agrawala, learned Advocate seeking discharge and it was directed that the learned Advocate would continue to appear for respondent no.3. Mr. Tushar Mehta, learned Solicitor General was then granted time to place Status Report on record.

The matter was thereafter adjourned on few occasions and because of COVID-19 pandemic situation, the matter could not be listed and taken up.

Today when the matter was called out, Mr. Tushar Mehta, learned Solicitor General invited our attention to the Office Memorandum dated 30.11.2021 issued under signature of Deputy Secretary (Extradition), CPV Division, Ministry of External Affairs, Government of India. Paragraphs 2 to 5 of the Memorandum read as under:

"2. It may be recalled that an extradition request in respect of VM was forwarded to UK side on 9 February 2017 in CBI Case under Sections 120B read with 420 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. On 10 December 2018, the Senior District Judge Westminster Magistrate's Court, London recommended VM's extradition to India. VM appealed the Order of his extradition before the High Court of London. The appeal was admitted on the sole ground of sufficiency of *prima facie* case. The High Court of London dismissed the appeal on 20 April 2020. VM applied leave to appeal to the Supreme Court in the High Court. On 14 May 2020 the High Court of London rejected his application for permission to appeal to Supreme Court. VM has thus exhausted all avenues of appeal in the UK.

3. Following the refusal of leave to appeal, VM's surrender to India should, in principle, have been completed within 28 days. However, the UK Home Office intimated that there is a further legal issue which needs to be resolved before VM's extradition may take place. The UK side further said that this issue is outside and apart from the extradition process, but it has the effect that under the United Kingdom law, extradition cannot take place until it is resolved. The High Commission was further informed that the issue is confidential and so it cannot be disclosed.

4. In compliance with the Order of the Hon'ble Supreme Court dated 31.08.2020, the Government of India again took up the pending extradition case of VM with the Government of UK so as to seek his early extradition and facilitate his presence before the Hon'ble Supreme Court on 5 October 2020.

5. The UK side has informed that extradition of VM cannot take place until a separate legal issue, which is judicial and confidential in nature is resolved. The UK side emphasized that neither they can provide any more details nor intervene in the process. They have also indicated that through the designated channel, the UK Home

Office has received a request to serve summons on VM for his hearing before the Hon'ble Supreme Court. The British Home Office has forwarded the Hon'ble Supreme Court's Order through the Hertfordshire Police on 17 September 2020 for serving it to VM."

As indicated in paragraph 2 of the Memorandum, the proceedings for extradition have attained finality and respondent no.3 has exhausted all avenues of appeal in the United Kingdom. However, paragraphs 4 and 5 deal with some proceedings which are stated to be confidential and with regard to which no details are forthcoming. It appears that these are the same proceedings which were referred to in the order dated 02.11.2020.

Having considered all the circumstances on record, it is directed:

- a. The matter in terms of the directions issued by this Court in its order dated 09.05.2017 shall now be listed on 18.01.2022.
- b. Respondent No.3 is at liberty to advance such submissions, as are deemed appropriate, pertaining to the issues set out in the order dated 09.05.2017.
- c. If, for any reason, respondent no.3 is not present to advance such submissions, learned counsel on his behalf can advance such submissions as are open to respondent no.3, in law.
- d. We request Mr. Jaideep Gupta, learned Senior Advocate of this Court to assist the Court as Amicus Curiae in the matter.

Mr. Gupta will be at liberty to avail services of any Advocate-on-Record of his own choice in the instant matter.

The Registry is directed to supply papers of this matter to Mr. Gupta within a week.

e. The matter shall be dealt with finally on 18.01.2022.

(MUKESH NASA)
COURT MASTER

(VIRENDER SINGH)
BRANCH OFFICER