IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

Crl.Rev.Pet.No. 3328 of 2003 ( )

AGAINST THE JUDGMENT IN CRL.A.NO. 49/2002 of SESSIONS COURT, KOZHIKODE DATED 26-11-2003

AGAINST THE JUDGMENT IN C.C.NO.63/1998 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE DATED 17-01-2002

PETITIONER(S)/APPELLANT/FIRST ACCUSED:

KUMARESAN,
S/O.ANNANAYAKKAR,
PUTHIYAKOVILAKOM PARAMB,
KASABA AMSOM, KOZHIKODE.

BY ADVS.SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, KASABA, KOZHIKODE
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KEARLA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K. Ramakrishnan, J.

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Crl.R.P.No.3328 of 2003

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Dated this, the 20th day of March, 2015.

O R D E R

First accused in C.C.No.63/1998 on the file of the Chief Judicial Magistrate Court, Kozhikode is the revision petitioner herein. He along with two others were charge sheeted by the Sub Inspector of Police, Kasaba police station in Crime No.286/1996 under Sections 199, 419, 468 of Indian Penal Code and Section 12(1)(b) of Indian Passport Act.

2. The case of the prosecution in nutshell was that, on 03.10.1996, the revision petitioner who is a passport holder colluded with accused No.2 falsely pretending as one Ramesh, Puthiyakovilakam Parambu, Kasaba amsom, desom submitted an application for passport before the Regional Passport Authority for getting a passport with forged certificates and documents containing false datas with a view to dishonestly induce the concerned authorities to issue a new passport and on 07.10.1996, he in collusion with accused Nos.2 and 3 furnished a false declaration regarding his identity receivable as evidence before the Police Commissioner knowing to be false for getting an emergency passport and thereby, they have committed the offence punishable under Sections 199, 419,

468 of Indian Penal Code and Section 12(1)(b) of Indian Passport Act. After investigation, final report was filed and the case was taken on file as C.C.No.63/1998 on the file of the Chief Judicial Magistrate Court, Kozhikode.

3. When the accused persons appeared before the court below, the particulars of offence were read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 15 were examined and Exts. P1 to P20 and P19(a) were marked on the side of the prosecution. After closure of the prosecution evidence, the accused were questioned under Section 313 of Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that they have not committed any offence and they are innocent of the same. No defence evidence was adduced on their side.

4. After considering the evidence on record, the court below found accused Nos.2 and 3 not guilty of any of the offences alleged and acquitted them of those charges under Section 248(1) of Code of Criminal Procedure. The court below also found the revision petitioner not guilty for the offences

under Sections 419 and 468 of Indian Penal Code and Section 12(1)(b) of Indian Passport Act and acquitted him of those charges. But, the court below found the revision petitioner guilty under Section 199 of Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for one year and also to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month. Aggrieved by the same, he filed Crl.Appeal No.49/2002 before the Sessions Court, Kozhikode and the learned Sessions Judge, by the impugned judgment, dismissed the appeal confirming the order of conviction and sentence passed against him. Aggrieved by the same, the present revision has been filed by the revision petitioner - first accused before the court below.

5. Heard the Counsel for the revision petitioner Shri.Devaprasanth P.J. and the Public Prosecutor Smt. V.H.Jasmine and perused the records.

6. The Counsel for the revision petitioner submitted, having acquitted the revision petitioner for the offences under Sections 419 and 468 of Indian Penal Code and Section 12(1)(b) of Indian Passport Act on the ground that, there is no evidence to show that the application was submitted by him

and the signature in the application was put by the revision petitioner, the courts below were not justified in convicting the revision petitioner for the offence under Section 199 of Indian Penal Code as the ingredients to be proved under Section 12 (1)(b) of Indian Passport Act and Section 199 of Indian Penal Code are one and the same. Unless it is proved by the prosecution that, any declaration or evidence has been submitted by the revision petitioner in person, it cannot be said that the ingredients of Section 199 of Indian Penal Code is attracted. So, according to him, the courts below were not justified in convicting the revision petitioner for the offence alleged.

7. On the other hand, the learned Public Prosecutor submitted that the petitioner earlier filed Ext.P5 application for another passport with another name and when it was rejected, he filed the present application and the evidence of PWs 1 and 2 will go to show that prosecution has proved the case beyond reasonable doubt, the application with false documents have been produced by him and the concurrent findings of the court below on this aspect do not call for any interference.

