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Crl.O.P.No.22626 of 2021
and Crl.M.P.No.12306 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2023

PRONOUNCED ON : 27.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.22626 of 2021
and Crl.M.P.No.12306 of 2021

Sanjay Mondal

...

Petitioner

versus

1.The State of Tamil Nadu,
Rep. by The Inspector of Police,
Central Crime Branch, FPP Team,
Vepery, Chennai - 600 007.
[Crime No.2 of 2020]

2.The Assistant Foreigners
Regional Registration Officer,
Bureau of Immigration,
Chennai International Airport,
Meenambakkam,
Chennai - 600 027.

...

Respondents

[R-2 impleaded as per order dated 18.07.2022 in Crl.M.P.No.9015 of 2022 in Crl.O.P.No.22626 of 2021]

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records and quash the final report filed against the petitioner in C.C.No.288 of 2021 pending on the file of the learned Judicial Magistrate No.I, Alandur.



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Crl.O.P.No.22626 of
and Crl.M.P.No.12306 of



For Petitioner : Mr.A.S.Balaji
for Mr.S.Senthil
For Respondent No.1 : Mr.A.Gopinath
Government Advocate (Crl. Side)
For Respondent No.2 : Mr.R.Subramanian
ACGSC

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.288 of 2021 on the file of the learned Judicial Magistrate No.I, Alandur and quash the same.

2. The case of the prosecution is that during the scrutiny of the passport at an Immigration Counter, it was found that the petitioner is a Bangladesh National and he obtained Indian Passport fraudulently; during the year 2007, he had entered into India through Hilli Border of Balurghat Border (North Dinajpur) and lived with his paternal uncle namely Laxman Chandra Mondol Goalpara, Raiganj in West Bengal; he arranged fake birth certificate, Pan Card, Voter Card and Ration Card for getting an Indian Passport with the help of his uncle; he obtained the Indian Passport bearing No.K1502392 issued by the Regional Passport Officer, Kolkata on 05.05.2022.



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2.1. The date of expiry of the Passport is 07.05.2022; the petitioner was arrested and produced before the learned Judicial Magistrate on 20.01.2020 and thereafter released from the prison and confined at the special camp for refugees at Trichy under Section 3(2)(e) of the Foreigners Act 1946; after completing the investigation, final report has been filed before the learned Judicial Magistrate No.I, Alandur for the offences punishable under Section 12(1)(A)(a) of the Passport Act, 1967.

3. The learned counsel for the petitioner submitted that the petitioner has not committed any offence; the respondent police failed to note that the petitioner belongs to the Hindu community migrated from Bangladesh and got settled down in India in the year 2007 at the age of 16 years. He further submitted that the petitioner acquired permanent residential identity and had also obtained Aadhar Card, Pan Card, Voter Card, Ration Card and valid Indian Passport.

3.1. The petitioner belongs to Minority Community; due to fear of religious persecution, he was compelled to come down to India and seek



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shelter; the Government of India had provided exception under Section 3-A of the Foreigners Order, 1948 and it has been inserted in GSR No.686(E) dated 07.09.2016. According to the said provision, *“persons belonging to minority communities in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December 2014, without valid documents including passport or other travel documents and have been exempted under Rule 4 from the provisions of Rule 3 of the Passport (Entry into India) Rules 1950.*

3.2. The respondent police had failed to take note that Section 6-B of the Citizenship Act, 1955 would state that from the date of commencement of the Citizenship (Amendment) Act 2019, any proceeding pending against a person under the Citizenship Act in respect of the illegal migrant or citizenship shall stand abated on conferment of citizenship to him.



3.3. The petitioner is a citizen of India and he did not commit any offence. The issuance of Indian Passport on 05.05.2012 by the Regional Passport Officer, Kolkata, would prove that the petitioner is innocent and he did not involve himself in any offence after he came to India. Hence, the proceedings in C.C.No.288 of 2021 should be quashed.

4. The Government Advocate (Crl. Side) appearing for the first respondent submitted that there are materials to show that the petitioner was residing at Bangladesh and he had his schooling at Barondi Primary School at Bangladesh. The petitioner submitted a fake transfer certificate for obtaining Passport and the Headmaster of the concerned school at West Bengal has stated that the petitioner did not study at West Bengal. The petitioner had entered India illegally in the year 2007; with the help of fake birth certificate, he was able to secure the Pan Card, Voter Card, Ration Card, Aadhar Card and the Passport; he also confessed that he is a Bangladesh national and obtained Indian Passport fraudulently; there are sufficient materials available on record to frame charges against the petitioner / accused for the offences under Section 12(1)(A)(a) of Passport



Act, 1967 and 14 of Foreigners Act, 1946 r/w Sections 420, 468, 471 of IPC.

