

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 140 OF 2016

Shri Ivan Francis Fernandes,
Son of Luis Antonio Fernandes,
Resident of H. No.37/1, Vaddem,
Socorro, Bardez, Goa.

.... Petitioner

V e r s u s

1. State of Goa,
Through Chief Secretary of Government
of Goa, having his Office at Secretariat,
Alto Porvorim, Bardez, Goa.

2. Chief Registrar of Birth and Deaths,
Government of Goa,
having their office at Pundalik Nagar,
at Pundalik Nagar, Alto Porvorm,
Bardez, Goa.

3. The Registrar of Births and Deaths,
Village Panchayat of Socorro, having
Their office at Socorro, Bardez,
Goa.

..... Respondents

Mr. Gajendra Usgaonkar, Advocate for the Petitioner.

Mr. Mahesh Amonkar, Addl. Government Advocate for
Respondent nos.1 To 3.

CORAM: C. V. BHADANG, J.
DATE: 05TH JANUARY, 2017.

ORAL JUDGMENT:

Rule, made returnable forthwith. Mr. Amonkar, the learned Additional Public Prosecutor waives service for respondents. Heard finally by consent of the parties.

2. The petitioner had filed an application before the Chief Registrar of Births and Deaths under section 15 of the Registration of Births and Deaths Act, 1969 (Act for short) for correction of his birth entry in the Register of Births and Deaths. According to the petitioner, the said entry was recorded in pursuance of the order of the Executive Magistrate on 7/7/1979 under section 13(3) of the said Act. It is contended that there are certain errors which have crept in the Birth Certificate issued pursuant to the said order.

3. The Chief Registrar of Births and Deaths, as per the communication dated 4/6/2016 informed the applicant that the application cannot be entertained unless there is an order of a Judicial Magistrate First Class, since it is a delayed registration. It appears that the petitioner also approached the learned Magistrate for a direction to the Registrar of Births and Deaths to correct the entry. The learned

Magistrate by an order dated 2/5/2015 found that under section 15 of the said Act r/w Rule 11(1) of the Registration of Births and Deaths Rules, 1999 (Rules, for short) the Judicial Magistrate First Class is not empowered to give a direction for correcting an entry. In that view of the matter the application came to be rejected.

4. The petitioner challenged the same before the learned Sessions Judge in Criminal Revision Application No.40/2015. The learned Sessions Judge by a judgment and order dated 13/5/2016 has dismissed the criminal revision application holding that the Magistrate does not have jurisdiction to direct the Registrar of Births and Deaths to carry out any correction and changes in the order regarding the birth of the applicant. Faced with this, the petitioner is before this Court.

5. On hearing the learned counsel for the parties, it appears that the relevant entry regarding birth of the petitioner was taken in pursuance of the order of the Executive Magistrate who was then the competent authority

as per the provisions of the Act. Once the entry having been taken, the claim of the petitioner would fall under section 15 of the Act i.e for correction of the entry. The application filed by the petitioner is also under section 15 of the Act. Shri Amonkar, the learned Public Prosecutor for the respondents states that the the respondent no.2 shall decide the application of the petitioner in accordance with law. In such circumstances, the following order is passed:

ORDER:

- (i) The petition is allowed.
- (ii) The impugned communication dated 4/6/2012 issued by the respondent no.2 is hereby quashed and set aside.
- (iii) The Respondent no.2 shall decide the application filed by the petitioner in accordance with law.
- (iv) Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/