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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2690/2019 & CRL.M.A. 10760/2019**

SYEDA AFSHAN RAHMAN

..... Petitioner

Through: Mr. Neeraj Deora, Adv.
along with petitioner in
person.

versus

STATE & ANR

..... Respondents

Through: Mr. Ajay Vikram Singh,
APP for the State along
with Adv. Pawan Kumar
Bajoria, Adv. Anjali
Rohtagi, Adv. Prawesh
Sharma & Adv. Kirti
Arora.
SI Rahul Kumar, PS New
Friends Colony.
Ms. Vijaya Singh & Mr.
Rahul Kr. Kanojia, Advs.
for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

27.05.2024

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1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973, *inter alia*, seeking quashing of FIR No. 347/2005 dated 08.04.2005, registered at Police Station New Friends Colony for offences under Sections 12 of the Passport Act, 1967, Section 17 of the Citizenship Act, 1955 and Section 420 of the Indian Penal Code, 1860 ('IPC').
2. The petitioner is also impugning summoning order dated 20.10.2011, passed by the learned Trial Court, in the present

CRL.M.C. 2690/2019

Page 1 of 10



case. The petitioner has also challenged order dated 25.04.2019, passed by the learned Trial Court, where the matter is listed for after charge evidence.

BRIEF FACTS

3. The FIR was registered pursuant to a complaint given by Respondent No.2, who alleged that the petitioner had travelled to India on an Indian Passport despite being a Canadian Citizen holding a Canadian Passport. It was also alleged that the petitioner had obtained the Overseas Citizenship of India ('OCI') Card by concealing the fact that she was a Pakistani national at the time of applying for the Overseas Citizenship. Respondent No.2 at the relevant time was married to the petitioner.

4. On 24.02.2007, Closure Report was filed in the present case as nothing was found during investigation to show that the petitioner had committed the offences under Section 12 of the Passport Act, 1967 and Section 17 of the Citizenship Act, 1955. The birth certificate of the petitioner was verified from the Patna Municipal Corporation and it was also found that Ministry of Home Affairs had legalised the petitioner's stay in the year 2005.

5. After the filing of the Closure Report, the Ministry of Home Affairs issued a Show Cause Notice to the petitioner on 25.01.2008.

6. Thereafter, Respondent No.2 filed a protest petition against the final Closure Report in the present FIR.

7. The learned Trial Court *vide* order dated 15.03.2014 framed charges against the petitioner for offences under Section 17 of the Citizenship Act, 1955 and Section 12 of the Passport Act, 1967.

8. Respondent No.2 preferred an application under Section



216 of the CrPC for framing an additional charge under Section 420 of the Indian Penal Code, 1860 ('IPC'). Thereafter, the learned Trial Court *vide* order dated 02.12.2016 observed that the learned predecessor of the Court had inadvertently left out Section 420 of IPC and noted that *prima facie* Section 420 of the IPC was also made out against the petitioner. An additional charge under Section 420 of the IPC was formally framed against the petitioner *vide* order dated 18.01.2017.

9. It is pointed out that the OCI registration of the petitioner was cancelled on 22.08.2008 and an order for deportation was issued against her. The petitioner was sent to Nirmal Chaya. Aggrieved by the same, the petitioner preferred Writ Petition before this Court pursuant to which she was released and granted an opportunity to prefer her representation before the Ministry of Home Affairs.

10. The petitioner preferred WP (C) No.12520/2009, *inter alia*, challenging the cancellation of her OCI registration. The said writ was dismissed by this Court with the finding that the petitioner was issued a separate Pakistani Passport on 15.11.1989 when she was twenty years old. The cancellation of her OCI registration was upheld on account of her making a false statement in her application for grant of OCI registration. Thereafter, the petitioner had preferred LPA No.678/2010 against the said order which was dismissed as withdrawn *vide* order dated 03.03.2011 as the issue had been mitigated since the petitioner was issued the Person of Indian Origin ('PIO') Card.

SUBMISSIONS

11. The learned counsel for the petitioner submits that the parties had been litigating in relation to matrimonial discord and
CRL.M.C. 2690/2019

Page 3 of 10



the parties have now settled their disputes and have entered into a Settlement Agreement dated 14.01.2021 with the intervention of Delhi High Court Mediation and Conciliation Centre.

12. He submits that the parties had agreed that they will withdraw all cases against each other and would also cooperate in quashing of the present FIR.

13. He further submits that even though the petitioner was holding a Canadian Passport at the time of travel but was entitled to also hold an Indian Passport which she was required to surrender.

14. He submits that the petitioner has since surrendered her Indian Passport. He relies upon a letter dated 18.05.2005, issued by the Ministry of External Affairs, which explicitly states that the petitioner has surrendered her Indian passport consequent to her acquiring Canadian citizenship and that she had entered India on her Indian Passport and would leave India on her Canadian Passport.

15. He submits that the petitioner was born in Patna, Bihar in the year 1968 as was verified by the Investigating officer in the Closure Report. He submits that the petitioner's father was sent on deputation to Bangladesh with his family, where he was killed on duty in the year 1971. He submits that the petitioner's mother with her children, including the petitioner, were thereafter taken to India via Karachi, Pakistan. He submits that the Indian citizenship of the petitioner was restored in the year 1990.

16. He submits that the petitioner was a minor when her name was endorsed in her mother's passport and the same was done merely to facilitate her travel back to India.

17. He submits that the Ministry of Home Affairs, on
CRL.M.C. 2690/2019

Page 4 of 10



08.11.2010, has already granted a PIO card to the petitioner which is valid till the year 2025. He submits that the petitioner thus holds a valid Canadian Passport and a valid status as a Person of Indian Origin.

