

**CRIMINAL REVISION APPLICATION NO. 475 OF 2018
WITH
CRIMINAL APPLICATION NO. 447 OF 2018
IN
CRIMINAL REVISION APPLICATION NO. 475 OF 2018**

Mrs.Naseem Banoo Abdul Salam Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. A. Majid H.Banderkar for the Applicant.

Mrs. Rutuja Ambekar, APP for the Respondent/State.

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CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 11 OCTOBER 2018

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, this Criminal Revision Application is heard finally and disposed of at the stage of admission, as the issue involved is short and the notes of evidence and other documents are produced by the counsel.
2. The applicant/accused was prosecuted for the offences punishable under Sections 465, 468, 471, 419 and 420 of the Indian Penal Code (the said Act) as well as under Section 3 p/u/s/ 12 (1) (b) of the

Passport Act by judgment and order dated 20th May, 2016 passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai in C.C. No. 122/PW/2009. The applicant/accused was held guilty for the offence punishable under Section 468 of the said Act and sentenced to suffer rigorous imprisonment for three years and fine of Rs. 15,000/-. The applicant/accused convicted for the offences punishable under Sections 465, 471, 419 and 420 of the said Act and sentenced to suffer rigorous imprisonment for one year and fine of Rs. 5000/- under each head separately. The applicant/accused also convicted for the offence punishable under Section 3 p/u/s 12 (1) (b) of the Passport Act and sentenced to suffer rigorous imprisonment for one year and fine of Rs. 5000/-. Thus, the total fine of Rs. 40,000/- was imposed on the applicant/accused.

3. It is informed that the entire fine amount has been deposited by the applicant/accused in the trial Court. Against the said judgment and order, the applicant/accused has preferred Criminal Appeal No.507 of 2016 before the Sessions Court, Greater Bombay. The learned Additional Sessions Judge, Gr. Bombay vide judgment and order dated 27th July, 2018 dismissed the appeal and confirmed conviction of the applicant/accused.

Hence, this Criminal Revision Application is filed.

4. It is the case of the prosecution that in the year 2003-04, the applicant/accused had got prepared a fake passport bearing No. E-4808003 through one passport agent by name Abdul Sattar Abdul Shaikh. She wanted to go Saudi Arabia to earn money and, therefore, she wanted passport to travel abroad. However, she was not having sufficient documents so she approached passport agent Mr. Abdul Sattar Abdul Shaikh, who advised her to use the fake passport, and he by using the documents and the name of his daughter Noorjahan Abdul Salam Shaikh prepared passport on which the photograph of the applicant/accused was affixed as Noorjahan, though the name of the applicant/accused is Naseem Banoo Abdul Salam Shaikh. The applicant/accused in fact travelled to Saudi Arabia and stayed there for two years and came back. Again, she travelled to Dubai and stayed there for 5 months. Thereafter, in the year 2009, Mrs. Maya More, PI, MRA Marg Police Station came across the complaint made by one Abdul Razzak Shaikh against the applicant/accused that the applicant/accused had prepared a fake passport bearing No. E-4808003 by using the documents of Smt. Noorjahan Shaikh. The

police officer Mrs.More conducted preliminary enquiry at Worli passport office and she found that there was substance in the complaint as the passport was prepared from file No. A-36584. Thereafter, the police collected the relevant information and registered the offence. The police officer Mrs.More herself filed First Information Report (FIR) to the police. Pursuant to which, the offence was registered at C.R. No. 85 of 2009. The police arrested the applicant/accused and recorded the statements of the witnesses connected to the offence and thereafter, seized the passport. The chargesheet was filed in the Court of Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai. The charge was framed and the evidence of six witnesses was tendered by the prosecution. After considering the evidence, the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai convicted the applicant/accused and in the appeal, she lost her case.

5. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent and she has not committed any offence. The trial Court as well as the Sessions Court have not appreciated any evidence properly and have not considered that she herself has not committed any offence of forgery. He has further submitted that the

applicant/accused is a woman. She wanted to earn money for her family and she went to Saudi Arabia. She was doing job of maid servant and earning money for her family. She again went to Dubai and stayed there for five months to earn money for her family. He has further submitted that the applicant/accused is not a hardcore criminal. She herself has not taken steps for preparation of fake passport.

6. The learned APP while opposing this application, has relied on the evidence of PW -1 Mrs. Maya More, PI and the evidence of all prosecution witnesses especially the evidence of PW-4 Noorjahan Shaikh. She has pointed out that Noorjahan Shaikh has specifically mentioned the role played by the applicant/accused. The applicant/accused had knowledge that she is preparing a fake passport and by using the fake passport, she travelled abroad. Hence, the offence was complete. She has further submitted that the applicant/accused is properly convicted for the offences of committing forgery and also for using forged documents. Making fake passport and using forged documents for the purpose of cheating, the punishment is given in the Passport Act. Thus, the punishments under the Passport Act are stand. She has further submitted

that the findings given by both the Courts are legal and proper.

