

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Revision Case No. 359 of 2012

Judgment:

This Criminal Revision Case is directed against the judgment, dated 28.02.2012, passed in Criminal Appeal No. 207 of 2011 by the learned Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad, whereby and whereunder the learned Judge, while setting aside the conviction and sentence for the charges under Sections 420 and 471 IPC, confirmed the conviction and sentence imposed against the revision petitioner/accused for the offence punishable under Section 12(1)(b) of the Passports Act, 1967 (for short 'the Act'), by the learned XII Additional Chief Metropolitan Magistrate, Hyderabad, in CC No. 54 of 2008, dated 18.04.2011.

2. The case of the prosecution, in brief, is that on credible information that the accused was in possession of two Indian passports on different names, PW.1 the Sub-Inspector of Police, South Zone Task Force, Hyderabad, along with his team intercepted the accused on 14.07.2006 at 11.00 AM and, on enquiry, the accused admitted that he was in possession of two Indian passports and other ID proofs. The accused further confessed that he applied for second passport in the name of Syed Javeed, S/o Syed Abdul Sattar, resident of D.No.8-118/2, Chandrayangutta, Hyderabad, through one agent namely Pappu @ Nandu and he collected the second passport issued in the name of Syed Javeed by the Regional Passport Officer, Hyderabad, through the said agent. On the complaint given by PW.1, a case in Crime No.102 of 2006 was registered against the revision petitioner/accused and, after completion of investigation, the Inspector of Police, Admin., CCS, DD, Hyderabad, filed charge sheet against the revision petitioner/accused for the offences punishable under Sections

420 and 471 IPC and Section 12(1)(b) of the Act on the allegations that the revision petitioner/accused obtained two Indian Passports in different names with false addresses by using fake documents and cheated the passport authorities.

3. The trial Court framed the charges against the revision petitioner/accused for the offences under Sections 420 and 471 IPC and Section 12(1)(b) of the Act, and he denied the charges.

4. During the course of trial, on behalf of the prosecution PWs.1 to 12 were examined and Exs.P1 to P19 were marked. On behalf of the accused none were examined and no documents were marked. The accused denied the incriminating material appearing against him in the evidence of prosecution witnesses.

5. The learned Magistrate, on consideration of the entire material on record, found the revision petitioner/accused guilty of the offences under Sections 420 and 471 IPC and Section 12(1)(b) of the Act and, accordingly, convicted and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for a period of three months for the offence under Section 420 IPC and further he was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for a period of three months for the offence under Section 471 IPC. The revision petitioner/accused was also sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for a period of three months for the offence under Section 12(1)(b) of the Act.

6. Aggrieved by the said conviction and sentence, the revision petitioner/accused filed Criminal Appeal No. 207 of 2011 and the learned Sessions Judge, by impugned judgment, found the revision

petitioner/accused not guilty of the charges under Sections 420 and 471 IPC and, accordingly, acquitted him thereof. However, the learned Sessions Judge, found the revision petitioner/accused guilty of the charge under Section 12(1)(b) of the Act and confirmed the sentence of RI for two years and fine of Rs.2,000/-, in default to suffer SI for three months for the said offence. Hence, the revision petitioner/accused has filed the present revision case.

7. Learned counsel for the revision petitioner/accused submitted that the lower appellate Court, having disbelieved the case of the prosecution and having acquitted the revision petitioner/accused of the offences under Sections 420 and 471 IPC, ought not to have accepted the evidence of the prosecution for holding the revision petitioner/accused guilty of the charge under Section 12(1)(b) of the Act. He further submitted that, absolutely, no material whatsoever has been produced by the prosecution to show that it is the revision petitioner/accused who has obtained two passports one from the Regional Passport Authority, Mumbai, and the other from the Regional Passport Authority, Hyderabad, and no passport officer has been examined to show that it is the revision petitioner/accused who submitted the applications for obtaining two different passports. He further submitted that the two passports are, admittedly, standing in the names of two different persons and they are not in respect of one and the same person. He further submitted that the passport, which is marked as Ex.P3, was issued by the Regional Passport Authority, Hyderabad, on 20.05.2004, and the endorsement made in the passport - Ex.P2, issued by the Regional Passport Officer, Mumbai, shows that in the month of May 2004, the revision petitioner/accused was in Riyadh. He further submitted that the prosecution could not even establish the fact that the two passports i.e., Ex.P2, issued by the Regional Passport Officer, Mumbai, and Ex.P3, issued by the Regional Passport Officer, Hyderabad, were seized from the