18. The learned counsel for Respondent No. 2 submits that the parties have settled their disputes and Respondent No. 2 has no objection if the present FIR is quashed.

19. The learned Additional Public Prosecutor for the State, however, objects to quashing of the FIR on the ground of settlement.

ANALYSIS

20. Offence under Section 420 of the IPC is compoundable whereas offences under Section 12 of the Passport Act, 1967 and Section 17 of the Citizenship Act, 1955 are non-compoundable. The offences under Section 12 of the Passport Act, 1967 and Section 17 of the Citizenship Act, 1955 are not *in personam* that can be quashed on the ground that the complainant and the accused have settled the dispute.

21. It is well settled that the inherent power vested in the High Court under section 482 of the CrPC is wide in nature. While the said power ought to be exercised sparingly, the High Court can exercise the same to secure the ends of justice and to prevent an abuse of the process of any court.

22. The Hon'ble Supreme Court in the case of ***State of Haryana v. Bhajan Lal*** : 1992 Supp (1) SCC 335 expounded as to when the High Court should exercise the inherent powers under Section 482 of the CrPC. The relevant portion of the afore-mentioned judgment reads as under:

“102. In the backdrop of the interpretation of
CRL.M.C. 2690/2019

Page 5 of 10



the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is



maliciously instituted by an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(emphasis supplied)

23. Section 12 of the Passport Act, 1967 reads as under:

“12. Offences and penalties

(1) Whoever-

(a) contravenes the provisions of section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.”

24. The learned Trial Court has framed the charge against the petitioner under Section 12 of the Passport Act, 1967 as the petitioner had allegedly travelled to India on her Indian Passport while she also had a Canadian Passport.

25. The letter dated 18.05.2005, issued by the Ministry of External Affairs, clearly states that the petitioner had surrendered her Indian Passport consequent upon her acquiring Canadian Citizenship. It was noted that she had entered India on her Indian Passport and would leave on her Canadian Passport. The same has not been disputed.

26. It is relevant to note that Section 15 of the Passport Act, 1967 provides that no prosecution shall be instituted against any person in respect of any offence under the said Act without the



previous sanction of the Central Government or any such officer or authority as may be authorized by the Government by order in writing in this behalf.

27. In the present case, the charge was framed for the offence under the Passport Act, 1967 pursuant to the complaint filed by the then husband of the petitioner, that is, Respondent No.2. There is no mention of any valid sanction authorizing the prosecution in this behalf. In view of the same, the said charge cannot sustain against the petitioner.

28. Section 17 of the Citizenship Act, 1955 reads as under:

‘17. Offences.—Any person who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable with imprisonment for a term which may extend to ¹[five years], or with fine which may extend to fifty thousand rupees, or with both.’

29. Insofar as Section 17 of the Citizenship Act, 1955 and Section 420 of the IPC are concerned, the said offences have been levelled against the petitioner for allegedly concealing the fact that she was earlier a Pakistani citizen and made a false representation.

30. It is relevant to note that this Court *vide* order dated 02.07.2010, in WP (C) No.12520/2009, had noted that the petitioner had been issued a Pakistani Passport in the year 1989 when she was twenty-one years old and that she had voluntarily acquired Pakistani Citizenship. It was observed that the same was *de hors* the fact that while she was a minor, her name was endorsed on her mother’s passport. In the said proceedings, the petitioner had argued that she had acquired Pakistani passport



solely for the purpose of renunciation. It was also noted that the petitioner had renounced the passport after merely three months and her application for grant of Indian citizenship was pending at that time.

31. It is relevant to note that the petitioner had preferred LPA No.678/2010 against order dated 02.07.2010, which was withdrawn by her only because the issue had been mitigated by her having received the PIO Card.

32. It is argued that the error in the petitioner's application for OCI registration was a *bona fide* mistake where the petitioner did not disclose the fact of her having held a Pakistani passport in the past as she had only obtained the same for a short period for renunciation. It is not disputed that the petitioner now holds a valid PIO card. It is clear that the Government Authority itself has overlooked the error on part of the petitioner and granted her the PIO status.

33. It is also not denied that the petitioner was born in India in the year 1968 and is, therefore, admittedly, a Person of Indian Origin. There is merit in the argument that the petitioner, due to inadvertence and *bona fide*, did not disclose the fact that she was holding Pakistani passport for a short period of time. Section 17 of the Citizenship Act makes false representation, an offence, if the same has been done knowingly.

34. As noted above, the petitioner was admittedly a Person of Indian Origin for which the Government authorities have itself issued a PIO card. The petitioner was also issued an Indian passport which had not been cancelled for the alleged violations of the Passport Act but was surrendered since the petitioner had acquired the Canadian citizenship. Thus, the petitioner could not have knowingly given a false representation under the
CRL.M.C. 2690/2019

Page 9 of 10



Citizenship Act.

35. Considering the aforesaid facts and the fact that the proceedings were, in fact, initiated at the instance of the former husband of the petitioner who was at logger heads due to matrimonial discord and also the fact that the Government authorities have also overlooked the misrepresentation and have issued a PIO Card, I am of the opinion that no useful purpose would be served by keeping the proceedings alive as the parties have moved on in life and the petitioner is now settled in Canada and has acquired their citizenship.

36. In view of the above, FIR No. 347/2005 and all consequential proceedings arising therefrom are quashed.

37. It is made clear that this Court has not gone into the legality of the Settlement between the parties and the rights of the minor child will not be affected in any manner whatsoever by the present order.

38. The present petition is allowed in the aforesaid terms.

39. Pending application also stands disposed of.

AMIT MAHAJAN, J

MAY 27, 2024