

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46695 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

=====

Regional Passport Officer Patna Namely Anand Kumar S/O M.P. Singh Resident Of 34/620 Officers Flat, Bailey Road, P.S.- Kotwali, District- Patna.

.... Petitioner

Versus

1. The State Of Bihar
2. Mokim Ansari Father And Legal Guardian Of Tanweer Hasan S/O Md. Mokim Ansari Resident Of Barauli, P.S.- Barauli, District- Gopalganj Present Address Raja Bazar, Samanpura, P.S.- Shastrinagar, District- Patna.

.... Opposite Party

=====

Appearance :

For the Petitioner/s : Mr. Anis Akhtar, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar, Advocate

For the State : None.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 04-08-2017

Heard learned counsel for the petitioner and

Learned counsel for the opposite party no. 2. As usual, learned Additional Public Prosecutor for the State is not present.

This is an application under Section 482 Cr.P.C. for setting aside the order dated 03.05.2013 passed in Miscellaneous Case No. 45(M) of 2013 by learned Judicial Magistrate, 1st Class, Patna. By the impugned order, the learned Magistrate has directed the Passport Office at Patna to correct the name and date of birth of the son of the opposite party no. 2 in



the passport which was obtained by him in the year 2005.

The facts are not in dispute. It is the case of the opposite party no. 2 that an application for grant of passport was submitted in the name of the son of the opposite party no. 2 on or about 19.09.2005. A copy of the application is Annexure-1 to the present application. A perusal thereof shows that the name mentioned in the application is Tanweer Hasan Tunna and the date of birth disclosed in the application is 25.08.1978. The applicant declared his educational qualification as having passed 8th Class, in proof thereof, he submitted an affidavit and a school leaving certificate. On the basis of the documents furnished by the son of the opposite party no. 2 whom he has described as minor and has claimed himself his legal guardian even at this stage, a passport came to be issued in the year 2005.

In the year 2013, the opposite party no. 2 filed an application in the court of learned Chief Judicial Magistrate which was registered as Miscellaneous Case No. 45(M) of 2013. The learned Chief Judicial Magistrate transferred the case to the



court of learned Judicial Magistrate, 1st Class, and learned Judicial Magistrate after taking statement of the opposite party no. 2 passed the impugned order on 03.05.2013.

It appears from the record that the opposite party no. 2 claimed in his application before the learned Chief Judicial Magistrate that his son had passed matriculation examination in the year 2003 in which the date of birth of his son is mentioned as 05.05.1988. It is further case of opposite party no. 2 is that the name of his son was wrongly written as Tanweer Hasan Tunna, and therefore, a correction should be carried out accepting the submission of opposite party no. 2 regarding the correct name at his date of birth. Surprisingly son of opposite party no. 2 in whose name passport stands has not filed the application and opposite party no. 2 still claims himself legal guardian of his son.

It is further a matter of record that before filing the application before the court of learned Chief Judicial Magistrate, Patna, the opposite party no. 2 or his son had not taken any step in the Passport Office for correction as prayed for in the Court.



Learned counsel for the petitioner has assailed the order impugned in the present application on the ground *inter alia*, that at the first instance, the petitioner did not implead the Union of India and the Regional Passport Officer as party, instead the State of Bihar was shown represented through the Regional Passport Officer, there was no notice to the Regional Passport Officer or to any other authority of the Passport Office and above all by the impugned order a 'Criminal Court' under Section 6(ii) Cr.P.C. has given a kind of declaration which is within the power of a civil court of competent jurisdiction in a duly constituted civil suit for such purpose.

The submission is that the impugned order has not only been passed in violation of principles of natural justice but has also been passed without jurisdiction, and, therefore, even if the order does not suffer from malice, in fact, it definitely suffers from malice in law.

On the other hand, learned counsel appearing on behalf of the opposite party no. 2 submits that the opposite party no. 2 was justified in filing the application for getting the relief as has been granted by



the impugned order. He further submits that the petitioner cannot maintain an application in his own name and then the forum chosen by the petitioner for assailing the impugned order is not an appropriate forum. Learned counsel, however, is unable to take a stand as to which court the petitioner should have approached for setting aside the impugned order.

In the opinion of this Court, the petitioner being the Regional Passport Officer, Patna having received the direction from the learned Judicial Magistrate, 1st Class, Patna, is definitely an aggrieved person by the impugned order, because, the same has been passed without hearing him. Further, in view of the submission of the petitioner that the order is wholly without jurisdiction, the jurisdiction of this court under Section 482 Cr.P.C. to set aside the said order cannot be questioned. A Regional Passport Officer is the head of the Passport Office at Patna and being Incharge of the affairs of the Office and an Officer of the Central Government being aggrieved by the impugned order has filed the present application, and this court finds the same in order.

Now coming to the impugned order passed



by the learned Judicial Magistrate, this Court finds that at the first instance, neither the Union of India nor the Regional Passport Officer at Patna were served before passing the impugned order. This kind of order passed by the learned Judicial Magistrate, 1st Class was not within his jurisdiction. A Judicial Magistrate is definitely a 'criminal court' and a 'criminal court' cannot give a kind of declaration which is in the jurisdiction of a civil court in a duly constituted civil suit. In effect what the learned Judicial Magistrate has done is that he has issued a kind of declaration that whatever the opposite party no. 2 has claimed is correct and the same should be carried on by the Passport Office at Patna. The Judicial Magistrate, 1st Class, Patna has gone beyond his jurisdiction and has erred in assuming a jurisdiction which is not vested in him. There is not even a whisper in the application filed before the learned Chief Judicial Magistrate, Patna as to how and under which provision of law the same could have been instituted before the learned Chief Judicial Magistrate, Patna for the reliefs prayed by the opposite party no. 2. Learned counsel for the opposite party no. 2 could not place any provision of law



showing conferment of a jurisdiction upon a criminal court to give a declaration as to correctness of name and date of birth.

The impugned order is, therefore, vitiated by error of law and is wholly without jurisdiction. Hence, the same is hereby set aside.

Before I part with this order, it would be just and proper to point out that the application for passport was submitted on or about 19.09.2005 declaring that the son of opposite party no. 2 was having an educational qualification of 8th Class and a positive document by way of school leaving certificate was enclosed in support of his date of birth mentioned in the application i.e. 25.08.1978. Now, the opposite party no. 2 claims that his son was a matriculate of the year 2003, meaning thereby that at least two years before submission of the application before the Passport Office he had passed the matriculation examination, this court has tried to find out from the records as to whether there is any unintentional error on the part of the opposite party no. 2 or his son which led to the present circumstance, but the records are nowhere leading to come to a conclusion. Learned



counsel for the opposite party no. 2 is also unable to explain the same.

In the circumstances, if an application for correction of name and date of birth is filed or has been filed by the passport holder, the Passport Office shall consider the same in accordance with norms and rules prescribed on this behalf and a thorough inquiry as to why the date of birth supported by the school leaving certificate was submitted in the year 2005, when the son of the opposite party no. 2 was a matriculate of the year 2003. The certificate produced also has to be examined by an appropriate authority and then a decision in accordance with law shall be taken by the concerned Passport Office.

This application, thus, stands allowed with the above observation.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	07.08.2017
Transmission Date	07.08.2017