possession of the revision petitioner/accused and there is no independent evidence to corroborate the claim of the Investigating Officer that the revision petitioner/accused was in possession of the passport – Ex.P3, said to have been issued at Hyderabad and, in that view of the matter, both the Courts below have erred in holding the revision petitioner/accused guilty of the offence under Section 12(1)(b) of the Act.

8. On the other hand, learned Additional Public Prosecutor submits that the prosecution has placed the best possible evidence on record and the reports of the hand writing experts of the Forensic Science Laboratory clearly show that the two passports Exs.P2 and P3 though standing in different names, but they belong to one and the same person i.e., the revision petitioner/accused and that both the Courts below have properly appreciated the entire evidence on record and convicted the accused for the offence under Section 12(1)(b) of the Act, which do not warrant any interference of this Court.

9. Section 12(1)(b) of the Act reads as under.

“12. **Offences and Penalties.**- (1) Whoever- (a)

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(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;

(c)

(d)

(e)

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.”

10. On careful perusal of the entire material on record, what is required to be proved by the prosecution is that it is the revision

petitioner/accused who having, admittedly, obtained the passport – Ex.P2 from the Regional Passport Officer, Mumbai, has obtained the passport – Ex.P3 from the Regional Passport Officer, Hyderabad, by furnishing false information or suppressing the material information that he has already possessed the passport – Ex.P2 issued by the Regional Passport Officer, at Mumbai.

11. There is no dispute insofar as the passport – Ex.P2 is concerned. Admittedly, the passport – Ex.P2 belongs to the revision petitioner/accused. The controversy, however, is with regard to the passport – Ex.P3, which is said to have been issued by the Regional Passport Officer, Hyderabad. Ex.P2 is the passport bearing No.E6615707, issued in the name of the revision petitioner/accused viz., Mohd. Abdul Haleem, S/o Mohd. Abdul Aleem. The name of the spouse of the revision petitioner/accused is shown as Saleem Sultana in Ex.P2. Whereas, the passport – Ex.P3 bearing No.E8996998 was issued in the name of Syed Javeed, S/o Syed Abdul Sattar and the name of the spouse of the applicant is mentioned as Syeda Farhana Sattar. A perusal of the two passports Exs.P2 and P3 clearly shows that they were issued in the name of two different persons and they cannot be said to be issued in the name of one and the same person, more particularly in the name of the revision petitioner/accused. When the passport – Ex.P2 was issued in the name of the revision petitioner/accused, the passport – Ex.P3 was issued altogether to a different person. The names of the father and the spouse also do not even tally. The photographs on Exs.P2 and P3 are quite distinct and different. The signatures on two passports are also completely at variance and to a naked eye it cannot be said that both of them are signed by one and the same person.

12. Adverting to the evidence on record, PW.1, who is the Inspector of Police, Chandrayanagutta Police Station, has deposed that on reliable information the revision petitioner/accused was in possession

of two Indian passports, he apprehended him at Hyderabad and from his possession two passports Exs.P2 and P3 were seized. The said recovery and apprehension is said to have been made in the presence of the independent panch witnesses who are examined as PWs.2 and 3. But, both of them turned hostile and they have categorically denied that they acted as panch witnesses at the time of alleged arrest, confession and recovery.

