

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 776 OF 2020

Noma M.C. Fernandes

Age:34 years; Occu:Private Service

R/at; Flat No.303, 3rd Floor, Royal Gem

Appt. Assusen Road, Moti, Daman

.. Petitioner

Versus

1. Union Territory of Diu-Daman

(Through Nani Daman Police Station)

2. Milind Rambhai Ingle

Age:53 years; Occ:Executive Engineer

R/at: House No.1102, Mahyavanshi Falia

Dunetha, Nani Daman

.. Respondents

Mr. Niranjan Mundargi a/w Mr. Abhishek Yende for the Petitioner.

Mr. Hiten Venegaonkar a/w Mr. Saurabh Kshirsagar for the
Respondents.

**CORAM : S.S.SHINDE &
M.S.KARNIK, JJ.**

**RESERVED ON : DECEMBER 1, 2020
PRONOUNCED ON : DECEMBER 21, 2020**

JUDGMENT : (PER M.S. KARNIK, J.)

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.

2. By this Petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the Petitioner prays for quashing and setting aside the chargesheet bearing No.82 of 2018 (RCC No.74 of 2018) arising out of FIR bearing C.R. No.06 of 2016 dated 11.01.2016 registered with Nani Daman Police Station for the offence punishable under Section 420 of the Indian Penal Code ('IPC' for short) and under Section 17 of the Citizenship Act lodged by the Respondent No.2.

3. The prosecution case is as under :-

A crime was reported at Nani Daman Police Station on 11.01.2015 by the Executive Engineer, Electricity Department, Daman informing the police that one government employee by name Nome M.C. Fernandes (Petitioner) was working as a Lower Division Clerk since 09.01.2012. After working as a public servant for more than three years, she tendered her resignation on 01.04.2015 with one month's notice for the reason that she has family problems and hence does not

wish to continue the government job. The aforesaid notice was actually submitted in the department on 01.05.2015 and therefore the department on 02.05.2015 called for a report of the employee. The report was submitted by the Superintendent of Police, Daman on 07.12.2015 in which it was stated that the lady employee is registered in the FRO Office at Daman as a Portuguese citizen and the information provided by her to the Office of FRO was that she is unemployed. She processed her passport application by stating that she is a citizen of Portugal and is a housewife and acquired a Portuguese passport on 22.06.2015. A complaint was therefore made that the Petitioner had provided false information for obtaining government service within the Union Territory at Daman and thus acquired government job by providing false information. Furthermore, she also cheated the Office of FRO by stating that she was unemployed and never acquired any government service. On the basis of this information an offence came to be registered under Section 420 of the IPC and Section 17 of the Citizenship Act.

4. Learned counsel for the Petitioner submitted that the Petitioner is a Portugal National and she is Overseas Citizen of India. He would further submit that the Petitioner resigned on 01.04.2015 and the same is in accordance with procedure stated

in her appointment letter dated 05.01.2012 and therefore it is clear that the Petitioner declared herself unemployed pursuant to the date of her resignation hence, the chargesheet suffers from non application of mind.

5. Learned counsel for the Petitioner would submit that there is no cogent material to substantiate the allegations of cheating. He invites our attention to Section 420 of the IPC to submit that there is no delivery of property so as to attract the ingredients of the said Section. Learned counsel therefore submitted that this is a fit case for quashing of the FIR.

6. Learned counsel on behalf of Respondent No.1 submitted that the Petitioner suppressed the fact that she is a Portuguese national while seeking employment. The Petitioner was not eligible for the employment and thus furnished false information to secure employment. Learned counsel would also submit that the Petitioner cheated the Office of FRO by stating that she was unemployed and never acquired any government service. In these circumstances, he would submit that the ingredients of the offence under Section 420 of the IPC and Section 17 of the Citizenship Act are clearly attracted and therefore the Petition deserves to be dismissed.

7. Heard learned counsel for the parties. It is pertinent to note that the FIR is dated 11.01.2016. Even the chargesheet has been filed. It is pointed out by learned counsel for the Respondents that the trial Court is unable to proceed with the matter as the Petitioner is not remaining present despite issuance of several Non Bailable Warrants. It is further pointed out that from the date of filing of chargesheet, on more than 20 occasions trial Court had issued Non Bailable Warrants against the Petitioner. According to learned counsel for Respondent No.1 the Police realised that the Petitioner fled from India to London. Due to this reason, the prosecution had no other choice but to issue Look Out Circulars against the Petitioner since 2016.

8. During the course of the enquiry the statement of one Mr. Nilay Thakkar working in the Office of FRO branch came to be recorded. He has stated that on 22.04.2015 the Petitioner approached the Office of the FRO and handed over one application for NOC enclosing her Portuguese passport and other original documents. In the said application she has clearly mentioned that she is not a government servant and she is a housewife. During the enquiry it was revealed that she is working in the Electricity Department and she has not declared the fact that she has acquired Portuguese passport and

Portuguese nationality and thus cheated the Government and the FRO Office.

9. In our opinion, it is not possible for us to accede to the prayer of the Petitioner to quash the FIR as the allegation against the Petitioner is that she has provided false information to the government agencies while acquiring government job and thereby cheated them. Further it is alleged that she cheated the office of FRO by stating that she was unemployed and never acquired any government service.

10. It is well settled that for this Court to exercise the extra-ordinary jurisdiction under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the Petitioner has to demonstrate that the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. It is only when the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the Petitioner that the FIR can be quashed.

11. In the facts of the present case, the allegations against the Petitioner and the evidence collected in support of the same discloses the commission of an offence under Section 420 of the IPC and Section 17 of the Citizenship Act and that the ingredients of the said section are attracted. The learned counsel for the Petitioner wants us to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR which is not permissible in the exercise of our extraordinary or inherent powers. The allegations made in the FIR, in our considered opinion, do clearly constitute a cognizable offence justifying the registration of a case and an investigation thereon and this case does not fall under any one of the categories of cases formulated in the decision of the Apex Court in the case of **State of Haryana and Others vs. Bhajan Lal and Others**¹ calling for the exercise of extraordinary or inherent power to quash the FIR itself.

12. The Writ Petition is therefore is devoid of merit and the same is accordingly dismissed.

13. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)

1 1992 Supp (1) SCC 335