

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.133 OF 2019
IN
CRIMINAL APPLICATION NO.828 OF 2016

Hussain Mohammed Shattaf @
Hussain Mehboob KhokhawalaApplicant
versus
Humaid Mohammed Shattaf and ors.Respondents

with
CRIMINAL APPLICATION NO.134 OF 2019
IN
CRIMINAL APPLICATION NO.827 OF 2016

Hussain Mohammed Shattaf @
Hussain Mehboob Khokhawala and anr.Applicants
versus
Humaid Mohammed Shattaf and ors.Respondents

Mr. Ashwin Shete along with Mr. Rehmat Lokhandwala and Mr. Prasad Sawant i/b. M/s. Jayakar and Partners, advocate for the applicants.
Ms. Rohin Salian, advocate for respondent No.1.
Mrs. P. H. Kantharia, advocate for respondent Nos. 3, 4 and 6.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 3rd JULY, 2019.

P. C. :

Heard learned counsel appearing for the respective parties.

2. The applicant – Hussain Mohammed Shattaf has filed these applications for grant of “No Objection” to him for renewal of passport in

relation to MECR No. 412 of 2016 registered with Worli Police Station and MECR No.8 of 2014 registered with Cuffe Parade Police Station at Mumbai as required by the passport authorities.

3. The applicant – Hussain Mohammed Shattaf is an Indian citizen and currently residing in Dubai, U.A.E. The applicant No.2 in criminal application No.134 of 2019 is the mother of Hussain Mohammed Shattaf. It is the case of the applicants that Mohammed Shattaf was earlier married to the mother of respondent No.1 and out of this wedlock, respondent No.1 was born. Mohammad Shattaf, thereafter, in the year 1978, got married to applicant No.2 – Farida Shattaf in criminal application No.134 of 2019 and out of this wedlock, the applicant – Hussain Mohammed Shattaf is born. Mohammed Shattaf expired in the year 2003, leaving behind properties in U.A.E. and India. After his death, dispute arose between the applicants and respondent No.1. The applicants claim that respondent No.1 is the step-brother of Hussain Mohammed Shattaf. The disputes regarding the heirship to the properties of deceased Mohammed Shattaf are pending in the Court at U.A.E..

4. Respondent No.1, thereafter filed 3 applications under Section 156 of the Code of the Criminal Procedure, 1860 (for short “the Cr.PC.”) against the applicants and obtained the orders under clause (3) thereof.

In pursuance of these order, following three MECRs are registered against the applicants :

Sr.No.	Police Station	C.R.No.	Sections
1	Cuffe Parade Police Station, Mumbai.	MECR No.08/2014	406, 420, 465,466,468,471, 474, 120(b) r/w. 34 of IPC.
2	Lonawala City Police Station	MECR No.13/2014	406, 420, 465,466, 467,468, 471 and 474 of IPC.
3	Worli Police Station	MECR No.412/2015	406,420,465, 466, 468, 471, 474 of IPC r/w Sec.12 of the Indian Passport Act, 1967.

The first MECR is filed against Hussain Mohammed Shattaf-applicant No.1 in both the applications and rest of the 2 MECRs are filed against both the applicants. So far as MECRs registered at Cuffe Parade and Worli Police Stations are concerned, the applicants filed 2 separate applications viz. criminal application Nos.828 and 827 of 2016 under Article 482 of the Cr.PC. for quashing the said MECRs. Both these applications were placed before the Division Bench of this Court (Coram : Abhay Oka and Smt.Anuja Prabhudessai, JJ.) on 24th January, 2017 and, this Court after hearing learned counsel appearing for the respective sides, observed that strong prima facie case is made out and, therefore, issued Rule. By way of ad-interim relief, though investigation was

allowed to be continued, it was directed that charge-sheet should not be filed against the applicants.

6. The passport issued to applicant No.1- Hussain Mohammed Shattaf was due to expire in the month of June, 2017. The applicant No.1- Hussain Mohammed Shattaf had gone to U.A.E. earlier and, therefore, he made an application dated 4th June, 2017 to the Indian Embassy at U.A.E. for renewal of his passport. The applicant – Hussain Mohammed Shattaf was told that minimum 5 working days from the date of submission of the application are required to process the renewal application for the passport. The applicant, thereafter, on 24th June, 2017 and 25th July, 2017 made correspondence with the Indian Embassy and enquired regarding the status of the renewal of his passport. The Indian Embassy, by its letter, dated 31st July, 2017, thereafter informed the applicant that the matter is referred to the Regional Passport Authorities of Mumbai for their clearance and comments in the matter since one individual has requested to impound/cancel the passport of the applicant – Hussain Mohammed Shattaf on the basis of number of allegations. Ultimately, Attachè Consular informed the applicant – Hussain Mohammed Shattaf, by letter dated 20th November, 2018 that the passport can be renewed only after furnishing requisite NOC/Permission of the Trial Court and tendering undertaking as per enclosed proforma.

