

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-31265 of 2019

Date of Decision: 15.10.2019

Saurav Kalia

...Petitioner

versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Ramesh Sharma, Advocate
for the petitioner.

Amol Rattan Singh, J.

By this petition, the petitioner seeks quashing of FIR no.268 dated 02.09.2016, registered at Police Station Navi Baradari, District Jalandhar City, alleging therein the commission of an offence punishable under Section 12 (1) (b) of The Passports Act, 1967 (hereinafter to be referred to as the Act).

He also seeks quashing of the subsequent proceedings arising from the report submitted to the Magistrate under Section 173 of the Cr.P.C., on 24.07.2017, as also the order passed by the learned Judicial Magistrate Ist Class, Jalandhar, dated 26.02.2019 (copy Annexure P-5).

The allegation in the FIR (copy Annexure P-1), registered at the instance of respondent no.2 herein, is that the petitioners' passport, bearing no.3101293, had been got issued by concealing facts from the Regional Passport Authority, Chandigarh.

The complainant is the wife of the petitioner.

As per the complainant, her marriage was solemnized with the petitioner at Ludhiana on 28.11.2011, as per Hindu rites, after which they lived and cohabited together at Jalandhar, but with no child born of the said marriage.

The FIR further contains allegations of mis-treatment of the complainant at the hands of the petitioner and his family, in respect of which another FIR was lodged, alleging therein the commission of offences punishable under Sections 406/498-A of the IPC, with it also stated that the petitioner had earlier instituted a petition under Section 9 of the Hindu Marriage Act, 1955, allegedly giving therein the wrong address of the complainant, to try and obtain an *ex parte* decree against her, which petition was however subsequently withdrawn, and instead a petition under Section 13 of the said Act was instituted by him.

Further allegations have also been made in the 'present FIR', with regard to the ill-treatment meted out to respondent no.2 by the petitioner and his family.

2. As regards the main allegation in the FIR in question presently, it is stated that the petitioner had applied for a passport by furnishing false information and had been granted such passport on 07.09.2015, valid upto 06.09.2025, and had in fact visited foreign countries many a time on the strength of that passport, the concealment in his application form being that he had not disclosed that he was married to the complainant, and had deliberately not added her name in the application, thereby showing himself to be a bachelor.

Hence, as per respondent no.2, the provisions of the Passport Act, 1967 had been violated, and a criminal case therefore was required to be registered against the petitioner.

3. Upon the matter having been investigated by the police, a report under Section 173 of the Cr.P.C. came to be filed before the competent court, stating therein that as per written information received from the office of the

Regional Passport Office, Jalandhar, the passport presently held by the petitioner was issued from that office, “against his old passport no.F-7522329 dated 09.05.2006”.

The said report (copy Annexure P-2) further states that upon the matter having been investigated from all respects, it was found that the petitioner had actually concealed the factum of his marriage to the complainant, i.e. respondent no.2, at the time that he had sought renewal of his old passport and consequently, an offence punishable under Section 12 (1) (b) of the Act, was made out.

4. Upon the said report having been submitted, the learned Judicial Magistrate Ist Class, Jalandhar, vide her order dated 02.12.2017, first noticed the provision contained in Section 15 of the Act, to the effect that no prosecution shall be instituted against any person in respect of any offence punishable under the Act without the previous sanction of the Central Government or other authority as may be so authorised, with the contention of the counsel for the petitioner before that court being that no sanction having been obtained, cognizance under the said offence could not be taken.

However, as the learned Assistant Public Prosecutor appearing for the State before that court had also prayed for framing of charges under Section 177 and 420 of the IPC, as regards Section 177 it was held by the learned Magistrate that as the case had not been instituted on a complaint filed by the Passport Officer (i.e. the public servant concerned in terms of Section 177 of the IPC), cognizance could not be taken of that offence by the court, in view of the provisions of Section 195 of the Code of Criminal Procedure, 1973.

Similarly, no averment having been made with regard to any

deception by the petition as regards delivering any property of a valuable security, even a charge under Section 420 of the IPC was not made out.

However, as per the learned Magistrate, in view of the fact that the petitioner had concealed the factum of his marriage in his application form and had induced the Passport Officer to issue him a passport bearing the entry “single” (as regards his marital status), therefore an offence punishable under Section 417 of the IPC was made out, as it still amounted to cheating.

Consequently, holding that even though no sanction had been obtained as regards the cognizance of an offence punishable under Section 12 of the Act, since “the ingredients of Section 417” of the IPC were also made out, the petitioner was liable to be charged accordingly.

5. That order having been challenged by the petitioner before the learned Additional Sessions Judge, Jalandhar, that court, vide an order passed on 14.08.2018 (copy Annexure P4), eventually held that the Act being a special law, with Section 5 of the IPC specifically providing that provisions of the said Code were not to affect the provisions of any special or local law, the trial court could not have taken cognizance of the offence punishable under the Act.

Consequently, the order passed by the trial court on 02.12.2017 was set aside and the revision was disposed of by the learned Additional Sessions Judge, with a direction to the trial court to reconsider the matter and to pass an order afresh.

