

CRIMINAL REVISION

Present:

The Hon'ble Mr. Justice Syamal Kanti Chakrabarti

Judgment on 09.09.2010

C. R. R. 4057 of 2008

Malcolm War Macleod

Vs

State of West Bengal

POINTS:

QUASHING: Concealment of certain information contained in the passport- Continuation of proceeding without appropriate sanction of the Central Government _ Whether the proceeding is to be quashed- **The Passports Act, 1967 S.12,15**

FACTS:

An Indian national reported to N.S.C.B.I. Airport Immigration (Departure Side), Counter 6 manned by the defacto complainant, to obtain clearance to travel to Bangkok. Scrutiny of his passport revealed that page Nos. 31/32 of his Indian passport was missing. The passenger was, therefore, subjected to interrogation during which he admitted the he had torn off the page 31/32. His intention in doing so, as per the passenger, was to suppress the fact that on that page there were endorsements from the Canadian Embassy refusing him visa, and he was apprehensive that it will prevent him from travelling abroad. When corresponding pages 5/6 of the passport came loose, he admits to having used super glue to stick them back again. Charge sheet has been submitted against the petitioner under Section 420/468/471/120B of the IPC and Section 12 of The Passports Act, 1967 Section 420/468/471/120B of the IPC and Section 12 of The Passports Act, 1967.

HELD:

From the contents of the FIR it will appear that the allegation made therein relates to mutilation of the Government Passport granted to the accused petitioner. It is alleged therein that he has torn of pages 31/32 containing some adverse remark made by Canadian Embassy refusing Visa in his favour. This concealment of certain information contained in the passport is an offence which

comes under the purview of Section 12(1)(b) of the Passport Act, 1967 which provides that whoever 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 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. By tearing certain portion of the passport the accused wanted to suppress the material information regarding adverse remark made against him by the Government of Canada for refusal of Visa. If such conduct comes within the mischief of Section 12(1)(b) of the Passport Act, 1967 the same act cannot come within the mischief of Section 420/468/471 IPC. Moreover, if there is any special law to deal with any particular offence or conduct of the offender the general law will not apply in such case and the special law shall prevail. From both these points of view I hold that the FIR discloses only the alleged offence under Section 12(1)(b) of the Passport Act, 1967 and not any offence under Section 420/468/471 IPC though charge sheet has been submitted under all these provisions. Para 7

Neither in the FIR nor in the charge sheet there is any whisper that the investigation has been made with the previous sanction of the Central Government. It has already been pointed above that under 15 of the Passport Act no prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf. In the FIR the SI Mr. Joydeep Banerjee has not mentioned that he is authorised by the Central Government to lodge such complaint and in course of investigation no attempt has been made to obtain such sanction before filing of charge sheet. Considering this point of view I hold that initiation of the instant proceeding without previous sanction of the Central Government constitutes a breach of

Section 15 of the Passport Act, 1967 and from this point of view also the instant proceeding is not sustainable in law. Para 8

Cases cited:

1998 SCC (Cri) 1625 ; 1990 C Cr L R (Cal) 1; 2009 (1) Crimes 216 (SC); 2006 Cri L.J. 3972; 2002 C Cr L R (SC) 332 and (1996) 8 SCC 167

For the Petitioner : Mr. Debasis Roy,
Mr. T. K. Bhattacharjee,
Mr. Kunaljit Bhattacharjee.

For the State : Mr. Kasen Ali Ahmed.

Syamal Kanti Chakrabarti, J.:

The present revisional application has been filed praying for quashing the proceedings arising out of G. D. reference No. 996 dated 24.06.2010 of N.S.C.B.I. Air Port Police Station, District – 24 Parganas (North) under Section 420/468/471/120B of the IPC and Section 12 of The Passports Act, 1967.

2. Learned lawyer for the petitioner submits that the aforesaid case was initiated on the basis of a complaint dated 24.06.2008 lodged by Jaydeep Banerjee, S.I. (SCO) before the Inspector-in-Charge N.S.C.B.I. Airport Police Station, District 24 Parganas (North) contending inter alia, that,

“ On 24.06.2008 an Indian national by the name of Malcolm War Macleod (D.O.B. 10.09.1961), S/O: Allan Macleod, of 123/12, N Dam Lane, Laban East Khasi Hills, Meghalaya, Pin: 793 004 and also of Plot No. 9, Near Bethesda Kenches Trace, Shillong, reported to N.S.C.B.I. Airport

Immigration (Departure Side), Counter 6 manned by the defacto complainant, to obtain clearance to travel to Bangkok by flight No. TG-134.

Scrutiny of his passport revealed that page Nos. 31/32 of his Indian passport No. E2744760/Guwahati/24.09.2002 – 23.09.2012 was missing. The passenger was, therefore, subjected to interrogation during which he admitted the he had torn off the page 31/32. His intention in doing so, as per the passenger, was to suppress the fact that on that page there were endorsements from the Canadian Embassy refusing him visa, and he was apprehensive that it will prevent him from travelling abroad. When corresponding pages 5/6 of the passport came loose, he admits to having used super glue to stick them back again.”

On receipt of such complaint investigation was made and charge sheet has been submitted against the petitioner under the aforesaid provisions of the Act.