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5. According to the prosecution, the date of birth of the petitioner is 08.05.1990. It is stated that the petitioner had studied upto 5th Standard at Barondi Primary School and the said place is in Bangladesh. The petitioner and his parents were Bangladesh Nationals. However the petitioner managed to come to India and he has been residing in India from the year 2007.

6. The learned Government Advocate (Crl. Side) has already accepted that the petitioner had entered into India in the year 2007. But the case of the prosecution is that the petitioner had entered India illegally and thereafter he managed to obtain Pan Card, Voter Card, Ration Card, Aadhar Card etc., by producing fake birth certificate and thereafter, he also managed to get the Indian Passport. So the prosecution did not deny the fact that the petitioner had come to India during the year 2007.

7. According to Section 2(1) proviso of the Citizenship Act, 1955 any Hindu who entered into India on or before 31st day of December, 2014 and who has been exempted by the Central Government under clause (c) of



sub-section (2) of Section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purpose of this Act.

8. According to Section 3-A of the Foreigners Order, 1948, persons belonging to minority communities in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December 2014, without valid documents including passport or other travel documents and have been exempted under Rule 4 from the provisions of Rule 3 of the Passport (Entry into India) Rules 1950. For the sake of convenience, the said provision is extracted as under:-

“3-A.Exemption of certain class of foreigners.-

(1) Persons belonging to minority communities in [Afghanistan, Bangladesh] and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious



persecution or fear of religious persecution and entered into India on or before the 31st December, 2014-

(a) without valid documents including passport or other travel documents and who have been exempted under rule 4 from the provisions of rule 3 of the Passport (Entry into India) Rules, 1950, made under section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920); or

(b) with valid documents including passport or other travel document and the validity of any of such documents has expired, are hereby granted exemption from the application of provisions of the Foreigners Act, 1946 and the orders made thereunder in respect of their stay in India without such documents or after the expiry of those documents, as the case may be, from the date of publication of this order in the Official Gazette.”

9. According to the above provision, any Hindu who belongs to Bangladesh seeking shelter in India due to religious persecution or fear of religious persecution, will be exempted from the Penal Provisions of the



Foreigners Order, 1948 and exemption to that effect is under Rule 4 of the Passport (Entry into India) Rules 1950. So according to the petitioner in the year 2007 due to fear of religious persecution, he sought shelter at his uncle's place and thereafter settled in India. Some of the documents that have been produced before the prosecution are the certificates given by the Revenue Officer of the petitioner's father's village. Those documents have been produced to show that the local people of the place were able to identify the petitioner as a person belonging to Bangladesh. The petitioner did not deny the fact that he migrate from Bangladesh. So it is possible for the persons to have known his family also and hence that cannot be the only reason to suspect the petitioner.

10. It is not the case of possessing of a fake passport. The claim of the prosecution is that the petitioner managed to get the Indian Passport because he produced a fake birth certificate and by obtaining some other Indian identity cards like Pan Card, Voter Card and Aadhar Card. One fact which cannot be denied by the prosecution is that the petitioner had entered India in the year 2007 itself. There is no dispute about the religion of the



petitioner that he is a Hindu. Even according to the petitioner, he has stated that he sought shelter at India due to fear of persecution as he belongs to minority religion at Bangladesh.

11. The passport was given by considering the fact that the petitioner had entered into India before 31st December 2014 and that he is entitled to get the advantage of staying at India in view of Section 3-A of the Foreigners Order, 1948.

12. In view of the same, the petitioner cannot be considered as a illegal migrant within the meaning of Section 2(1)(b) of Citizenship Act, 1955. The proviso to Section 2(1)(b)(2) would also exempt the persons belonging to Bangladesh if entered into India on or before 31st of December 2014 and who has been exempted by the Central Government. In view of clause (c) of sub-section (2) of Section 3 of the Passport (Entry into India) Act, 1920, the petitioner shall not be treated as an illegal migrant for the purposes of Citizenship Act. The said proviso reads as under:-

“2. Interpretation.-(1) In this Act, unless the context otherwise requires,-



(a) “a Government in India” means the Central Government or a State Government;

[(b) “illegal migrant” means a foreigner who has entered into India-

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;]

[Provided that any person belonging to Hindu, Sikh, Budhist, Jains, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of Section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920) or from the application of the provisions of the Foreigners Act, 1946 (31 of 1946) or any rule



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or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act.]

13. Rule 4(1)(ha) of the Passport (Entry into India) Rules, 1950 provides exemption as that of Section 3-A of Foreigners Order, 1948. For the sake of clarity, Rule 4(1) of the Passport (Entry into India) Rules, 1950 is extracted as below:-

“4(1).The following classes of persons shall be exempted from the provisions of Rule 3”

(a) Xxxxx

(b) Member of Naval, Military or Air Forces of India, entering India on duty and members of the family of any such person when accompanying such person to India on a Government transport

(c) Xxxxxxx

(d) Xxxxxx

(e) Xxxxxx

(f) Person domiciled in India entering India by land or by air over the Nepalese or Bhutanese frontier.



