

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (Crl.) No. 1304/2009

Judgment reserved on: 13.11.2009
Judgment delivered on: 21.12.2009

Mrs. Susie Rehmer Petitioner
Through: Ms. Geeta Luthra, Sr. Advocate with
Mr. Shivkant Arora, Advocate

Versus

State Respondent
Through: Mr. Vikas Pahwa, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

- | | | |
|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

*

1. By this writ petition filed under Article 226 of the Constitution of India read with section 482 of Code of Criminal

Procedure, 1973 the petitioner seeks quashing of the FIR No. 235/2008 dated 17.06.2008. The factual matrix of the case is as follows:-

That on the night intervening 16/17 June, 2008 while going to Germany, the petitioner approached the immigration counter and upon scrutiny of various travel documents, it was informed that one page of the passport being page no. 27 and 28 was missing from the said passport and an FIR No. 235/2008 dated 17.06.2008 was registered at the Police Station I.G.I Airport, under Section 12 of the Passport Act, 1967. The petitioner was arrested and released on bail subsequently. Thereafter the petitioner moved an application for no objection for the issuance of a fresh passport which was given vide order dated 16.09.2008 by the learned ACMM subject to the condition that the same be deposited in the court.

2. Ms. Geeta Luthra, counsel for the petitioner contended that merely missing of a page would not attract Section 12(1) (b) of the Passport Act as the case of the State is not that any specific entries were manipulated or altered by the petitioner in the passport. In support of her arguments counsel for the petitioner has placed reliance on Schedule V of Clause 5 of The Passport

Act, 1967 and judgment of the Apex Court in ***Akmal Ahmed vs. State of Delhi AIR 1999 SC 1315*** and of Delhi High Court reported in ***134 (2006) DLT 700 in Balvinder Singh vs. State***. Counsel also submits that even otherwise such entry or alteration has to be wilful which is not a case set up by the State. Another contention raised by the counsel for the petitioner was that the State cannot file a police report in a summon case where the investigation is not completed within the statutory period of six months. She submitted that the FIR in the present case was registered on 16.6.2008 and till date the investigation has not been completed. The contention of the counsel was that it is the mandate of Section 167 (5) of the Code of Criminal Procedure that the investigation in a summon case triable by a Magistrate must be completed within a period of six months. Counsel further submitted that if for any reason investigation in such like case does not get completed then it is for the prosecution to approach the Magistrate to seek extension of the six months period which in the present case has not been done by the State. In support of her argument counsel for the petitioner has placed reliance on the judgment of High Court of Madras in ***Azalea Veronica vs. State rep. By Inspector of***

Police 2007 Cri LJ 3038. She further submitted that it can be assumed that the investigation already stands completed in view of the stand taken by the State in the Status Report. Counsel further stated that even otherwise import of Section 167(5) of Cr.P.C. is that any investigation done beyond the mandatory period of six months cannot be looked into by the court. In support of her arguments, counsel for the petitioner placed reliance on the judgment of the Apex Court in ***State of Karnataka vs. M.Raju 1995(1) RCR 38.***

3. Mr. Vikas Phawa , Addl. Standing Counsel for the State on the other hand submitted that Section 12(1)(b) of the Passport Act, 1967 is attracted in the present case as the first part of 12(1)(b) where the attribute of knowledge has been made essential will not extend to the second part of the section which would get attracted once the alteration or attempt to alter or cause to alter has been made by the passport holder without any lawful authority. Counsel further submitted that under Section 17 of the Passport Act, passport has been made a property of the Central Government and under Schedule V clause 5 the holder of the passport or travel document is personally responsible for

its safe custody. Counsel thus submitted that in the present case one leaf of the passport of the petitioner i.e. page Nos. 27 & 28 which was attached with the other leaf of the passport i.e. page No. 9 & 10 was found missing by the office of the immigration department which in the normal course could not have been detached. Counsel further submitted that it is the obligation of the passport holder to have apprised to the nearest passport authority in India or to the nearest Indian Mission if the holder of the passport is abroad in case of an unintentional loss or destruction of passport as laid down in Clause 5 of Schedule V of the Passport Rules, 1980. Mr Pahwa further stated that the expression 'entry' has not been defined in the Passport Act and once the page of the passport itself is missing that itself is sufficient to attract Section 12(1)(b) of the Passport Act. He stated that half of the passport carries passport number on the top of every page and if the page of the passport is missing from the passport then such entry on page of the passport with passport no. itself would go and that would mean that particular entry from the passport is missing. He further submitted that in many other cases the State has found that such blank page is found to have been misused by many criminals to take

advantage to travel abroad based on visas obtained on such missing pages of the passport.

