

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(CRL) No. 230/2010**

Decided on 29.10.2010

IN THE MATTER OF :

NIRU KUMARI Petitioner
Through : Mr. Ajay Kumar, Adv.
with petitioner and her husband in person.

versus

STATE Respondent
Through : Mr. Sanjeev Bhandari, ASC
for the State with Investigating Officer.

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*** HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Article 226 of the Constitution of India praying *inter alia* for quashing of FIR No.63/2010 lodged by an officer at the Immigration Department, IGI Airport against the petitioner, under Section 419/420 IPC read with Section 12 of the Passport Act, 1967 (in short '**the Act**').

2. In a nutshell, the facts of the case are that on 5.2.2010, a complaint was received from the IGI Airport alleging that the page No. 21 of the passport of the petitioner, who arrived at the airport for taking immigration clearance to fly to Zurich, was found to be damaged. On the aforesaid complaint, the FIR in question came to be registered with PS IGI Airport. Thereafter, investigations were carried out. In the investigation, the petitioner disclosed that she had got a visa for travelling to Zurich and after getting the same, she had noticed that one of the pages of the passport was damaged, but did not bother much about it. Thereafter, she came to IGI Airport for flying to Zurich to join her husband, Mr. Manish Kumar Tiwari, who has presently gone there to complete his post-doctorate studies. At the airport, the petitioner was arrested on account of the purported tampering of her passport, and produced before the court of the learned Metropolitan Magistrate, where she was released on bail.

3. Counsel for the petitioner states that the FIR lodged by the respondent is liable to be quashed as the present case is not covered under Section 12 of the Act. He relies on the judgment in the case of Balwinder Singh vs. State, **Crl.M.C. 3630/2006**, decided on 9.10.2006.

4. Section 12 of the Act is relevant for consideration and reproduced herein below for ready reference :-

"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 to 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 allow another person to use a passport or travel document issued to him;

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

(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 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."

5. For the purposes of the present case, clause (b) of sub-section (1) of Section 12 of the Act is relevant. As per the said clause, if a person attempts to alter or causes to alter the entries made in a passport or travel document, he can be punished under Section 12 of the Act. The original passport of the petitioner is produced by the learned ASC for the State. A perusal thereof shows peeling off of the paper at page 21. The same formed the basis of lodging of the aforesaid FIR.

6. The respondent was directed to file a status report. The status report dated 5.5.2010 filed by the respondent mentions that a report was sought from the India Security Press, Nasik Road, in respect of the aforesaid passport of the petitioner. The Press had opined in its report dated 5.4.2010 as below:

"(i) Some sticker (may be Visa or some other Sticker) has been peeled off/removed from Page Number 21 of this Passport.

(ii) The stitching is 'Genuine' of this Passport.

(iii) No other alterations have been noticed in this Passport."

7. The submission of the learned ASC for the State was recorded in the order dated 17.9.2010 that after receipt of the aforesaid report from the India Security Press, Nasik Road, the Embassies of USA and Switzerland were approached for the purposes of verification of the visas affixed on the passport of the petitioner. As far as the Embassy of USA is concerned, the report is stated to be in favour of the petitioner. The Embassy of Switzerland has also confirmed affixation of a visa on the passport of the petitioner. Hence, it is established that the two visas affixed on the passport of the petitioner, are genuine.

8. Counsel for the petitioner submits that in the aforesaid circumstances, the peeling off at page 21 of the passport can, by no stretch of imagination, be termed as an attempt on the part of the petitioner to alter or cause to alter entries made in the passport and as none of the entries have been tampered with by the petitioner, the FIR is liable to be quashed.

9. The aforesaid submission made by the counsel for the petitioner is borne out from all the three status reports filed by the respondent from time to time. The investigations carried out by the

respondent have also not brought out any material against the petitioner. It is therefore clear that the present case does not fall under clause (b) of sub-section (1) of Section 12 of the Act, as the petitioner has not furnished any false information or suppressed any material information with a view to obtain the aforesaid passport under the Act. Nor has she altered or attempted to alter or cause to alter the entries made in her passport. Hence, the provisions of Section 12 of the Act are not applicable to the facts of the present case. The petitioner has not tampered with the passport, for attracting the provisions of Section 12 of the Act.

10. In these circumstances, the writ petition is allowed and the FIR No.63/2010 is quashed on the ground that no offence is made out against the petitioner under the provisions of Section 12 of the Act.

11. The petitioner is permitted to approach Police Station IGI Airport for release of her passport, which shall be released forthwith.

12. The petition is disposed of.

OCTOBER 29, 2010
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(HIMA KOHLI)
JUDGE