6. Thereafter, the impugned order dated 26.02.2019 (Annexure P5), came to be passed, which reads as follows:-

“Present: Ld. APP for the State.

Accused on bail with counsel.

Today the case was fixed for consideration on

charge. Application for adjournment of case as complainant has moved application for seeking permission from Govt. Authority in this case filed, which is allowed. On request, case stands adjourned to 29.03.2019 for consideration on charge.”

7. Before this court, the sole argument of Mr. Sharma, learned counsel for the petitioner, is to the effect that as has been already held by the learned Additional Sessions Judge, since no cognizance could be taken at all of the case without sanction of the competent Government/authority, the proceedings, starting with the registration of the FIR, and the investigation subsequently carried out, are also completely without jurisdiction, and therefore the FIR itself, alongwith the report submitted under Section 173 (2) of the Cr.P.C., needs to be quashed, with, obviously, the subsequent proceedings before the trial court thereby becoming *non-est*.

At that stage, in its order dated 24.07.2019, this court had referred to clause (b) of sub-section (3) of Section 10, of the Act, with learned counsel also having pointed to Section 15 thereof, which read as follows:-

Section 10:-

“Variation, impounding and revocation of passports and travel documents.

xxx xxx xxx

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

xxx xxx xxx

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf:

[Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.]”

xxx

xxx

xxx

“Section 15:-

Previous sanction of Central Government necessary.-No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf.”

8. The matter had been adjourned at that stage, for learned counsel to address arguments as to how the impugned order, Annexure P-5, suffers from any illegality, with him to also cite any judgment in his favour, in that context.

Eventually, with learned counsel not having referred to any judgment, the ratio of the judgment of the Supreme Court in **General Officer Commanding, Rashtriya Rifles v. Central Bureau of Investigation and another** (2012) 6 SCC 228 had been put to him, wherein it was held as follows:-

28. “Prosecution” means a criminal action before a court of law for the purpose of determining “guilt” or “innocence” of a person charged with a crime. “Civil suit” refers to a civil action instituted before a court of law for realisation of a right vested in a party by law.

xxxxx

xxxxx

xxxxx

44. There is a marked distinction in the stage of investigation and prosecution. The prosecution starts when the cognizance of offence is taken. It is also to be kept in mind that the cognizance is taken of the offence and not of the offender. The sanction of the appropriate authority is necessary to protect a public servant from unnecessary harassment or prosecution. Such a protection is necessary as an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer.

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63. In broad and literal sense “cognizance” means taking notice of an offence as required under Section 190 Cr.P.C. “Cognizance” indicates the point when the court first takes judicial notice of an offence. The court not only applies its mind to the contents of the complaint/police report, but also proceeds in the manner as indicated in the subsequent provisions of Chapter XIV CrPC. (Vide *R.R. Chari v. State of U.P. And State of W.B. v. Mohd. Khalid.*)”

(All emphasis applied in this judgment only)

9. Hence, learned counsel had been asked to address arguments as to how the FIR itself was not maintainable, because once prosecution has been held to be a criminal action before a court of law, and there being a marked distinction as regards the stage of investigation and prosecution, with prosecution specifically having been held to be starting when cognizance of an offence is taken in terms of Section 190 of the Cr.P.C., by a competent court, obviously, investigation itself could not be held to be without jurisdiction.

10. Thereafter, on the next date of hearing, Mr. Sharma had firstly submitted that the aforesaid judgment was strictly in the context of the Prevention of Corruption Act, 1988 and the Army Act, 1950, and therefore what has been held as regards the stage at which prosecution commences, cannot be held to be applicable to the provisions of the Passports Act, 1967; his contention therefore being that in the context of the Act, the police also cannot register an FIR, and definitely cannot submit a report under Section 173 of the Cr.P.C., without sanction from the competent Government/ authority.

11. Having considered the matter, it is first to be noticed that in the case of the *General Officer Commanding, Rashtriya Rifles* (supra), the essential question before their Lordships was in the context of the Armed Forces, J&K (Special Powers) Act, 1990, as also of course the Army Act, 1950

and the Code of Criminal Procedure (and not under the provisions of the Prevention of Corruption Act, as has been contended by learned counsel for the petitioner).

12. Be that as it may, after considering the entire law on the subject, as regards the issue presently in question, i.e. as to whether prosecution would be deemed to have begun at the stage of the registration of the FIR itself, or the stage of investigation or the stage of filing of a report under Section 173 of the Cr.P.C., as regards the question of what the term “prosecution” means, it was held by the Supreme Court as follows:-

“28. “Prosecution” means a criminal action before a court of law for the purpose of determining “guilt” or “innocence” of a person charged with a crime. “Civil suit” refers to a civil action instituted before a court of law for realisation of a right vested in a party by law.”

13. The Apex Court then went on to discuss the difference between judicial proceedings and legal proceedings, holding that legal proceedings are those that are regulated or prescribed by law, in which a judicial decision may be given.

Eventually, after going on to discuss the case law on the issue and specifically in the context of “sanction for prosecution”, it was held that the protection granted under Section 197 of the Code of Criminal Procedure (in respect of prosecution of Judges and public servants), was meant to protect public servants against the institution “of possibly vexatious criminal proceedings”.