8. The case of the prosecution as emerged from the

prosecution witnesses was as follows:

According to the prosecution, the first accused had filed Ext.P2 application dated 03.10.1996 for getting a passport with the particulars of second accused and producing the documents relating to second accused and also filed Ext.P1 application for emergent verification before PW2 which he sent to PW1 and he conducted the verification and gave Ext.P4 report to PW2 and he forwarded the same to the police, on the basis of which, PW13 registered Ext.P15 First Information Report as Crime No.286/1996 of Kasaba police station against the revision petitioner alleging offence under Sections 199, 419, 468 of Indian Penal Code and Section 12(1)(b) of Indian Passport Act. He had conducted investigation and seized Ext.P5 earlier application said to have been submitted by the revision petitioner and Ext.P7 passport as per Ext.P6 seizure mahazar in the presence of witnesses. He had seized Ext.P2 application with Ext.P3 series as per Exts.P8 and P9 seizure mahazars. He had also seized Ext.P19 ration card as per Ext.P16 seizure mahazar and handed over the same to the owner namely., PW14 as per Ext.P17 Kychit. He gave Ext.P18 report to add accused Nos.2 and 3 also in the First Information

Report. The further investigation in this case was conducted by PW15 who completed the investigation and submitted the final report.

9. The case of the prosecution was that first accused filed Ext.P2 application along with Ext.P3 series documents of second accused affixing his photograph for getting a passport for himself though he was having Ext.P7 passport. Further, the case of the prosecution was that since he wanted to get an emergent verification, he submitted Ext.P1 application before PW2 which he had forwarded to PW1 who conducted verification and found that the documents submitted by the applicant were not that of that person and the photograph affixed in the application is not that of the person whose documents were produced along with the application, but, that of the revision petitioner and he gave Ext.P4 report, on the basis of which, the case has been originated. But, in order to attract offence under Section 199 of Indian Penal Code, it must be proved by the prosecution that any declaration or evidence has been given by any person which is likely to be used by the court or the public servant before him such declaration has been made as evidence which he knew to be false. The

ingredients of Section 12(1)(b) of Indian Passport Act are also similar to the same ingredients mentioned in Section 199 of Indian Penal Code. If any person has given a false information for the purpose of getting passport, then, it will fall under Section 12(1)(b) of Indian Passport Act. Both the courts below have found that the prosecution has failed to prove that the signature in Ext.P1 or P2 were that of the revision petitioner. Further, in the evidence of PW2, he had only stated that the person had come and gave the application. But, his evidence is not sufficient to prove the identity of the person who had come with the application for conducting the verification as he may be receiving several applications of such nature for that purpose. He had not identified that person during the course of investigation as well. He had only identified accused No.1 on the basis of the photograph seen on that application. That identification is not sufficient to come to the conclusion that it was he who had personally submitted the application for that purpose. Further, the courts below have acquitted the revision petitioner and other accused persons for the offences under Sections 468, 419 and Section 12(1)(b) of Indian Passport Act on the ground that prosecution has failed to prove that the

signature in Ext.P1 or P2 was put by the revision petitioner. Further, the person who said to have filled the application for the revision petitioner did not support the case of the prosecution that the particulars in that application were filled by him as instructed by the first accused. If that be the case, there is no acceptable evidence before the court to prove that the declarations were made by the revision petitioner and it contains the signature so as to bring under the purview of Section 199 of Indian Penal Code that he had submitted the declaration and gave false evidence to that effect which can be used by the authorities so as to convict him for the offence under Section 199 of Indian Penal Code as well. So, under the circumstances, there is some force in the submission made by the Counsel for the revision petitioner that having found him not guilty for the offence under Sections 419 and 468 of Indian Penal Code and Section 12(1)(b) of Indian Passport Act on the ground that the prosecution has failed to prove that the signature in the application was put by the revision petitioner, the courts below were not justified in convicting the revision petitioner for the offence under Section 199 of Indian Penal Code as the particulars to be proved for convicting the revision

petitioner for the offence under Sections 419 and 468 of Indian Penal Code and Section 12(1)(b) of Indian Passport Act are required to be proved for the purpose of convicting him for the offence under Section 199 of Indian Penal Code which is lacking in this case and the courts below have acquitted him for the offence under Sections 419 and 468 of Indian Penal Code and Section 12(1)(b) of Indian Passport Act and as such, the conviction entered by the courts below for the offence under Section 199 of Indian Penal Code as against the revision petitioner is unsustainable in law in view of the discussions made above and the same is liable to be set aside giving him the benefit of doubt and he is entitled to get acquittal of the charge levelled against him giving him the benefit of doubt.

So, the revision petition is allowed and the order of conviction and sentence passed by the trial court and confirmed by the appellate court against the revision petitioner for the offence under Section 199 of Indian Penal Code are set aside and he is acquitted of the charge levelled against him giving him the benefit of doubt. He is set at liberty. The bail bond executed by him will stand cancelled.

Office is directed to communicate this order to the

concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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True copy]

P.A to Judge