

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Crl.MC.No. 6102 of 2013 (F)

CRIME NO. 619/2013 OF KARIPUR POLICE STATION , MALAPPURAM

PETITIONER/ACCUSED :-

**SHAMSEER, S/O.RAYINKUTTY,
PAINCHEERI HOUSE,
MOORKANADU ROAD,
KOLATHUR (PO),
MALAPPURAM DISTRICT,
KERALA, PIN - 679 338.**

**BY ADVS.SRI.T.K.AJITH KUMAR
SRI.K.T.SIDHIQ
SRI.P.VINODKUMAR
SRI.RAJAN VELLOTH**

RESPONDENT/COMPLAINANT :-

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. THE REGIONAL PASSPORT OFFICER,
MALAPPURAM, DOWNHILL(P.O),
MALAPPURAM, PIN - 676 519.**
- 3. THE ASSISTANT IMMIGRATION OFFICER,
O/O ASST. FOREIGNERS REGIONAL REGN.OFFICER,
BUREAU OF IMMIGRATION (MHA),
GOVERNMENT OF INDIA,
CALICUT INTERNATIONAL AIRPORT,
CALICUT AIRPORT P.O.,
MALAPPURAM DISTRICT - 673 647.**

**R1 BY PUBLIC PROSECUTOR, SRI.MADHUBEN
R2 BY ADV. SRI.PPARAMESWARAN NAIR, ASG**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
21-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 6102 of 2013 (F)

APPENDIX

PETITIONER(S)' ANNEXURES :-

ANNEXURE A :- TRUE COPY OF THE RELEVANT PAGE OF THE PASSPORT OF THE PETITIONER BEARING NUMBER F8843579.

ANNEXURE B :- TRUE COPY OF THE FIRST INFORMATION REPORT IN 619 OF 2013 OF KARIPUR POLICE STATION.

ANNEXURE C :- TRUE COPY OF THE COMPLAINT DATED 16.10.2013.

ANNEXURE D :- TRUE COPY OF SCHOOL LEAVING CERTIFICATE OF THE PETITIONER.

ANNEXURE E :- TRUE COPY OF THE LICENSE OF THE PETITIONER.

ANNEXURE F :- TRUE COPY OF THE ORDERS PASSED BY THE REGIONAL PASSPORT OFFICER, MALAPPURAM DATED 24.07.2013.

ANNEXURE G :- TRUE COPY OF THE RELEVANT PAGES OF PASSPORT OF FATHIMA BEARING NUMBER G4636891.

ANNEXURE H :- TRUE COPY OF THE RELEVANT PAGES OF PASSPORT OF FATHIMA BEARING NUMBER G8868848.

RESPONDENT(S)' ANNEXURES :- NIL

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//TRUE COPY//

P.A. TO JUDGE

K. HARILAL, J

Crl.M.C.No. 6102 of 2013

Dated this the 21st day of January, 2015

ORDER

The petitioner herein is the accused in Crime No.619 of 2013 of Karipur Police Station registered for the offence punishable under Sections 468 and 471 of the Indian Penal Code read with Section 12(1)(b) of the Indian Passport Act. The Prosecution case in brief is that, the petitioner herein is the holder of Indian Passport bearing No.F8843579 issued on 09.08.2006. Now the petitioner is employed at Jeddah in Kingdom of Saudi Arabia. On 16.10.2013, when the petitioner reached the Calicut Airport from Jeddah, his passport was taken into custody on the allegation that there is a tampering on the date of birth shown in the said passport.

2. This Criminal M.C. is filed under Section 482 of the Code of Criminal Procedure, contending that, even if the entire allegation in the complaint filed by the defacto complainant has been admitted at its entirety, no offence has been made out under Sections 468 and 471 of the

Indian Penal Code. The learned Counsel for the petitioner submits that, to constitute an offence under Section 463, the false document should be made with an intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with an intent to commit fraud. But, in the instant case, the case of the defacto complainant is that, on 16.10.2013 the petitioner arrived from Jiddha and approached the Arrival Gate after clearance. While checking the Passport the officer at the gate, Shri.Nidhin Antony T.A.(SG), found that the date of birth in the date of birth column and machine reading zone was tampered. In short, the defacto complainant has no case that the tampering said to have been found in the passport would constitute forgery and that forgery was made with any of the intention described under Section 463 of the Indian Penal Code. Therefore, the prosecution initiated against the petitioner is liable to be quashed.

3. Per contra, the learned Government Pleader submits that the scope of interference under Section 482 of the Criminal Procedure Code to quash FIR is very limited, particularly when investigation is yet to be completed. It is also contended that the intention of the petitioner to make tampering can be brought out during the course of investigation. Therefore, at this stage it cannot be said that the allegation against the petitioner would not constitute the offence under Section 468 of the Indian Penal Code. The Standing Counsel for the respondents 2 and 3 also advanced arguments to justify the prosecution and investigation going on against the revision petitioner under the present complaint.

4. Going by the complaint filed by the defacto complainant, as rightly submitted by the learned Counsel for the petitioner, the intention to tamper the date of birth column of the passport is not stated in the complaint. But I am of the opinion that, even though any kind of intention is not brought out in the complaint, it can be unearthed and brought up during the course of

investigation. Therefore, in my view, at this stage, the FIR cannot be quashed on the allegation that the allegations in the complaint do not constitute offence under Section 468 of the Indian Penal Code. But I am of the opinion that the petitioner will get an opportunity to raise all these contentions before the Trial Court after the filing of the final report, by the prosecution, by invoking Jurisdiction under Section 239 of the Code of Criminal Procedure. If such an application is filed by the petitioner, the Trial Court will consider the above points meticulously after affording an opportunity of being heard to the petitioner, at the earliest.

This Criminal M.C. is disposed of accordingly.

Sd/-
K. HARILAL
JUDGE

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P.A. TO JUDGE