13. It is obligatory on the part of the prosecution to prove that the passport – Ex.P3 was obtained by the revision petitioner/accused by furnishing false information and by suppressing the material information and for that purpose necessary documentary evidence ought to have been placed on record. The prosecution has examined PW.4, who was the Deputy Passport Officer, Mumbai, and he deposed that the passport – Ex.P2 was issued, but no record is available since the same has been destroyed. PW.5 is working as Clerk-cum-incharge in Model English Naidu High School, Mumbai, who deposed that the school leaving certificate purported to be in the name of Abdul Haleem is not issued by the said school. The said certificate, however, is not produced nor marked as exhibit. PWs.8 to 12 are police officers who have completed the investigation and filed charge sheet. Their evidence does not show that the revision petitioner/accused has obtained two passports by suppressing the vital information. _

14. Then remains the testimony of PWs.6 and 7, who are said to be the Scientific Officers, APFSL, Hyderabad, and who compared the disputed documents with the admitted one. The two passports Exs.P2 and P3 along with other documents such as driving licence and election ID were sent to the experts and so also the admitted signatures of the revision petitioner/accused. Exs.P15 and P16 are the opinions submitted by PWs.6 and 7 respectively. A perusal of the opinions Exs.P15 and P16 shows that no satisfactory reasons are

averred by the officers of the Forensic Science Laboratory to show the basis of furnishing their opinion that the signatures found on the passports Ex.P2 and P3 are that of one and the same person. Even with regard to photographs, no satisfactory reasons were given by the Scientific Officers to show that the two photographs are of one and the same person.

15. When an expert compares the admitted and disputed documents whether it be signatures or photographs, he is required to give all minute details for coming to the conclusion that both the admitted and disputed documents are signed and belonged to one and the same person. PW.6 has stated that after careful examination and comparison of the original documents she is of the opinion that the person who wrote the red enclosed signatures marked as S1 to S70 also wrote the red enclosed signatures marked as Q1 to Q3, but no other details are given by PW.6. When the signatures on the passports Exs.P2 and P3 are compared with that of the admitted signature of the revision petitioner/accused and the signature of Javeed, it appears that both the signatures are altogether in different style and speed. When the admitted signature of the revision petitioner/accused is in the type of signature, the signature of Javeed in the passport Ex.P3 is the name written in all capital letters.

16. Taking into consideration the above facts and circumstances of the case and the nature of evidence placed on record, it cannot be said that the prosecution has proved beyond all reasonable doubt that it is the revision petitioner/accused who has obtained the passport Ex.P3 at Hyderabad by suppressing the fact of his possessing Ex.P2 – passport, issued by the Regional Passport Office, Mumbai.

17. In the circumstances, the benefit of doubt should invariably go to the revision petitioner/accused. Both the Courts below have not properly appreciated the evidence on record and have erroneously

found the revision petitioner/accused guilty of the offence under Section 12(1)(b) of the Act. Hence, the conviction and sentences passed by both the Courts below against the revision petitioner/accused for the said offence cannot be sustained and the revision petitioner/accused is entitled for acquittal.

18. In the result, the Criminal Revision Case is allowed setting aside the impugned judgment. Consequently, the conviction and sentence passed against the revision petitioner/accused stands set aside. The fine amount, if any paid by the revision petitioner/accused, shall be returned to him. The trial Court is directed to return the passport – Ex.P2 bearing No.E6615707 and the passport – Ex.P11 bearing No.A23507/1.7.94 to the revision petitioner/accused immediately on receipt of the records from this Court and on duly satisfying about the identity of the person taking return of the passports Exs.P2 and P11. However, the passport – Ex.P3 bearing No.E8996998 issued in the name of Syed. Javeed by the Regional Passport Officer, Hyderabad, shall be impounded.

19. As a sequel thereto, the miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

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M.S.K. JAISWAL, J.

Date: 02.09.2015

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