7. Heard submissions. Perused the judgments and orders passed by both the Courts. I have gone through the evidence of all the prosecution witnesses especially the evidence of PW-4 Noorjahan Shaikh. There is no doubt that the applicant/accused has committed offence of making fake passport. The applicant/accused was aware that her passport is not genuine and she travelled abroad in the name of Noorjahan Shaikh. The applicant/accused allowed her photograph to be affixed on the passport when the passport was issued in the name of Noorjahan Shaikh. The applicant/accused used passport twice to travel abroad. The concurrent findings given by the learned Metropolitan Magistrate and the learned Sessions Judge are legal and correct. No interference is required in the judgments of conviction passed by both the Courts. The applicant/accused has committed offence of forgery and cheating and thus, she is held guilty for the offences punishable under Sections 465, 468, 471, 419 and 420 of the said Act as well as under Section 3 p/u/s 12 (1) (b) of the Passport Act. The question posed before this Court on sentence awarded under Section 468 of the said Act, which states that whoever commits forgery, intending

that the document shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. In this case, under the said Section, the maximum punishment is awarded three years and fine under each head separately.

8. The learned counsel for the applicant/accused has made a statement that the applicant/accused has deposited the entire fine amount, which comes to Rs. 40,000/-. He has prayed for leniency in substantive sentence.

9. The learned APP while opposing it, has submitted that considering the nature of the offences and as the applicant/accused was having knowledge when she used the fake document, the sentence awarded to the applicant/accused is necessary and adequate. She has further submitted that the sentence awarded to the applicant/accused is not to be reduced, otherwise it will lead precedent in other cases.

10. On due deliberation on this point, I find that there are certain mitigating circumstances which the trial Court so also the Sessions Court

ought to have taken into account, though maximum punishment under Section 468 of the said Act is upto 7 years. While considering mitigating circumstances, the Court has to consider each case on its facts. Mitigating circumstances in the present case are as follows:

- (i) The applicant/accused herself had not prepared the passport. She approached one passport agent Abdul Sattar Abdul Shaikh, who in fact should have been accused when the offence came on the surface in the year 2009. He expired in the year 2005. PW-4 Noorjahan Shaikh has deposed that her father was a passport agent and the applicant/accused approached him and paid his charges. It is pertinent to note that the deceased Abdul Sattar Abdul Shaikh had prepared passport by using the document under the name of his daughter Noorjahan Shaikh. Thus, it shows that the deceased Abdul Sattar Abdul Shaikh was very active in making fake passport. Generally, when a person appoints passport agent to get the work done because he is not in a position to do the work. The initiative is taken by the passport agent. It has come in the evidence that the applicant/accused had gone to Saudi Arabia and worked as a

maid servant. The applicant/accused is not educated and knowledgeable about the procedure of the passport office. The applicant/accused appears to be uneducated. Under such circumstances, the applicant/accused cannot be considered as a prime accused in this offence. It appears that the applicant/accused acted upon as per advise and guidance given by the passport agent i.e., the deceased Abdul Sattar Abdul Shaikh.

- (ii) The applicant/accused had gone abroad and she was taken a job of maid servant to earn livelihood. So, it appears that there are certain parenting and financial circumstances made her to go abroad to earn money for her family;
- (iii) The applicant/accused is a mother of four daughters. Out of which, two are married and two are yet to marry;
- (iv) The applicant/accused is not a hardcore criminal;
- (v) The applicant/accused is not having criminal antecedents;
- (vi) This offence is committed in the year 2003-04 i.e., 14 years back.

11. All these circumstances are mitigating circumstances and, therefore, the applicant/accused case is required to be considered on these backgrounds to reduce the sentence, which are as follows:

- (i) The sentence awarded for the offences punishable under Sections 465, 471, 419 and 420 of the said Act as well as under Section 3 p/u/s 12(1) (b) of the Passport Act by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai vide judgment and order dated 20th May, 2016 is hereby reduced to 15 days with fine;
- (ii) The sentence of three years awarded for the offence punishable under Section 468 of the said Act is hereby reduced to one month with fine as awarded by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai vide judgment and order dated 20th May, 2016. Thus, substantive sentence is reduced;
- (iii) However, the fine amount imposed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai is hereby maintained.
- (iv) Set off is granted.

12. Criminal Revision Application is allowed and is disposed of on the above terms.

13. Criminal Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)