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(g) Nepalese and Bhutanese entering India by land or by air over the Nepalese or Bhutanese frontier.

(h) Bona fide Mohammedan pilgrims domiciled in India returning from Jeddah or Basra;

(ha) persons belonging to minority communities in (Afghanistan, Bangladesh and Pakistan), namely, Hindus, Siks, Buddhists, Jains, Parsis and Christians, who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December 2014.”

14. As per Rule 3 of the Passport (Entry into India) Act, 1950, no person proceeding from any place outside India shall enter or attempt to enter India by water, land or air, unless he is in possession of a valid passport. So the exemption from any action taken for entering into India without valid travel documents given to the persons like petitioner who belongs to Bangladesh for seeking shelter in India due to compelling reasons such as religious persecution or fear of religious persecution is apparent



under the Foreigners Act, 1946, Citizenship Act, 1955 and Passport Act, 1946.

15. The learned counsel for the petitioner submitted that as per Section 2(1) proviso to clause (b) of the Citizenship Act, 1955, the persons referred in the said provision can grant a certificate of registration or certificate of Naturalisation from the Central Government by fulfilling the provision of the Third Schedule. The Third Schedule provides certain qualifications under proviso to clause (d) of the Third Schedule and it would state that the persons belonging to Hindu minority in Bangladesh are eligible for Naturalisation, if the said person had an aggregate period of residence or service in Government in India for “*not less than five years*”. For a better clarity, the qualifications for Naturalisation of a person as provided under Third Schedule of the Citizenship Act, 1955 are extracted as under:-

*“ The qualifications for Naturalisation of a person [***] are—*

(a) that he is not a subject or citizen of any country where citizens of India are prevented by law or practice of that country from becoming



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subjects or citizens of that country by naturalisation;

(b) that, if he is a citizen of any country, [he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted];

(c) that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;

[Provided that if the Central Government is satisfied that special circumstances exist, it may, after recording the circumstances in writing, relax the period of twelve months upto a maximum of thirty days which may be in different breaks;]

(d) that during the [fourteen years] immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than [eleven years];



[Provided that for the person belongs to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as “not less than five years” in place of “not less than eleven years”];

(e) that he is of good character;

(f) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution; and

(g) that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India:

Provided that the Central Government may, if in the special circumstances of any particular case it thinks fit,-

(i) allow a continuous period of twelve months ending not more than six months before the date of the application to be reckoned, for the



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purposes of clause (c) above, as if it had immediately preceded that date;

(ii) allow periods of residence or service earlier than [fifteen years] before the date of the application to be reckoned in computing the aggregate mentioned in clause (d) above.”

16. In any case, the petitioner cannot be considered as an illegal migrant within the meaning of the above said statute. Further the petitioner has given with the Indian Passport, Pan Card, Voter Card, Aadhar Card for showing his permanent residence at India for several years from 2007. In fact, he has been possessing a valid Indian Passport on 05.05.2012, on which date he was intercepted.

17. The petitioner, who was a Hindu Minority of his country had migrated to India on fear of religious persecution and he was under compelling circumstances to seek shelter in India. Hence, he should not be treated as an illegal migrant. Further, he did not suppress the fact that he belongs to Bangladesh prior to his migration and so there cannot be any suppression of facts in obtaining Indian Passport by the petitioner. The



petitioner has not involved in any criminal offence and maintained good conduct prior and subsequent to the issuance of the passport.

18. In view of the above stated reasons, subjecting the petitioner to undergo the ordeal of trial can be of no consequence and it would only waste the time of the Court. Hence in order to serve the ends of justice, I feel this petition should be allowed and the proceedings should be set aside.

19. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.288 of 2021 pending on the file of the learned Judicial Magistrate No.I, Alandur is set aside. Consequently, connected Miscellaneous Petition is closed.

27.04.2023

Speaking order

Index : Yes

Neutral Citation : Yes

sri

To

1.The Judicial Magistrate No.I,
Alandur.

2.The Inspector of Police,
Government of Tamil Nadu,

18/20



CrI.O.P.No.22626 of
and CrI.M.P.No.12306 of



Central Crime Branch, FPP Team,
Vepery, Chennai - 600 007.

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3.The Public Prosecutor,
Madras High Court,
Chennai.



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Crl.O.P.No.22626 of 2021
and Crl.M.P.No.12306 of 2021



R.N.MANJULA, J.

sri

Pre-Delivery Order made in
Crl.O.P.No.22626 of 2021
and Crl.M.P.No.12306 of 2021

27.04.2023