

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24192-2022 (O&M)
Reserved on: 07.02.2023.
Pronounced on: 04.05.2023.

Festus Benson Onwuchuruba
... Petitioner(s)
Versus
UT Chandigarh
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. A.P. Kaushal, Advocate
for the petitioner(s).
Ms. Simsi Dhir Malhotra, APP. UT., Chandigarh.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
11	12.1.2019	Sector 39, Chandigarh	465, 467 IPC

Seeking quashing of FIR, captioned above, registered for forgery of the passport, and using the said forged passport as a genuine document by impersonating another person, the petitioner-accused has come up before this court under Section 482 of the Code of Criminal Procedure, 1973 (CrPC).

2. Petitioner's grudge is that initially, he was arrested by the Narcotic Control Bureau, Chandigarh (NCB) under Section 21 NDPS Act on 30.11.2007, and at that time, the factum of forged passport was very much in the knowledge of the concerned officers of NCB, but they did not take any action. After a much belated stage, i.e., after about 12 years, they lodged the present FIR and want to prosecute him for the abovesaid offence. The petitioner has stated that in the *Jamatalashi* form, only the number of the fabricated passport was mentioned and not the passport itself. Even the Ministry of External Affairs needed to verify the passport's authenticity. The petitioner further submitted that the petitioner was convicted under Section 21 NDPS Act vide order dated 28.1.2012 passed by Special Judge, Chandigarh, and was sentenced to undergo rigorous imprisonment for 15 years along with a fine. He challenged the said order in High Court, after which his sentence was reduced to 10 years, and now, his

sentence is over. However, intending to detain the petitioner further, the NCB has come up with the present FIR, saying that the passport was forged. It amounts to double jeopardy or *the* waiver and cannot be prosecuted in part for the offence, which was knowingly left in 2007. Instead of prosecuting themselves, they connived with UT Chandigarh to register the present FIR.

3. In the reply filed by the UT Chandigarh, the conviction and reduction of sentence to 10 years by the High Court remains undisputed. It is also undisputed that the sentence of the petitioner in the said case was over, and it was only when the deportation formalities of the petitioner were being completed, at that time, that the Government came to know about the forgery of the passport. It would be proper to refer to relevant paragraphs of the reply, which read as under: -

- "2. That the reduction warrant in view of judgement dated 16/08/2013 of the Hon'ble High Court, Chandigarh was received on 22/08/2013. The jail authority has further informed that the petitioner Festus Benson Onwuchuruba has completed his substantive sentence on 02/12/2017 and now serving sentence in lieu of fine since 03/12/2017. It was further informed that the petitioner is ready to pay the fine as and when his deportation formalities are completed. In this regard, a letter was received from the Consular, High Commission of Nigeria, New Delhi dated 17/07/2018, wherein it was informed to the office that the petitioner is Bonafide Nigerian citizen, and enclosed related document of his Nigerian nationality with the request to deport him to Nigeria.
3. That the matter was taken up with the Narcotics Control Bureau Chandigarh Zonal Unit Govt. of India, MHA, Sector 25(West), - Chandigarh, with request to send comments/report in this case and also confirm whether any passport other document of identity in respect of petitioner was taken into possession by the NCB at the time of his arrest in the above cited case. In response to the aforesaid said reference the NCB Authority, Chandigarh Zonal Unit, informed the office that the petitioner is not required in any other case of NCB, further mentioned that his passport bearing No 83691 was taken into possession during Jama talashi after his arrest and enclosed certified copy of aforesaid Burundi Passport No PO 83691 issued on 07/06/2005 which was valid till 06/06/2010 in the name of Onwuchuruba Festus Benson, Republic of Burundi Date of Birth 05/12/1975. Thereafter, the Zonal Director, Govt. of India, MHA, NCB (CZU), Sector-25(West) Chandigarh was again requested by the answering respondent to provide information in respect of the petitioner i.e. his Date Place of arrest in the above cited case as per the available records and also provide his Burundi Passport No.83691 of Mr. Festus Benson Onwuchuruba.
4. That in reply, the NCB authority mentioned DOB of the petitioner 05/12/1975 and resident of Makamba, nationality Republic of Burundi, Fathers Name Shri Benson, Home Country Address r/o 86, Robotson Avenue Distt Town Bujumbura Republic of Burundi, dated Place of Arrest near Round About of Grain Market, Sector 39 Chandigarh and also enclosed aforesaid Burundi Passport No.83691 in original. Accordingly, the matter was informed to Deputy Director (Imm.) Intelligence Bureau, Govt of India, MHA, New Delhi and Under Secretary Govt of India, MEA, CPV Division, Patiala House, New Delhi) on 24/09/2018 respectively with

request to verify/confirm the genuineness of the following documents in respect of petitioner.