7. The applicants, thereafter filed (O.O.C.J.) writ petition lodging No.4024 of 2018 in this Court for issuance of “No Objection”. This writ petition was disposed of by a Division Bench (Coram : B. P. Dharmadhikari and Smt. Revati Mohite Dere, JJ.) on 10th January, 2019, by observing that the department has only asked the applicant to get necessary clearance from the Court in which matter against him are pending for obtaining passport. The Division Bench granted liberty to the applicant to approach the Court, in which, the matters are pending for necessary clearance/no objection.

8. In pursuance of the above referred order, the applicants have now preferred the present criminal applications for grant of “No Objection”. The applications are opposed by Ms.Salian, learned counsel for respondent No.1 and Ms.Kantharia, learned counsel for respondent Nos. 3, 4 and 6. Ms. Salian pointed out that the applicant has to approach the Trial Court. However, she could not tell us, the Trial Courts in which the matters are pending. Ms. Kantharia also opposed the applications on the ground that earlier the applicant filed civil writ petition and the same was disposed off. She also submitted that the applicant has not made an application to the passport authority in India. Ms. Kantharia submitted that the applicant should not have made an application for renewal of passport to the Indian Embassy at Abu Dhabi, U.A.E..

9. Having considered the rival arguments, we are of the opinion that the applicant is entitled for grant of “No Objection” as claimed in the application.

The present two application are filed in respect of two pending cases viz. MECR No.8 of 2014 registered with Cuffe Parade Police Station and MECR No.412 of 2015 registered with Worli Police Station. So far as 3rd MECR pending in Lonavala City Police Station is concerned, a common statement is made across the Bar that investigation into the said MECR is completed and charge-sheet is filed in the Court of JMFC at Vadgaon. The learned counsel for the applicant fairly stated that in respect of this MECR, he has to approach the JMFC Court at Vadgaon.

So far as MECR Nos. 8 of 2014 and 412 of 2015 registered with Cuffe Parade and Worli Police Stations respectively are concerned, we find that the High Court though allowed the investigation to go on, it restrained the concerned police stations from filing charge-sheet and, therefore, charge-sheet is not filed. The applicants have filed applications for quashing the said MECRs as those cases are pending in this Court. We find that there is no other Court where the proceedings of the said MECRs are pending and, therefore, we find that the applicants have rightly approached this Court for grant of “No Objection”. The

objection of Ms. Salian, learned counsel for respondent No.1, in this regard, has no merit. The objection of Ms. Kantharia, learned counsel for respondent Nos.3, 4 and 6 is also without any substance, since it is not disputed that the applicant No.1- Hussain Mohammed Shattaf could have filed application for renewal of passport to the Indian Embassy in Abu Dhabi, U.A.E.. The application was filed well before the expiry date of the passport. The application was not decided one way or the other, on the ground of objection of respondent No.1, who according to the applicant is his step-brother. Ultimately the applicant was communicated that in view of the pendency of the criminal proceedings, his passport cannot renewed unless clearance certificate is granted by the Courts in which the proceedings are pendings. The applicant – Hussain Mohammed Shattaf made an application for renewal of passport at Indian Embassy in Abu Dhabi, U.A.E. since he was there and, there is no restriction on him that he should apply only to the Indian Passport Authorities.

10. Having seen the MECR Nos.8 of 2014 and 412 of 2015, we find that both arose out of heirship dispute. As stated above, we have already referred the order of the Division Bench of the High Court wherein it is observed that the applicants have made strong prima facie and, therefore, restrained the concerned police stations from filing charge-sheet. We find that due to non-renewal of the passport, the applicant – Hussain Mohammed Shattaf is stranded in U.A.E. and cannot travel to

India or any other place. In this regard, we note that it is the objection of respondent No.1 that the applicants have not attended the proceedings in India. In the absence of passport, the applicants cannot attend the proceedings in Indian Court and renewal of the passport would be in the interest of respondent No.1 also, inasmuch as once the passport of the applicant – Hussain Mohammed Shattaf is renewed, he will be able to attend the criminal proceedings in India.

11. In the above circumstances and having regard to the nature of the offence, we allow both the applications and grant “No Objection Certificate” to the applicant No.1- Hussain Mohammed Shattaf in relation to MECR Nos.8 of 2014 and 412 of 2015 pending investigation before the Cuffe Parade and Worli Police Stations respectively.

12. It is made clear that clearance certificate is granted as required by the passport authorities in Indian Embassy at Abu Dhabi, U.A.E..

13. In light of above, the criminal applications are disposed of.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]