3. It is contended by the learned lawyer for the petitioner that without proper investigation and enquiry charge sheet has been submitted arbitrarily against the petitioner being charge sheet no. 33 dated 24.06.2008 which should be quashed.
4. Learned lawyer for the petitioner has relied upon a similar case dealt with by this Hon'ble Court in CRR 3495 of 2008 and the principles laid down in 1998 SCC (Cri) 1625 and 1990 C Cr L R (Cal) 1 in support of his contention. On the contrary learned lawyer for the State has opposed the move and claimed that once the Magistrate has taken cognizance the superior Court cannot substitute its own discretion to examine the case on merit whether or not the allegations made in the complaint, if proved, could ultimately end in conviction of the accused. He has further urged that inherent jurisdiction of the Court under Section 482

Cr.P.C. has to be exercised sparingly and carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself and it is the duty of the Court to see that such instrument is not handed over to an accused to short circuit the prosecution and bring about its sudden death. He has drawn my attention to the principles laid down in 2009 (1) Crimes 216 (SC); 2006 Cri L.J. 3972; 2002 C Cr L R (SC) 332 and (1996) 8 SCC 167 in support of his contention.

5. From the contents of the FIR it appears that on 24.06.2008 while the petitioner accused reported to N.S.C.B.I. Air Port Migration (Departure Side) Counter No. 6 to obtain clearance to travel to Bangkok by flight no. TG-314, the security personnel in course of scrutiny of his documents found page no. 31/32 of his Indian Passport missing. On interrogation it transpired to them that intentionally he has torn of the pages which contained endorsement from the Canadian Embassy refusing Visa and he was apprehensive that it will prevent him from travelling abroad.
6. For the purpose of proper adjudication of the matter the following provisions of Passport Act, 1967 are quoted below:

“Section 2(b) – “passport” means a passport issued or deemed to have been issued under this Act;

Section 2(d) – “travel document” means a travel document issued or deemed to have been issued under this Act.

Section 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.

Section 15 – Previous sanction of the Central Government necessary. – No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf.

Section 17 – Passports and travel documents to be property of Central Government. – A passport or travel document issued under this Act shall at all times remain the property of the Central Government. ”

7. I have perused the FIR, CD and considering the submissions made by learned lawyers for both parties. It appears that after investigation charge sheet has been submitted against the accused person under Section 420/468/471 IPC and under Section 12 of the Passport Act. From the contents of the FIR it will appear that the allegation made therein relates to mutilation of the Government Passport granted to the accused petitioner. It is alleged therein that he has torn off pages 31/32 containing some adverse remark made by Canadian Embassy refusing Visa in his favour. This concealment of certain information contained in the passport is an offence which comes under the purview of Section 12(1)(b) of the Passport Act, 1967 which provides that whoever 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 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. By tearing certain portion of the passport the accused wanted to suppress the material information regarding adverse remark made against him by the Government of Canada for refusal of Visa. If such conduct comes within the mischief of Section 12(1)(b) of the Passport Act, 1967 the same act cannot come within the mischief of Section 420/468/471 IPC. Moreover, if there is any special law to deal with any particular offence or conduct of the offender the general law will not apply in such case and the special law shall prevail. From both these points of view I hold that the FIR discloses only the alleged offence under Section 12(1)(b) of the Passport Act, 1967 and not any offence under Section 420/468/471 IPC though charge sheet has been submitted under all these provisions.

8. From the charge sheet it appears that the FIR was lodged on 24.06.2008 by SI Jaydeep Banerjee which was endorsed in favour of P. K. Sarkar for investigation by OC N.S.C.B.I. Airport PS being case no. 43108 dated 24.06.2008. During investigation IO has examined the complainant and other witnesses including the accused and recorded their statement under Section 161 Cr.P.C. then consulted with the IC N.S.C.B.I. Airport PS and according to his advice submitted charge sheet against the accused persons under Section 420/468/471 IPC as well as under Section 12 of the Passport Act, 1967. Neither in the FIR nor in the charge sheet there is any whisper that the investigation has been made with the previous sanction of the Central Government. It has already been pointed above that under 15 of the Passport Act no prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf. In the FIR the SI Mr. Joydeep Banerjee has not mentioned that he is authorised by the Central Government to lodge such complaint and in course of investigation no attempt has been made to obtain such sanction before filing of charge sheet. Considering this point of view I hold that initiation of the instant proceeding without previous sanction of the Central Government constitutes a breach of Section 15 of the Passport Act, 1967 and from this point of view also the instant proceeding is not sustainable in law.
9. Under the circumstances I hold that the argument advanced by the learned lawyer for the State is not tenable. Continuation of such proceeding which is void ab initio for want of appropriate sanction of the Central Government will be sheer abuse of the process of law. To prevent it the said proceeding arising out of N.S.C.B.I. Airport Police Station case no. 43 dated 24th June, 2008 being G. R. No. 1605/2008 now pending before the Chief Judicial

Magistrate, Barasat is quashed and the accused is discharged and released from his bail bond.

10. Urgent photostat certified copy of this order, if applied for, be supplied to all the parties, upon compliance of all necessary formalities.

(Syamal Kanti Chakrabarti, J.)