

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Cr1.O.P.No.19637 of 2021

Samsan.R

... Petitioner

Vs.

1.The State represented by
The Sub Inspector of Police,
Central Crime Branch - II, Chennai.

2.The Assistant Foreigners' Regional
Registration Officer (AFRRO),
Bureau of Immigration Impounding,
Chennai International Airport,
Chennai - 600 027.

... Respondents

Prayer: This Criminal Original Petition had been filed under Section 482 of Criminal Procedure Code to call for the records in Crime No.40 of 2018 on the file of the Sub-Inspector of Police, Central Crime Branch II, Chennai dated 21.03.2018 and to quash the same as groundless, erroneous in law & facts, and not maintainable.

For petitioner : Mr.V.Lakshai Sajin Kumar

For Respondents : Mr.L.Baskaran (for R.1)
Government Advocate (Cr1. Side)
Mr.B.Rabu Manohar (for R.2)

ORDER

This Criminal Original Petition had been filed to quash the proceedings in Crime No.40 of 2018 on the file of the first Respondent.

2. This Petition had been filed by the Petitioner/Samsan who was born in India. He admits that his parents are Sri Lankan refugees. It is his contention that though he had not suppressed any facts, a case was registered under the Passport Act against him. Therefore, he seeks to quash the First Information Report registered against him by the first Respondent.

3.The learned Counsel for the Petitioner submits that he

was born and brought up in India and he had produced his School and College Certificates issued by the Government of Tamil Nadu and Vels University. The learned Counsel for the Petitioner invited the attention of this Court to the typed set of papers where the learned Judicial Magistrate, Alandur had refused to remand the Petitioner as Accused in the case on the ground that offences alleged are not attracted as per the provisions of the Citizenship Amendment Act and as per the Constitution of India. Therefore, the learned Counsel for the Petitioner seeks to quash the First Information Report.

4. The learned Counsel for the Petitioner relied upon the order passed by the High Court of Kerala at Ernakulam in the case of Shymesh -vs- State of Kerala [Crl.M.C.No.971 of 2013 dated 01.07.2014], wherein the High Court of Kerala had held as follows:

"10. Learned Counsel for the petitioner relied on a decision rendered by the Federal Court in Basdeo Agarwalla vs. Emperor (A.I.R (32) 1945 Federal court 16). In that case, similar provision under the Drugs Control Order, 1943 was interpreted. It was held thus:

" In our view, the absence of sanction prior to the institution of the Prosecution cannot be regarded as a mere technical defect. The clause in question was obviously enacted for the purpose of protecting the citizen, and in order to give the Provincial Government in every case a proper opportunity of considering whether a Prosecution should in the circumstances of each particular case be instituted at all. Such a clause, even when it may appear that a technical offence has been committed, enables the Provincial Government, if in a particular case it so thinks fit, to forbid any Prosecution. The sanction is not intended to be and should not be an automatic formality and should not so be regarded either by police or officials. There may well be technical offences committed against the provisions of such an Order as that in question, in which the Provincial Government might have excellent reason for considering a Prosecution undesirable or inexpedient. But this decision must be made before a Prosecution is started. A sanction after a Prosecution has been started is a very different thing. The fact that a citizen is brought into Court and charged with an offence may very seriously affect his reputation and a subsequent refusal of sanction to a Prosecution cannot possibly undo the harm which may have been done by the initiation of the first stages of a Prosecution. Moreover in our judgment the official by whom or on whose advice a sanction is given or refused may well

take a different view if he considers the matter prior to any step being taken to that which he may take if he is asked to sanction a Prosecution which has in fact already been started."

5. The learned Government Advocate (Crl.Side) vehemently opposed the line of argument of the Petitioner stating that investigation is still pending. The submission of the learned Counsel for the Petitioner seeking to quash the First Information Report cannot be accepted on the ground of placing reliance on the rulings that the Respondent herein had not obtained prior sanction before prosecuting the case.

6. The learned Government Advocate (Crl.Side) further submits that obtaining sanction does not warrant at this stage since only after collecting sufficient materials, the first Respondent will file final report and the same will be taken cognizance by the learned Judicial Magistrate and at that time, the Prosecution has to obtain sanction from the competent authority viz., the Government of India and not at the stage of registering the First Information Report. Therefore, the learned Government Advocate (Crl.Side) submits that the petition cannot be entertained at this stage and it may be dismissed as not maintainable.

7. The learned Counsel for the second Respondent also present before the Court. He adapted and followed the arguments made by the learned Government Advocate (Crl.Side).

8. On perusal of the rulings cited by the learned Counsel for Petitioner, it does not help him at this stage. Only when the final report of the investigation is laid before the competent Court concerned, before proceeding the Trial, the Prosecution has to obtain necessary sanction. As rightly pointed out by the learned Government Advocate (Crl.Side), the question of sanction is not attracted at the stage of registering the First Information Report.

9. Therefore, the said submission of the learned Counsel for the Petitioner seeking to quash the First Information Report on the ground that prior sanction had not been obtained by the Prosecution will not hold good and hence, the same is rejected. The further submission that the learned Judicial Magistrate refused to remand the Petitioner as Accused on the ground that he was born in India and as per the provisions of the Constitution of India and as per the provisions of the Citizenship Amendment Act, he is a citizen of India by birth and be treated as a citizen of India, therefore, the First Information Report has to be quashed also cannot be accepted. Since the investigation is at primary stage, the facts which had

been placed by the learned Counsel for the Petitioner can be agitated before the Trial Court. If at all the Investigation Officer lays the final report and it is taken cognizance by the learned Judicial Magistrate at the relevant point of time, but not at this stage. For present, it is not a fit case for quashing the First Information Report. Hence, the Criminal Original Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Inspector of Police,
Central Crime Branch - II, Chennai.

2.The Assistant Foreigners' Regional
Registration Officer (AFRRO),
Bureau of Immigration Impounding,
Chennai International Airport,
Chennai - 600 027.

3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.B.Rabu Manohar, Advocate, S.R.No.35791

CrI.O.P.No.19637 of 2021

PMK(CO)
SB(12/07/2022)