4. So far as section 167(5) is concerned, Mr. Pahwa submitted that if the investigation in a summons case is not completed for any reason then it is for the Magistrate to pass an order to stop further investigation into the offence and no such order has yet been passed by the Magistrate in the present case. Counsel further submitted that under Section 167(5) of the Code of Criminal Procedure the Magistrate after recording special reasons if any advanced by the investigating officer can permit the continuation of the investigation even beyond the period of six months. Counsel further argued that even if there is any delay in the investigation and delay in filing of the Challan the same shall merely constitute an irregularity which cannot vitiate the proceedings as would be manifest from Section 460(e) of the Code of Criminal Procedure. Counsel further submitted that under the Passport Act, 1967 the State is required to obtain a previous sanction of the Central Government before launching the prosecution and therefore the delay in conducting the investigation and filing of the Challan invariably takes place where such sanction of the concerned authority is required.

Counsel for the respondent further submitted that Section 12 of the Passport Act is a continuing offence and therefore, under Section 472 of the Code of Criminal Procedure a fresh period of limitation began to run at every moment of such continuing offence. He further submitted that in the given facts of the present case the investigation would certainly continue even beyond the mandatory period of six months and there would be no illegality in carrying out such investigation. In support of his arguments, counsel for the respondent placed reliance on the judgment of the Apex court in ***State of West Bengal vs. Falguni Dutta & Anr (1993)3 SCC 288*** and ***State of West Bengal vs. Nirmal Kanti Roy(1998)4 SCC 590*** and of this court in ***Court On Its Own Motion vs. State And Jai Bhagwan 28(1985) DLT 77***.

5. Refuting the said submissions of Mr. Pahwa, Ms. Geeta, counsel for the petitioner submitted that the contentions raised by the counsel for the State are just contrary to the stand taken by the State in the Status Report. She also submitted that the language of Section 12(1)(b) itself would show that alteration in the entry by the passport holder has to be with full knowledge and intention.

6. I have heard learned counsel for the parties at considerable length.

7. The question whether the State has a right to continue with the investigation beyond a period of six months in any case triable by the Magistrate as a summons case, cannot be gone into by this court at this stage when admittedly the State has yet to file the Challan. It would be thus for the concerned Magistrate to feel satisfied or not whether there was any justification for the continuation of investigation if any took place in the present case beyond the period of six months as has been prescribed in Section 167(5) of the Code of Criminal Procedure . Moreover it is also not in dispute that under The Passport Act 1967, the State is required to obtain a previous sanction of the Central Government before launching the prosecution against any accused person and therefore some delay is bound to take place in all those cases wherever the sanction is a pre-requisite before launching the prosecution. In ***Santimony Chatterjee vs. State of West Bengal and others*** **2000 Crl LJ 2406**, the Court after placing reliance on the

judgment of the Supreme Court in the case of ***Durgesh Chandra Shah vs. B.C. Saha 1996 Cri LJ 1137*** has gone to the extent of holding that the provisions of Section 167(5) cannot be made applicable where after the completion of the investigation the final report by the police is not submitted due to the technical reason of awaiting the sanction from the Government.

8. The judgment of the Apex Court in the case of ***State of Karnataka vs. M. Raju (supra)*** as referred by the counsel for the petitioner in no manner supports the case of the petitioner as there the Apex Court took a view that there is nothing in sub section 5 of Section 167 of Cr.P.C. to suggest that if the investigation has not been completed within the period allowed by that sub section, the officer in charge of the police station would be absolved from the responsibility of filing the police report under Section 173(2) of the Code. The Apex Court further held that the criminal cases which come within the ambit of sub-section 5 of Section 167 of Cr.P.C. cannot be permitted to die down in police stations but have to meet their fate in criminal courts one way or the other. The Apex Court also took a view

that the Special Court was competent to entertain the police report restricted to six months investigation and take cognizance on the basis thereof.

9. As already discussed above since in the present case the State has yet to file the police report under Section 173(2) Cr.P.C., therefore, it is left to the judicial discretion of the learned Magistrate to take a final view in the matter whether to entertain the police report restricted to 6 months investigation or beyond the said period after taking into consideration the aspect of time period consumed by the State in seeking prior permission for launching the prosecution in conformity with the requirement of Section 15 of the Passport Act and also the legal position explained and enunciated by the Apex Court on the above issue in its various decisions.

10. As regards to section 12 of the Passport Act, it deals with offences and penalties. It would be pertinent to reproduce the same as below:

"Offences and penalties.

