

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NOS.113 and 114 of 2015

CRIMINAL WRIT PETITION NO.113 of 2015

1. Mr. Kashinath Shetye
102, Raj Excellency,
Patto, Ribandar,
Tiswadi, Goa.
2. Dr Ketan Govekar,
Wadji Building 3rd Floor,
St. Inez, Panaji, Goa. .. Petitioners.

Vs.

1. The Police Inspector,
Maina Curtorim Police Station,
Margao, Goa.
2. The Superintendent of Police
South, South Goa.
3. The State of Goa
Through the Chief Secretary
Secretariat Porvorim Goa. .. Respondents.

Petitioner no.1 in person.

Mr. S. R. Rivankar, Public Prosecutor for the respondents, in both the petitions.

WITH

CRIMINAL WRIT PETITION NO.114 of 2015

1. Kashinath Shetye
102, Raj Excellency,
Patto, Ribandar, Goa.
(2444444, 2443333, 2444499,
9420689997)
2. Mahesh Kamat
Shivnari Hosing Society
Comba Margao Goa
9421089190

3. Dr. Ketan Govekar,
Wadji Building, St. Inez,
Panaji, Goa.
(9420819016). .. Petitioners.

Vs.

1. The Police Inspector,
Colva Police Station,
Colva, Goa.
2. The Superintendent of Police
South, South Goa.
3. The State of Goa,
Through the Chief Secretary
Secretariat Porvorim Goa. .. Respondents.

Petitioner no.1 in person.

Mr. S. R. Rivankar, Public Prosecutor for the respondents, in both the petitions.

**Coram :- SMT R. P. SONDURBALDOTA &
C. V. BHADANG, JJ.**

Reserved on : 15th November, 2016.

Pronounced on : - 21st November, 2016

ORDER :

Both these petitions involve common questions and they can be conveniently disposed of by this common order.

2. The challenge in these petitions is to the orders dated 01/08/2015, passed by the learned Judicial Magistrate, First Class at Margao in Criminal Miscellaneous Application Nos.180/2014/I

and 204/2014/I By the impugned orders, the applications filed by the petitioners under Section 156(3) of the Code of Criminal Procedure (the Code, for short), have been dismissed.

3. The brief facts are that the petitioners have filed complaints against unknown persons/ Government Servants and others, including MLAs and MPs, claiming that they should be booked under the National Security Act, 1980, Indian Citizenship Act, 1955 and Registration of Foreigners Act, 1939. In short, the petitioners claim that these persons although holding Indian Passport/s, have acquired the citizenship of Portugal. It is contended that these persons are holders of 'Bilhete de Identidade', which is a National Identity Card of Portugal. It is contended that these persons are a threat to the national security.

4. In such circumstances, a direction was sought from the Magistrate to Police Inspectors, Colva Police Station and Maina Curtorim Police Station, to register FIRs, on the strength of the applications filed by the petitioners and to conduct investigation.

5. By the impugned order/s, the learned Magistrate has dismissed the applications, which brings the petitioners to this Court.

6. We have heard petitioner no.1 in person and Shri Rivankar, learned Public Prosecutor for the respondents.

7. It is submitted on behalf of the petitioners that there are several persons, which includes Government Servants and some politicians, who are MLAs and MPs, who have acquired the Portuguese citizenship and as such, have ceased to be citizen of India, under Article 5 of the Constitution of India. It is submitted that there are several such persons, who are holding Bilhete de Identidade (Identity Card of Portugal), which entitles them to unrestricted travel to any part of the country in the European Union. It is submitted that this is a serious issue, which requires to be investigated and the learned Magistrate was not justified in dismissing the applications. Reliance on behalf of the petitioners is placed on the decision of Hon'ble Supreme Court in the case of **Rev. Mons. Sebastiao Francisco Xavier Dos. Remedios Monter Vs. State of Goa**; [1970 AIR 329]. It is submitted that the Competent Authority under the Citizenship Act is also not acting with due expedition and it is in these circumstances that the matters need to be investigated appropriately.

8. On the contrary, the learned Public Prosecutor has supported the impugned order. The learned Public Prosecutor

has placed reliance on the decision of Hon'ble Supreme Court in the case of ***Bhagwati Prasad Dixit Vs. Rajeev Gandhi***; [AIR 1986 SC 1534], in order to submit that the question whether any person has ceased to be a citizen of India, can exclusively be decided by the Central Government under the Citizenship Act and thus, the learned Magistrate could not have directed the investigation as prayed.

