

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 368 OF 2016**

Shezmin Imtiaz Momin
Age: 25 Years, Occupation: Dentist,
Residing at, Guruhimmat Building,
5th Floor, R No. 504, Dr. Mascarenhas Road,
Mazgaon, Mumbai 400 010

.. Applicant
(Original Accused)

Vs.

1. The State of Maharashtra
At the instance of Sr. Inspector
Worli Police Station, Mumbai
2. The Regional passport Officer,
Manish Commercial Centre, 216-A,
Dr. Annie Besant Road, Worli,
Mumbai, 400025
3. Chandrakant Pundalik Kadam,
Age: 61 years; Occupation: Service,
Residing at, A/1/1, Omishwari CHS,
Mahant Road Extension, Ville Parle (East),
Mumbai 400 057.

.. Respondents
(Respondent No.3
Org. Complainant)

Miss Mehta a/w Adv. Niranjan Mundargi i/by Adv. Omkar Mulekar for
Applicant.

Ms. Mahalakshmi Ganpathy APP for State.

CORAM : A. S. GADKARI AND

SHYAM C. CHANDAK, JJ.

RESERVED ON : 13th DECEMBER, 2023

PRONOUNCED ON : 9th JANUARY, 2024

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JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) The present Application is filed under Section 482 of the Criminal Procedure Code ('*Cr.PC.*', for short), seeking to quash the F.I.R. being C.R. No.357 of 2010, registered with Respondent No.1-Worli Police Station, Mumbai for the offences punishable under Sections 465, 467, 468, 471 and 420 of IPC and u/Section 12 (1) (b) of the Passport Act, 1967 against the Applicant.

2) Heard Miss Mehta, learned counsel for the Applicant and Ms.Ganpathy, learned APP for Respondents-State. Perused the record.

2.1) Record reveals that, Rule was issued and ad-interim Relief was granted on 22nd September, 2016. Learned Counsel for Respondent No.2 waived the service. Service of notice to Respondent No.3 is dispensed with. Respondent No.2 has opposed the Application by filing his Affidavit-in-Reply.

3) The facts giving rise to this Application are as under.

3.1) That on 31st December, 2010, Respondent No.3-Superintendent, Regional Passport Office, at Worli, lodged a report with Respondent No.1 police station that, the Applicant and 26 other accused persons prepared false documents and submitted those documents as true and correct, to obtain personal passport based thereon. Thus, the Applicant and said accused persons cheated the office of Respondent No.2. Therefore, the police

registered the impugned F.I.R. against the Applicant and others.

4) Learned Advocate for the Applicant submitted that, initially, the Applicant had applied for the Passport on 18th June, 2002, wherein, on her behalf, her date of birth was mentioned as 22nd April, 1991. Thereafter, the Passport bearing No.E2949211 was issued to the Applicant. The said Passport expired on 21st April, 2007. Hence, the Applicant submitted an Application for issuance of a fresh passport on 30th January, 2009. This Application was numbered as E003245. In this application the Applicant mentioned her date of birth as 22nd December, 1990. Thereafter, the Applicant received a letter dated 6th July, 2009 from the office of the Respondent No.2 calling upon her to explain the discrepancy in her date of birth as above. The Applicant replied that letter on 17th July, 2009, wherein she clarified that, she was a minor when she submitted the first Application for the Passport. The said Application was filed through an agent. In the said Application, her date of birth was wrongly mentioned as 22nd April, 1991 due to negligence on the part of the travel agent. Thus, there was a major laps on the part of the travel agent and oversight on the part of her parents, who are not very educated. The discrepancy is not intentional. Even though the first Passport was issued, it was never used by the Applicant. Therefore, she never noticed that, her date of birth in the initial Application and the first passport was incorrect or wrong. Thereafter, when the

Applicant become major, she submitted a fresh Application for the Passport by stating the correct date of birth. Learned Advocate therefore prayed that, the impugned F.I.R. may be quashed by allowing present Application.

5) Per contra, learned APP submitted that there is sufficient material on record that, the Applicant had submitted the false birth certificate containing her incorrect date of birth. Said Application was signed by the Applicant. As such there is *prima facie* case against the Applicant.

6) The respondents have not disputed that, the correct date of birth of the Applicant is 22nd December, 1990. Thus, the Applicant was a child below 12 years of age at the time of commission of the alleged offence *i.e.* on 18th June, 2002, when she submitted the first Application for the Passport through her parents.

7) As provided in Section 83 of the Indian Penal code, nothing is an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. The Respondents have not pointed out any material showing that, at the relevant time the Applicant had attained the sufficient maturity and there was necessary malice on her part to justify the maxim '*malitia supplet aetatem*' (malice makes up for want of age), therefore, her case is not falling under the above exception. Moreover, the Applicant has not used the first passport issued on

the basis of the alleged false birth certificate.

8) In view thereof, no *prima facie* case is made out against the Applicant of having committed the offences alleged in the impugned F.I.R. As such, continuation of said F.I.R. would amount to abuse of process of law. Hence, the said F.I.R. is liable to be quashed and it is accordingly quashed and set aside.

9) The Application is allowed in the above terms. Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)