

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 1563 of 2020

ORDER:

The present Criminal Petition is filed by the petitioner/accused under Section 482 of Cr.P.C., to set aside the order, dated 23.05.2019 passed in CrI.M.P.No.238 of 2019 in C.C.No.2716 of 2017 on the file of the XI-Additional Chief Metropolitan Magistrate, Secunderabad, which was confirmed by the II-Additional Metropolitan Sessions Judge, Hyderabad, vide its order, dated 29.11.2019 in CrI.R.P.No.92 of 2019 and consequently discharge the petitioner/accused from the proceedings in C.C.No.2716 of 2017 on the file of the XI-Additional Chief Metropolitan Magistrate, Secunderabad.

The facts in issue are that a charge sheet came to be filed against the petitioner/accused for the offences punishable under Section 420 of I.P.C. and Section 12 (1) (b) of the Passports Act, 1967, alleging therein that the petitioner/accused had cheated the Passport officials by submitting the false information as well as suppressing the material information and also obtained two passports on different names. During pendency of the Calendar Case, the petitioner/accused filed an application under Section 239 of Cr.P.C. to discharge him from the proceedings in C.C.No.2716 of 2017. By an order, dated

23.05.2019, the learned Magistrate, dismissed the said application. Aggrieved by the same, the petitioner/accused filed CrI.R.P.No.92 of 2019 before the II-Additional Metropolitan Sessions Judge, Hyderabad. By an order, dated 29.11.2019, the learned Sessions Judge, dismissed the said revision. Challenging the same, the present Criminal Petition is filed.

Heard learned Counsel for the petitioner/accused, learned Additional Public Prosecutor for the respondent-State and perused the record.

Learned Counsel for the petitioner/accused would submit that the learned Magistrate grossly erred in dismissing the application filed under Section 239 of Cr.P.C., without ascertaining the true facts of the case. He further submits that both the Courts below ought to have seen that the petitioner/accused had already approached the Chief Passport Officer and paid the penalty of Rs.5,000/- imposed vide order dated 23.04.2018 and compounded the offence and, therefore, continuation of the offence would amount to double jeopardy under Section 300 of Cr.P.C. It is also submitted that both the Courts below ought to have seen that there is no complaint from the passports authority to register a crime against the

petitioner/accused for the alleged offence and that there are no ingredients to attract the offence under Section 420 of I.P.C. and that the impounded passport was obtained at the instance of the agents and does not fall under the provisions of Passports Act. It is further submitted that both the Courts below ought to have seen that for registration of the crime under the provisions of Indian Passport Act, previous sanction of the Central Government is a pre-requisite and no such sanction was granted in the present case, therefore continuation of proceedings would be gross abuse of the process of law and the same is liable to be quashed. In support of his contention, he relied on the decision of Kerala High Court in *George Varghese v. State of Kerala*¹.

Learned Additional Public Prosecutor would submit that there is *prima facie* material against the petitioner/accused to frame charges under Section 12 (1) (b) of the Passports Act and Section 420 of I.P.C. and that there is no illegality or irregularity in the orders passed by the Courts below.

A perusal of the material on record would show that a crime was registered against the petitioner/accused for the offences punishable under Section 12 (1) (b) of the Passports

¹ CrI.M.C.No.3351 of 2013, dt. 16.12.2016

Act and Section 420 of I.P.C., alleging that the petitioner/accused had obtained two sets of passport with different personal particulars. Later, the petitioner made an application, dated 19.04.2017, to the Passport Officer, wherein he has stated that he had obtained passports with the help of travel agent, tendered apology for obtaining multiple passports and requested for restoration of passport facilities. By an order, dated 08.01.2018, the Passport Officer revoked his passports. Aggrieved by the same, the petitioner/accused preferred an appeal before the Chief Passport Officer. By an order, dated 04.04.2018, the Chief Passport Officer, allowed the appeal and directed the petitioner/accused to pay the penalty and on payment of penalty directed him submit fresh passport application with correct personal particulars supported by relevant documents, which the Passport Officer may process subject to usual checks, procedures and clear police verification report. Thereafter, the petitioner/accused has paid Rs.5,000/- penalty. It is the contention of the petitioner/accused that as the passport authority compounded the offence, continuation of proceedings in the above C.C. amounts to an abuse of process of law.

In *George Varghese v. State of Kerala (supra)*, Kerala

High Court held as under:

"7.It is borne out from the records that it was on 24.8.1993 that the petitioner had secured a passport from the Passport Office, Thiruvananthapuram. In the said passport, he had furnished his date of birth as 16.5.1976 and the father's name as George Kutty Kizhakkekara. He had travelled abroad using the earlier passport during the period 1996-2000. From 2000-2005 he was staying along with his Aunt at Mumbai. Since he had misplaced the passport, he had applied for a fresh passport by providing his school leaving certificate on 9.2.2001. In the said passport, the same details as furnished in the earlier passport were submitted. Using the said passport which was obtained from Mumbai, he had gone to Dubai and had returned back on 2005. While he was abroad, it appears that his passport was traced out and if the prosecution records are to be believed, the petitioner had surrendered the said passport before the passport officer, in the year 2010. It appears from Annexure-II that the Passport Officer taking note of the various aspects of the case decided to impose penalty under section 12(1)(b) of the Passports Act in terms of the circulars issued by the Ministry of External Affairs. The punishment provided for violating Section 12(1)(b) of the Passports Act is imprisonment for a term which may extend to two years or with fine which may extend to Rs.5,000/- or with both. The petitioner has been ordered to pay a fine of Rs.5000/- which has been remitted by the petitioner. It was thereafter that the crime was registered on the basis of re-verification. The final report has not been laid till date. The long and inordinate delay in laying the final report coupled with the fact that the offence was compounded by imposing penalty as is revealed from Annexures I and II persuades me to hold that the

continuance of proceeding is a clear abuse of process. In the aforesaid circumstances, I am of the considered view that fit case where this Court can exercise its extra ordinary powers under Section 482 of the code to quash the proceedings.”

In the instant case also the petitioner/accused has already remitted the penalty amount as ordered by the Chief Passport Officer. Apart from that as per Section 15 of the Passports Act, “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.” The respondent-State failed to produce any sanction order obtained under Section 15 of the Passports Act, which is pre-requisite before instituting prosecution against the petitioner/accused.

Having regard to the facts and circumstances of the case and in view of the law laid down by the Kerala High Court in *George Varghese v. State of Kerala (supra)* and no sanction has been obtained by the prosecution before initiating the proceedings against the petitioner/accused under the provisions of Passports Act, I am of the considered view that continuation of criminal proceedings against the

petitioner/accused would amount to abuse of the process of Court.

For the aforementioned reasons, the Criminal Petition is allowed by setting aside the order, dated 23.05.2019 passed in CrI.M.P.No.238 of 2019 on the file of the XI-Additional Chief Metropolitan Magistrate, Secunderabad, which was confirmed by the II-Additional Metropolitan Sessions Judge, Hyderabad, vide its order dated 29.11.2019 in CrI.R.P.No.92 of 2019 and the petitioner/accused has been discharged from the proceedings in C.C.No.2716 of 2017 on the file of the XI-Additional Chief Metropolitan Magistrate, Secunderabad.

As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand dismissed.

10.03.2020
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JUSTICE G.SRI DEVI