9. We have carefully considered the rival circumstances and the submissions made and we do not find that any case for interference is made out.

10. The learned Magistrate, after considering the rival contentions at length, including the decision in the case of ***Bhagwati Prasad Dixit*** (supra), has come to the conclusion and in our view rightly so, that the direction to register FIR under Sections 4 and 5 of Registration of Foreigners Act, 1939 or under Section 17 of Indian Citizenship Act, 1955, will be premature.

11. In the case of ***Bhagwati Prasad Dixit*** (supra), the petitioner had filed an appeal under Section 116-A of Representation of People Act, 1951 against the judgment of the High Court of Allahabad, dismissing the Election Petition, filed against the respondent. The election of the respondent was, *inter*

alia, challenged on the ground that the respondent had ceased to be Indian citizen as he was married to a foreign citizen. The Hon'ble Supreme Court upheld the dismissal of the election petition. It would be worthwhile to reproduce the observations in para 11 of the judgment as under :

“For purposes of deciding the question arising under section 9(1) of that Act, the Central Government by virtue of the power conferred on it by section 9(2) has been given an exclusive power to determine in accordance with the rules of evidence provided for the purpose whether a person has acquired the citizenship of another country. It follows that when once a person is admitted or held to be a citizen of India, unless there is a decision of the Central Government under section 9(2) of the Citizenship Act, 1955 that he has acquired the citizenship of a foreign country, he should be presumed to be an Indian citizen. Section 9 of the Citizenship Act, 1955 is a complete code as regards the termination of Indian citizenship on the acquisition of the citizenship of a foreign country. Sub-clause (d) of clause (1) of Article 102 of the Constitution provides that a person shall be disqualified for being chosen as and for being a member of either House of Parliament (i) if he is not a citizen of India, (ii) or has voluntarily acquired the citizenship of a foreign State or (iii) is under any acknowledgment of allegiance or adherence to a foreign State. We are concerned here with a case falling under clause (ii) and that question has to be

decided by virtue of Article 11 of the Constitution and section 9(2) of the Citizenship Act, 1955 by the Central Government only. The policy behind section 9(2) appears to be that the right of citizenship of the person who is admittedly an Indian citizen should not be exposed to attack in all forums in the country, but should be decided by one authority in accordance with the prescribed rules and that every other Court or authority would have to act only on the basis of the decision of the prescribed authority in that behalf and on no other basis. That being the mandate of the law, even the High Court trying an election petition can declare an Indian citizen as having acquired the citizenship of a foreign State only on the basis of a declaration made by the Central Government. If such a declaration made by the Central Government is produced before a High Court trying an election petition the High Court has to give effect to it. If such a declaration is not forthcoming, the High Court should proceed on the ground that the candidate concerned has not ceased to be an Indian citizen. It cannot independently hold an enquiry into that question on its own."

(Emphasis supplied)

It can, thus, be seen that Section 9 of the Citizenship Act, 1955 is a complete Code as regards termination of Indian Citizenship, on the acquisition of the citizenship of a foreign country. The policy behind Section 9(2), as held by the Hon'ble Supreme Court, is that right of citizenship of a person, who is

admittedly an Indian citizen, should not be exposed to attack in all forms, but should be decided by one Authority in accordance with the prescribed rules. It is, thus, clear that the learned Magistrate could not have issued a direction for investigation and has rightly dismissed the applications as being premature.

12. In the case of **Rev. Mons. Sebastiao Francisco Xavier Dos Remedios Monter** (supra), the appellant was resident of Goa and pursuant to Citizenship Order, had given a declaration of Portuguese Nationality. He was allowed to stay in India under a temporary residential permit till November 13, 1964. After that, he did not seek renewal of the permit. The lieutenant Governor of Goa acting under Article 239 of Constitution of India, had ordered the appellant to leave India. For disobeying the said order, the appellant was prosecuted under Section 14 read with Section 3(2) (c) of the Foreigners Act and was convicted, which was unsuccessfully challenged by the appellant initially before the Court of Sessions and, thereafter, before the Judicial Commissioner. It is this conviction and sentence, which was subject matter of challenge before Hon'ble Supreme Court. It can, thus, be seen that the case turned on its own facts and cannot come to the aid of the petitioners herein.

13. We find that the impugned orders do not suffer from

any infirmity so as to require interference. The petitions are without any merit and are, accordingly, dismissed. We, however, make it clear that we have not expressed any opinion on the merits of the allegations as contained in the applications filed by the petitioners.

C. V. BHADANG, J.

SMT R. P. SONDURBALDOTA

SMA