

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2020

PRONOUNCED ON:08.10.2020

CORAM

THE HON'BLE Mr. JUSTICE P.N. PRAKASH

Crl.O.P.No.27954 of 2018
and Crl.M.P.No.16223 of 2018
and Crl.M.P.No.5282 of 2018

Aditya Andreas ... Petitioner/Accused

Vs.

1.State represented by

The Sub-Inspector of Police,
Central Crime Branch,
Fake Passport Team - VII,
Vepery, Chennai.

2.The Deputy Passport Officer,

Regional Passport Office,
Rayala Towers, No.23, IV Floor,
Old No.785, New No.158,
Annasalai, Chennai - 2.

... Respondents/Complainant

Criminal Original Petition filed under Section 482
Cr.P.C. to call for the records relating to the complaint in
Crime No.204 of 2018 on the file of the Sub-Inspector of
Police, Central Crime Branch, Fake Passport Team-VII, Vepery,
Chennai and quash the same.

For Petitioner : Mr.I.Subramaniam
Senior Counsel for
Mr.S.Giritharan and
Mr.Arun Anbumani

For R1 : Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

For Petitioner : Mr.I.Subramaniam
Senior Counsel for
Mr.S.Giritharan and
Mr.Arun Anbumani

For R2 : Mr.R.Sankaranarayanan
Additional Solicitor
General assisted by
Mr.R.Ramalingam
Central Government
Standing
Counsel

O R D E R

This case was taken up through video conferencing.

2. This criminal original petition has been filed seeking to call for the records relating to the complaint in Crime No.204 of 2018 on the file of the Sub-Inspector of Police, Central Crime Branch, Fake Passport Team - VII, Veperiy, Chennai and quash the same.

3. The moral of the story in this case is, "Facts are sometimes stranger than fiction".

4. The petitioner had an Indian passport, which expired on 01.05.2016. Since his mother was a Swiss citizen, he applied for a Swiss passport, which was issued to him on 13.07.2016. As he wanted to obtain an Overseas Citizen of India (OCI) card, he went to the Regional Passport Office at Chennai, in September 2016 and surrendered his Indian passport. He was asked to give an affidavit disclosing the circumstances under which he obtained the Swiss passport, for which, he gave an affidavit dated 10.10.2016 disclosing everything. Much to his chagrin, on the report dated 16.11.2016 of the Deputy Passport Officer, Chennai, he was called to the Office of the Commissioner of Police, Chennai, for an enquiry. He attended the enquiry.

5. On the complaint lodged by the Deputy Passport Officer, Chennai, the police registered a case in Crime No.204 of 2018 on 19.05.2018 for the offence under Section 12(1A) (a) of the Passports Act, 1967, on the allegation that, in column no.8(ii) of the passport application form that was given by him in the year 2006 for getting the Indian passport, he had declared that, "he has not possessed citizenship of any other country", whereas, at that time, he was a Swiss citizen. In short, the allegation against the petitioner is that, he had suppressed his Swiss citizenship, when he applied for the Indian passport in the year 2006, though his Swiss passport

had expired on 31.05.2005 and thereby, he has committed an offence under Section 12(1A)(a) of the Passports Act.

6. This quash petition has been filed by the petitioner for quashing the FIR that has been registered against him.

7. During the course of hearing of the case, this Court directed the petitioner to file an affidavit setting out the entire circumstances under which he obtained the Swiss citizenship, for which, he filed an affidavit dated 28.09.2020, which reads as under:

"1. That I am the deponent herein and I am filing the present Affidavit giving the following information, mostly based on the information provided to me by my parents and the rest based on my personal knowledge.