- A) Burundi passport No. P083691 issued on 07/06/2005 in the name of petitioner, Festus Benson Onwuchuruba which was valid till 06/06/2010, from the Embassy of Burundi, New Delhi.
- B) Indian Visa No. G557816 (Type -S) issued on 23/01//2006 in the name of Festus Benson Onwuchuruba by the Mission at Blantyre valid till 22/01/2008.
- C) Immigration Stamp of CSI Airport, Mumbai Immigration dated 25/01/2006 made on Burundi Passport No.P083691 along with its Immigration record check.

After verification of genuineness of above document in question, the information received from the concerned authorities is as under:-

- A) The Embassy of Republic of Burundi, B 4/1,Vasant Vihar, New Delhi informed that the petitioner Festus Benson Onwuchuruba is not a Burundi citizen and the passport he is holding is fake Burundi passport. The Assistant Director (CFB), Intelligence Bureau, MHA, Govtof India, New Delhi vide letter No 4/CFB/2018(13)-X-7275 dated 06/10/2018, informed this office that according to their available arrival departure records from January 2006 onward arrival departure of the petitioner Festus Benson Onwuchuruba has not been traced on the given parameters. As per the report received from the Govtof India, MEA, CPV Division, New Delhi Indian Visa No G55816 dated 23/01/2006 was not issued to the present petitioner Festus Benson Onwuchuruba on Burundi Passport No. P083691.
- B) Petitioner Festus Benson Onwuchuruba was arrested in Cr. Case No. 10/2007 dated 30/11/2007 u/s 8,21, 27 () 29,30,60 of NDPS Act 1985 near roundabout of Grain Market, Sector - 39, Chandigarh by the NCB, Chandigarh Zonal Unit and during his Jama Talasi, Burundi Passport No PO-83691 issued on 07/06/2005 valid till 06/06/2010 in the name of Onwuchuruba Festus Benson, DOB 05/12/1975, was recovered from his possession by the NCB Authority, which was handed over to the answering respondent on 18/09/2018, and during verification, the same has been found fake. Further, as per the report received from the Bureau of Immigration, GOI, MHA,New Delhi there is no arrival /departure records of petitioner Festus Benson Onwuchuruba from January 2006 onwards on the given parameters. Moreover as per the report received from the Bureau of Immigration, GOI, MHA, New Delhi there is no arrival/ departure records of petitioner from January 2006 on the given parameters. Moreover, as per the report received from the Govt. of India MEA, CPV Division, New Delhi, the Indian Visa No G557816 (Type S) was not issued to petitioner Festus Benson Onwuchuruba on Burundi Passport No P083691 by the concerned Indian Mission.As per Information received from the Consular, High Commission of Nigeria, New Delhi on 11/12/2018, the NCB, CZU has requested this office to initiate legal action against petitioner.”

4. A perusal of abovesaid reply reveals that the petitioner’s passport was forged, but this fact was very much in the knowledge of the NCB in the year 2007 itself. Now, when the petitioner has undergone his complete sentence, on this ground alone, he is

being restrained from leaving for his country, i.e., even after four years. It means he has been away from his family since 2007. It will be a travesty of justice if case of prosecution is held in piece-meals instead of one go. On the face of it, it is malicious to cover up the deficiencies of the one wing of the Government by another wing. Nothing had stopped the NCB from lodging a separate FIR when the petitioner was initially arrested in 2007. They slept over the matter, and when the petitioner had undergone his sentence and was being deported, they realized their mistake and, to cover up their mistake, came up with lodging of fresh FIR, in which he has further been detained for another four years.

5. Once the factum of the passport being forged was well in the authorities' knowledge, they would be stopped from prosecuting him on the same ground to cover up the lacunas or the faults on their part, for which the petitioner could not have been spared even for a fraction. Bringing the guilty to justice is the spirit of the law, but causing injustice to such a person would be violative of such spirit. Thus, in the interest of justice, equity, and fair play, it would be a grave injustice to launch prosecution against the petitioner at such a belated stage, given the fact that the factum of passport of the petitioner being forged was well within the knowledge of the Central Government authorities way back when he was initially arrested in 2007. Such belated prosecution violates the fundamental human rights of the petitioner, who has been away from his family for the last 15 years.

6. Given above, in the peculiar facts and circumstances, it is a fit case where the continuation of fresh criminal proceedings shall amount to an abuse of the process of law, and the Court invokes its inherent jurisdiction under section 482 CrPC and quashes the FIR and all subsequent proceedings. Appropriate steps be taken to deport the petitioner to his native place in case he is not needed in any other case.

Petition allowed. All pending applications stand closed in tune with this judgment.

(ANOOP CHITKARA)
JUDGE

May 04, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No