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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.L.P. 427/2014 & CRL. M.A. 3040/2016

CBI ..... Petitioner

Through: Mr. Sanjeev Bhandari, Advocate Special PP, CBI

Versus

NWADINOBI RAPHEAL ..... Respondent

Through: Mr. Ambar Tewari and Mr. Aditya Madan, Advs.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **22.11.2017**

<u>CRL. M.A. No. 10375/2014 (condonation of delay)</u>

This application seeks condonation of delay of 1348 days in filing the petition. The reasons mentioned in the application *inter alia* are that the objection raised by the Registry on 03.08.2010 seeking clarification about the Classification/Nomenclature under which the application was filed, could inadvertently not be followed, hence the delay occurred. The Court would note that the petitioner has a chamber in the High Court premises. This Chamber would ordinarily be managed by a senior and competent persons who would be monitoring the progress of important cases being dealt with by the central investigating agency. It is therefore expected that the competent personnel would follow the status of each case diligently. It is in these circumstances that the condonation of delay of almost 3 years and 7 months is without merit. No justifiable reason has been assigned for the delay.

The learned counsel for the petitioner submits that since the petition raises an important question of law, therefore, it be heard on merits.

For the moment assuming that to be so, if one were to examine the petitioner's arguments on the supposed error in the impugned order, the following scenario unfolds:

<u>CRL.L.P. 427/2014</u>

This petition has impugned the order dated 19.05.2010 passed in CA No. 02/2009 by Additional Sessions Judge-II, Central District. The charges against the respondent were that respondent had been convicted under section 474 of IPC with rigorous imprisonment of five years and fine of Rs. 3,000/- in default to further undergo simple imprisonment for three months. The said order was set aside by the Additional Sessions Judge-II, Central District. The State has appealed against the acquittal on the ground that the respondent was found to be in possession of a forged passport and therefore, he was liable to be convicted. It is argued that considering the evidence of PW3, i.e., of the Under Secretary (Consulate), Ministry of External Affairs who had deposed that the recovered passport was forged and not being taken into consideration, it would stand to reason why the respondent possessed the said forged document except for misusing it. It is argued that the recovery of the document from the respondent was sufficient evidence that it was meant for misuse and therefore in view of section 474 IPC, the respondent would be liable for punishment.

In this regard impugned order has reasoned as under:-

> *"12. In appeal the grievance of the accused is three fold. One is that prosecution has failed to prove exclusive possession of the accused. The passports were recovered from the room and not from the personal search of the*

accused. There were other occupants in the room. The other two submissions are that ingredients of section 474 IPC include knowledge of the accused about the documents being forged and his intention to use the same fraudulently or dishonestly as genuine. It is not mere possession of a forged document, that can attract section 474 IPC.

13. I am unable to agree with the first contention that the possession of the accused was not exclusive. The Ld. Trial Court has rightly mentioned that after the other four Nigeriasn left the Hotel on 10.12.2001 the possession of the accused was exclusive.

14. Anyhow the Ld. Trial Court has not dealt with the remaining two ingredients of section 474 IPC. It is not the case of the prosecution that accused was author of forgery or that accused obtained the passport by giving false particulars in application. It was also not the case of the prosecution that accused had changed the photo of the passport or had affixed his own photo so as to infer that the accused intended to travel on that forged passport. Mere recovery of forged passport, (though prosecution has been able to prove factum of forgery regarding one passport only) does not mean that the accused intended to use that as genuine. The requirement of knowledge about document being forged and intention to use the same fraudulently as genuine is twin. Both the facts have to be proved simultaneously".

Section 474 of the IPC reads as under:

> "*474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.—1[Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven*

years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with 2[imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine".

The above mentioned offence comprises two essential elements: (i) the recovery of possession of the forged document from the accused and (ii) his intention to use the same fraudulently and dishonestly. The Court notes that the passport was not found on the person of the respondent. It was found in the hotel room which was hired on rent. The room had other occupants as well. There is no evidence to show that the respondent had knowledge of the existence of the passport and assuming he did, then also it is not proven that he had knowledge that it was forged. It is in these facts that the impugned order rightly concluded that possession of the passport was not exclusive to the accused. Logically, then the imputation of his intention to misuse the passport is unfounded. The two essential elements of section 474 of the IPC have not been satisfied.

In view of the above, the Court finds no reason to interfere with the impugned order. The petition is without merit, hence, alongwith Crl. M.A. 10374/2014, it is dismissed.

NAJMI WAZIRI, J

NOVEMBER 22, 2017
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