2. That I was born in Chennai, Tamil Nadu, India in 11.05.1985 and my birth was registered in the records of the Corporation of Chennai with the given name as Anil. I was adopted by Mr.Srinivasan Swaminathan and Mrs.Paola Swaminathan from Karna Prayag, Reception-cum-Adoption Center of the SOS Children's Villages of India - Chatnath Homes, Madras - 600 034 (then functioning at Child's Trust Hospital, Nungambakkam, Chennai) after necessary permission was obtained by the guardian, namely, the Administrative Officer of Karna Prayag on 26.01.1986 from the Hon'ble Principal City Civil Court, Madras in O.P.No.7 of 1986 vide order dated 23.01.1986. From the date of the said adoption, Mr.Srinivasan Swaminathan and Mrs.Paola Swaminathan became my parents. An adoption deed dated 10.03.1986 was thereafter registered as Document No.42 of 1986 in the office of the Sub-Registrar, Vallabnagar Taluka, Hyderabad, to the effect of grant of adoption, wherein my name was provided as Aditya.

3. That my father is a Citizen of India by birth and my mother Mrs.Paola Swaminathan is a Swiss National, presently holding a Swiss Passport bearing No.X2514836 which was issued to her at Bern, Switzerland on 15.04.2014. My parents got married on 14.04.1980 at Chennai and the same was registered as Marriage No.7 of 1980 in the office of the Sub-Registrar of Thyagarayanagar, Madras - 600 017.

4. That my father was working as a faculty member, State Bank staff college, Begumpet, Hyderabad, from the year 1983 to 1988 and was then residing at No. 6-3-1188 Begumpet Road, State Bank staff college Quarters, Hyderabad - 500 016. I was named Aditya Andreas and that my father obtained an

Indian Passport bearing No.X730263 for me firstly on 05.03.1986 from the Passport Office, Hyderabad, when I was less than 10 months old and the same was extended and valid till 04.03.1996.

5. That I studied LKG at Shaheen Nikethan School, Hyderabad in the year 1988-1989. My father got transferred from Hyderabad to SBI Capital Markets, Cuffepara, Bombay during 1988. My mother, being a Swiss National, a Swiss Passport bearing No.6616634 was obtained for me at Luzern, Switzerland on 31.05.1989 when I was only 4 years old which was valid till 16.06.1999. My parents used to take me to Switzerland and other countries by using my Indian passport from the year 1986.

6. That I studied UKG at Little Angels School, Lokhandwala Andheri West, Bombay during 1989-1990. We returned to Madras during 1990 and I underwent my schooling at The Krishnamurthy Foundation of India (KFI), Besant Nagar, Madras till my 6th Standard. Thereafter, I studied in Abacus Montessori School, Besant Nagar and Perungudi, Madras till my 10th Standard, which I completed in the year 2001. Subsequently, I studied my 11th and 12th Standard in Sishya, Adyar, Chennai. I completed my 12th standard in the year 2003. After my schooling, I joined PSG college of Arts and Science, Coimbatore to undergo my B.Sc., in Psychology in the year 2003 and completed the course in May, 2006.

7. That in the interregnum, my father renewed my Indian Passport and a Passport bearing No.A0912219 was issued for me at Madras on 03.04.1996 when I was only 10 years old and the same was valid till 02.04.2006. My Swiss Passport was also renewed by my mother and a Passport bearing No.9779175 was issued for me at Bombay on 15.03.2000 when I was only 14 years old and the same was valid till 31.05.2005.

8. That I attained majority in the year 2003 (date of birth is 11.05.1985) and I did not have the knowledge of the existing Swiss Passports obtained during my minority by my parents as I was always travelling to and from India to various countries by using my Indian Passport alone all along. I had

never travelled on the Swiss Passport right from the first issue till date.

9. That since the Indian Passport which was issued to me on 03.04.1996 expired on 02.04.2006, I applied for renewal of the Indian Passport during April 2006, when I was 21 years old, with no knowledge of the Swiss Passport obtained by my parents while I was a minor and which had got already expired on 31.05.2005. As such, I gave an undertaking required in the application for renewal / re-issue of passport as follows:

"I owe allegiance to the sovereignty, unity and integrity of India and have not voluntarily acquired the citizenship or travel document of another country. I have not surrendered or been deprived of citizenship of India. The information given by me is true and I am solely responsible for its accuracy. I am aware that it is an offence under the Passports Act 1967 to furnish any false information or to suppress any material information with a view to obtaining passport or any other travel document."

I declared so in view of the fact that I had neither voluntarily acquired citizenship nor had applied for travel document of another country till the year 2006 when I applied for Indian Passport and obtained the same after I attained majority.

10. That based on my application, my Indian Passport bearing No. F7476625 was issued on 02.05.2006 and the same was valid till 01.05.2016. Since I had no knowledge of and did not travel using the Swiss Passport till 2006, there can be no question of suppression of my nationality or possession of any foreign travel document, while I applied for Indian Passport in the year 2006.

11. That I pursued my M.Sc., in Clinical and Abnormal Psychology in Swansea, University of Wales, United Kingdom and completed my course in January, 2008. Subsequently, I returned to India at the end of 2008 and worked with Shine Kids and Cherry Tin at Chennai. I am currently working as Senior Program Manager - Product with Chrysalis (formerly EZ Vidya

Pvt. Ltd.) at No.66, Kamdar Nagar 2nd street, Nungambakkam, Chennai - 600 034.

12. That during June/July, 2016, when I decided to obtain a Swiss Passport as my mother is a Swiss National, I got to know of the earlier Swiss Passports obtained for me by my parents when I was a minor. Once I came to know of the same, I approached a Legal Counsel and I was advised to renew my earlier Swiss Passport since a valid foreign travel document is essential in order to apply for and obtain an Overseas Citizenship of India (OCI) card. I was also advised to surrender my Indian Passport to the Indian Passport Authorities.

13. That based on such advice, I got the Swiss Passport bearing No.X1094525 issued on 13.07.2016. After obtaining the Swiss Passport to apply for the OCI card, upon professional advice, I approached the Regional Passport Officer, Chennai during September, 2016 and surrendered the Indian Passport on the same day for obtaining surrender certificate and OCI. I was later asked to swear to an Affidavit dated 10.10.2016 disclosing the facts necessitating the obtaining of a Swiss Passport. Thus, it could be seen from the above that there was no question of any suppression by me.

14. That pursuant to a letter dated 16.11.2016 said to have been sent by the Deputy Passport Officer, Chennai to the Commissioner of Police, Chennai, I was called for an enquiry. I had given a statement explaining the entire facts, being a full disclosure to the Government authorities, and requested for rectification of the inadvertent mistakes. Despite the explanation, a complaint dated 03.01.2018 was lodged by the 2nd Respondent to the 1st Respondent and an FIR in Crime No.204 of 2018 for the alleged offence under section 12(1-A) (a) of the Passport Act, 1967 was registered against me."

8. On the request of this Court, Mr.R.Sankaranarayanan, learned Additional Solicitor General assisted by Mr.R.Ramalingam, learned Central Government Standing Counsel appeared before this Court by video conferencing. This Court also requested a Senior Officer of the Regional Passport Office, to appear by video conferencing and accordingly, Mr.S.Hemanadhan, Regional Passport Officer, Chennai, was present to assist this Court.

9. Heard Mr.I.Subramaniam, learned Senior Counsel representing Mr.Arun Anbumani and Mr.S.Giritharan, learned counsel on record for the petitioner, Mr.R.Sankaranarayanan, learned Additional Solicitor General representing Mr.R.Ramalingam, learned Central Government Standing Counsel for the second respondent/Regional Passport Officer and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the first respondent/State. The first respondent has filed a counter opposing the prayer of the petitioner.

10. This Court posed a question to Mr.R.Sankaranarayanan, learned Additional Solicitor General and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side), as to whether, are there materials to show that the factual averments (not his state of mind) in the affidavit filed by the petitioner are false, for which, they fairly stated in the negative. In fact, when the petitioner was called upon by the Regional Passport Officer, to swear to an affidavit, he had sworn to an affidavit dated 10.10.2016 and had submitted the same to the Passport Authorities, in which also, he had stated that when he applied for the Indian passport in the year 2006, he was not aware that his parents had taken a Swiss passport for him when he was a minor.

11. The submissions of the learned counsel for the petitioner can be summarized under the following bullet points:

- The petitioner was an orphan and a birth certificate showing his date of birth dated 11.05.1985 was issued by the Corporation of Chennai; the petitioner was named Anil; he grew up in an orphanage - Chatnath Homes in Chennai;
- Srinivasan Swaminathan, an Indian national, got married to Paola, a Swiss national, on 14.04.1980, in Chennai;
- That couple decided to adopt a child from an orphanage and therefore, they adopted the petitioner legally by order dated 23.01.1986 passed by the Principal Judge, City Civil Court, Chennai, in O.P.No.7 of 1986;
- They named him Aditya Andreas;
- The petitioner did his schooling in Hyderabad and Chennai and graduated from PSG College of Arts and Science, Coimbatore;
- The petitioner's father wanted him to be an Indian and so, he got an Indian passport bearing no.X730263 dated 15.03.1986, when the petitioner was less than ten months old;
- The petitioner's mother wanted him to be a Swiss national and so, she got a Swiss passport bearing

no.6616634 dated 31.05.1989 at Luzern in Switzerland, when the petitioner was four years old;

- Both parents were renewing the petitioner's passports as and when they expired;
- The petitioner has travelled to Switzerland several times only with his Indian passport and had never used his Swiss passport;
- Therefore, the petitioner was not aware that his mother had taken a Swiss passport for him;
- The Indian passport that was taken by his father when he was minor expired on 02.04.2006, by which time, the petitioner became a major, and so, he applied for an Indian passport in May 2006, when he was nineteen years old and he was issued with an Indian passport bearing no.F7476625 valid from 02.05.2006 to 01.05.2016.
- This can be illustrated better through the following chart:

Swiss Passport					Indian Passport				
S. No.	Date Issued	Petitioner's age	Passport No.	Valid till	S. No.	Date issued	Petitioner's age	Passport No.	Valid till
1	31.05.1989	4 years	6616634	16.06.1999	1	05.03.1986	Less than 10 months	X730263	04.03.1996
2	15.03.2000	14 years	9779175	31.05.2005	2	03.04.1996	10 years	A0912219	02.04.2006
3	13.07.2016	21 years	X1094525	12.07.2026	3	02.05.2006	19 years	F7476625	01.05.2016

12. It is the contention of the learned counsel for the petitioner that when the petitioner applied for an Indian passport in the year 2006, he was not aware that his mother had taken a Swiss passport for him, because, he had all along been travelling to Switzerland only with his Indian passport.

13. This Court questioned the respondents, as to whether, this assertion of the petitioner is true or false, for which, Mr.R.Sankaranarayanan, learned Additional Solicitor General and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) submitted that the petitioner had never used his Swiss passport and he had always been using his Indian passport to go abroad.

14. While that being so, why should this Court not believe the words of the petitioner that, he was not aware in the year 2006, when he was hardly nineteen years old, that his mother had taken a Swiss passport for him on 15.03.2000 bearing No.9779175 in Luzern, Switzerland, which also had expired on 31.05.2005. This Swiss passport was taken by his mother, when the petitioner was fourteen years old. When the petitioner applied for the Indian passport in May 2006, the Swiss passport had expired by then, i.e., on 31.05.2005.

15. According to the petitioner, only after the Indian passport expired on 01.05.2016, he obtained the Swiss passport on 13.07.2016, which was issued to him as his mother was a Swiss citizen; the petitioner did not want to sever his umbilical ties with India, since this is the land of his birth, and therefore, he went to the Regional Passport Office at Chennai, in September 2016, surrendered the expired Indian passport and requested the authorities to give him a surrender certificate for getting an OCI card; thereafter, when the passport authorities asked him to file an affidavit, he readily gave an affidavit setting out the details of the Swiss passports that was taken by his mother, when he was a minor. There also he did not suppress any fact. Thus, only from his statement, it came to the knowledge of the passport authorities that he also had a Swiss passport and consequently they informed that the declaration in column no.8(ii) of the passport application form that was submitted by him in the year 2006 was incorrect.

16. Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) submitted that this issue should be referred to the Central Government for determination under Section 9 of the Citizenship Act, 1955.

17. In the opinion of this Court, the issue at hand is not the citizenship of the petitioner, but, whether he had deliberately and knowingly given a false statement in column no.8(ii) of the passport application that, "he has not possessed citizenship of any other country". Under Section 9 of the Citizenship Act, the Central Government cannot determine the validity of the Swiss citizenship of the petitioner. Only when there is a dispute with regard to the Indian citizenship of a person, will Section 9 of the Citizenship Act apply.

18. This issue can be looked at from a different dimension. If the petitioner had gone to Switzerland with his Swiss passport and surrendered his expired Indian passport at the Indian Embassy in Switzerland for getting an OCI card, this prosecution would not have arisen at all. Only to deal with such situations, the Central Government had a scheme titled "Imposition of penalty for not surrendering Indian

passport". Under this scheme, a person who fails to surrender his Indian passport, can be levied a penalty ranging from Rs.10,000/- to Rs.50,000/ and he will not be visited with criminal prosecution. Mr.S.Hemanadhan, Regional Passport Officer, submitted that this scheme has been temporarily suspended by the Central Government since June 2020 for various reasons.

19. The Regional Passport Officer and the police cannot be blamed for the registration of the FIR, because, technically, giving wrong information in a passport application will attract Section 12(1A) of the Passports Act. When the petitioner, through his affidavit dated 10.10.2016 given to the passport authorities, honestly disclosed the fact of his mother having taken a Swiss passport for him when he was a minor, the passport authorities and the police were left with no other option but, to have an FIR registered against him. However, technicalities cannot put shackles in the hands of constitutional Courts which do have the power to come to the rescue of an honest person in a given case as the present one. It is legitimate for a policeman, given the training that has been imparted to him, to distrust and suspect everyone, but, Courts have to start of with the presumption that all persons are honest and innocent.

20. Yet another question was posed by this Court as to whether any other criminal case has been registered against the petitioner, for which the learned Government Advocate (Crl.Side) submitted that there is no record to show that the petitioner was involved in any offence.

21. Mr.R.Sankaranarayanan, learned Additional Solicitor General and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) submitted that if this Court quashes the FIR in this case, this will be cited as a precedent by others.

22. It is trite that stare decisis is unknown to criminal law and every criminal case has to be decided on its own facts (see Charan Singh and Others Vs. State of Punjab¹). As stated in the commencement of this order, this is a freak case and seldom will there be another orphan, who will have two passports, one taken by his father and the other by his mother, both of different nationalities. Therefore, by no stretch of imagination, can this order be cited as a precedent by anyone.

In the result, this criminal original petition is allowed and the FIR in Crime No.204 of 2018 on the file of the Sub-Inspector of Police, Central Crime Branch, Fake Passport Team-VII, Vepery, Chennai, is quashed. Connected Crl.M.Ps. are closed. The Chief Metropolitan Magistrate, Egmore, Chennai, is

1 (1975) 3 SCC 39

directed to return the petitioner's Swiss passport to him, which has been deposited by him on the directions of this Court.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

nsd

To

- 1.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Sub-Inspector of Police,
Central Crime Branch,
Fake Passport Team-VII,
Vepery, Chennai.
- 3.The Deputy Passport Officer,
Regional Passport Office,
Rayala Towers, No.23, IV Floor,
Old No.785, New No.158,
Annasalai, Chennai- 2.
- 4.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

+1cc to Mr.S.Giritharan, Advocate SR.33192
+1cc to Mr.R.Ramalingam, Advocate SR.33659

Cr1.O.P.No.27954 of 2018

BR (CO)

CB(11/11/2020)

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