12. Offences and penalties. (1) Whoever—

(a) contravenes the provisions of section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under

this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

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

(e) knowingly allows another person to use a passport or travel document issued to him,

shall be punishable with imprisonment for a term which may extend to 1[two years or with fine which may extend to five thousand rupees] or with both.*

1[(1A) Whoever, not being a citizen of India,-*

(a) makes an application for a passport or obtains a passport by suppressing information about his nationality, or

(b) holds a forged passport or any travel document, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.]

(2) Whoever abets any offence punishable under 1[Sub-section (1) or sub-section (1A)] shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.*

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence."

11. Rule 19 of the Passports Rules, 1980 which relates to the conditions of a passport or travel document reads as under:

"The conditions of a passport or travel document:

The conditions subject to which a passport or travel document shall be issued or renewed shall be as set out in Schedule V."

12. Rules 5 and 6 to the Schedule V relate to loss, damage or destruction of a passport or travel document which may be relevant for the present purpose and are accordingly reproduced hereunder:

"5. The holder of a passport or travel document is personally responsible for its safe custody. It must not be willfully lost, damaged or destroyed. In case of an unintentional loss or destruction, the fact and circumstances of such loss or destruction should be immediately reported to the nearest passport authority in India or (if the holder of the passport is abroad) to the nearest Indian Mission or Post and to the local police.

6. A passport or travel document must not be altered or mutilated in any way nor any endorsement made in it by any person other than a duly authorized official."

13. Dealing with the contention of counsel for the petitioner that the missing of a leaf from the passport of the petitioner is neither a wilful nor intentional act on the part of the petitioner which can lead to her prosecution under Section 12(1)(b) of the Passport Act read with Rule 5 of Schedule V of the Passport Rules, I would refrain to express any view in the matter as this is not the stage for the High Court to interfere when even the challan/police report has not yet been filed by the State.

Undoubtedly the High Court has very wide powers under Section 482 Cr.P.C. but as per the settled legal position this power has to be exercised by the High Court with great caution, care and circumspection. In ***Sanapareddy Maheedhar & Anr vs. State of Andhra Pradesh & Anr 2008Cri LJ1375*** the Apex Court has held that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of any offence.

It was observed that:-

"In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing the FIR or complaint or restraining the competent authority from investigating the allegations contained in the FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in the FIR or complaint discloses commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the

complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 Cr.P.C."

14. In ***State of Haryana vs. Bhajan Lal 1992 CriLJ 527*** the Apex Court considered the scope of the powers of the High Court under Section 482 Cr.P.C. and under Article 226 of the Constitution of India and laid down the following illustrative guidelines in which the FIR or complaint can be quashed, which are reproduced as under:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code

or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. Indisputably where a case of the petitioner falls in any of the aforesaid parameters laid down by the Apex Court or wherever the Court finds that the complaint or FIR lodged by the complainant is a gross abuse of the process of the Court or is tainted with malafide and ulterior designs then no fetters can come in the way of the High Court to exercise its inherent powers as envisaged under Section 482 Cr.P.C. to direct quashing of such an FIR or complaint but it would be improper for the High Court to enter into a detailed enquiry to analyze the case of the complainant and then to determine whether a conviction would be sustainable or not and then to arrive at a conclusion to quash the proceedings. Such a course if taken by the Court would even stifle legitimate prosecution at a stage where the State may be in the process of collecting the material before finally filing a police report under Section 173(2) Cr.P.C. Although it is difficult to lay down any hard and fast rule as the facts of each case would govern the exercise of the said

extraordinary power by the High Court under Section 482 Cr.P.C. but certainly so far as the facts of the present case are concerned when the State has yet to file a police report under Section 173 Cr.P.C. the quashing of the FIR at this premature stage would amount to stifling and closing the said prosecution.

The judgment in the case of ***Balwinder Singh vs. State*** **134(2006) DLT 700** cited by the counsel for the petitioner would be of no help to the petitioner as in the said case the Court came to the conclusion that affixing of blank paper on the existing leaf of passport under no circumstances be treated as altering or attempting to alter the entries made in the passport as in the present case one leaf of the passport itself is missing and it will be for the prosecution to either bring out the case under Section 12(1)(b) or may be under Section 12(3) of the Passport Act.

16. Hence in the light of the above discussion and the pleas and contentions raised by the respective counsel for the parties, this petition is hereby dismissed. However, as the petitioner is a frequent traveler to Germany it is hereby directed to the Trial Court to release the passport subject to the condition that the petitioner shall furnish an undertaking before the Trial Court by

way of an affidavit that she shall make herself available for the trial of the said case in the event of the filing of a charge sheet by the police against her and shall also furnish surety in the sum of Rs. 50,000 to the satisfaction of the concerned Magistrate.

17. Hence the writ petition stands disposed accordingly.

December 21, 2009

KAILASH GAMBHIR,J