14. Coming next to the difference between the stages of investigation and prosecution, it was held as follows:-

“44. There is a marked distinction in the stage of investigation and prosecution. The prosecution starts when the cognizance of offence is taken. It is also to be kept in mind that the cognizance is taken of the offence and not of the offender. The sanction of the appropriate authority is necessary to protect a public servant from unnecessary harassment or prosecution. Such a protection is necessary as an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer.”

(Emphasis applied in the present judgment only).

Very obviously, the context at that stage was only with regard to sanction for prosecution in respect of a public servant. However, the issue on sanction for prosecution, as also the stage of taking cognizance of offences is concerned, has been discussed by their Lordships in the context of various Acts, by citing judgments dealing with statutes including the UP Sales Tax Act, 1948, U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972, the Delhi Police Act, as also the Cr. P.C. (in the context of Sections 190 and 193 thereof).

15. In a nutshell, though the emphasis of the entire judgment in the case of *General Officer Commanding* (supra), is in the context of whether sanction had been appropriately obtained or not/or was required to be obtained or not, the stage of when prosecution starts, was a finding given by their Lordships *ejusdem generis*, thereby holding that the stage of investigation and stage of prosecution are clearly distinct from each other. [Reference paragraph 44 of that judgment (SCC citation) as has been reproduced hereinabove].

16. Though it has also been observed in that judgment that reference must be had to a specific statute, as regards the stage at which previous sanction of the competent authority (for taking cognizance of a matter), is to be

taken, however, in the present context, nothing in the Passports Act, 1967, is discerned, stipulating to the effect that prosecution would be deemed to start at the stage of either registration of the FIR itself, the stage of investigation, or at the stage of submitting a report under Section 173 of the Cr.P.C. to the competent court.

Section 15 of the Act simply postulates that “no prosecution shall be instituted against any person in respect of any offence under this Act, without the previous sanction of the Central Government” (or any other officer/authority authorized by it).

Thus, to repeat, with Section 15 stipulating as above and it having been held, in *General Officer Commandings'* case, that prosecution starts when cognizance of the offence is taken and that there is a difference between the stages of investigation and prosecution, very obviously the contention of learned counsel for the petitioner is misconceived.

17. Other than that, Sections 13 and 14 of the Act read as follows:-

“13. Power to arrest

(1) Any officer of customs empowered by a general or special order of the Central Government in this behalf and any [officer of police or emigration officer] not below the rank of a sub-inspector may arrest without warrant any person against whom a reasonable suspicion exists that he has committed any offence punishable under section 12 and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or to the officer in charge of the nearest police station and the provisions of [section 57 of the Code of Criminal Procedure, 1973 (2 of 1974)] shall, so far as may be, apply in the case of any such arrest.”

14. Power of search and seizure

- (1) Any officer of customs empowered by a general or special order of the Central Government in this behalf and any [officer of police or emigration officer] not below the rank of sub-inspector may search any place and seize any passport or travel document any offence punishable under Section 12.
- (2) The provisions of the [Code of Criminal Procedure, 1973 (2 of 1974)] relating to searches and seizures shall, so far as may be, apply to searches and seizures under this section.”

Hence, offences punishable under the Act are obviously cognizable offences, as a cognizable offence is defined in Section 2 (c) of the Code of Criminal Procedure, 1973, to be one in which a police officer can make an arrest without a warrant (in the context of either the 1st Schedule to the said Code, or under any law in force).

Consequently, with offences punishable under the Act being offences where a police officer/other authorised officer may arrest a person even without a warrant issued in that regard, naturally no sanction of the Government/authorised authority is required for initiating proceedings for such offence alleged to have been committed, but with cognizance of the offence to be taken by a court only after the Central Government/an 'authorised authority' has actually granted sanction for prosecution.

18. That being so, in the opinion of this court, what learned counsel for the petitioner has contended, that even an FIR cannot be registered and investigation too cannot be conducted by the investigating agency without seeking sanction of the Government, in terms of Section 15 of the Act, is an argument which cannot be accepted.

Certainly, the learned Judicial Magistrate could not have taken cognizance of any offence under the Act without the previous sanction of the

Central Government/competent authority authorised in that behalf, even in terms of the aforesaid provision, and therefore even though at the initial stage that court had erroneously held that because an offence punishable under Section 417 of the IPC also made out, no previous sanction was required, and that order was rightly set aside by the learned revisional court, however thereafter, on remand of the case, the impugned order having been passed simply to await the sanction of the Central Government/competent authority, on a request made by the prosecution, actual prosecution can naturally start before the trial court only upon such sanction for prosecution being obtained.

19. Consequently, I find no infirmity in the order impugned before this court, with the petition therefore dismissed.

Naturally, nothing stated hereinafore would be taken to be an observation made on the merits of the case for or against the petitioner, which would be subject matter of trial (if sanction for prosecution is granted by the competent authority), with the trial to thereafter proceed wholly on the basis of evidence led before the trial court.

October 15, 2019

dinesh

**(AMOL RATTAN SINGH)
JUDGE**

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes