

(2012) 01 KL CK 0089

In the High Court Of Kerala

Case No : Criminal M.C. No. 2466 of 2005 (H)

Mohammed Hussain Thangal

APPELLANT

Vs

State of Kerala and Detective Inspector

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Passports Act, 1967 — Section 12(1), 3
Penal Code, 1860 (IPC) — Section 415, 419, 469, 471

Citation : (2012) 01 KL CK 0089

Hon'ble Judges : N.K. Balakrishnan, J

Bench : Single Bench

Advocate : T.M. Abdul Lathiff, for the Appellant; V.H. Jasmine, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Balakrishnan, J.—The petitioner seeks to quash the charge sheet filed against him in C.C.No:128/2005. That charge sheet was filed by the C.B.C.I.D., alleging offences under sections 419, 469 and 471 of I.P.C. and also u/s 12(1) of Passport Act, 1967.

2. The petitioner is admittedly a permanent resident of Androth of Lakshadweep Island. It is alleged that he intentionally and fraudulently cheated the passport authorities by deliberately furnishing incorrect address to make it appear that he was a resident of Attingal of Thiruvananthapuram District and by suppressing material facts and fraudulently furnishing such materials he obtained a passport and a Visa. He was attempting to board Flight No:A1 877 to Saudi Arabia on 30.01.2003. It was alleged that he impersonated as a resident of Attingal when actually he was a resident of Androth Island.

3. The learned counsel for the petitioner submits that the allegation mentioned in the charge sheet do not disclose any offence against the petitioner. This submission is stiffly resisted by the learned Public Prosecutor.

4. The address furnished by the petitioner to obtain a passport was "Mohammed Hussain Attakkoya Thangal, Thangal Manzil, Palace Road, Attingal, Thiruvananthapuram District". It is not disputed that the petitioner was not a resident of Thangal Manzil or of Attingal of Thiruvananthapuram District. At no point of time he had resided at Attingal. It is also not disputed that he is actually a resident of Androth of Lakshadweep Island. The petitioner wanted to contend that the particulars for obtaining the passport were not furnished by him. It is not disputed that by making use of passport containing false particulars, he had obtained a Visa and attempted to board a flight as mentioned above. The fact that his name and father's name furnished in the passport are the same or the photograph affixed on the passport was that of himself cannot come to his rescue because there is sufficient material to hold that he has suppressed material facts and suggested fraudulent or untrue particulars to obtain a passport cheating the passport authorities.

5. Section 12(1) of the Passport Act reads:

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.

6. The contention that he did not knowingly furnish any false information cannot be accepted at all. Similarly, the fact that he did not suppress the material information that he was a resident of Androth also cannot be accepted at this stage. The fact that such false information was given with a view to obtaining a passport also cannot be challenged. Therefore, there is no difficulty to hold that prima facie the allegations do disclose the commission of offence u/s 12(1) of Passport Act.

7. It is contended by the defence that section 419 is also not attracted. According to him the petitioner did not cheat or induce the passport authorities to believe that the information furnished are correct. From the contention raised by the accused and from the prosecution records it is evident that the petitioner was involved in a criminal case. It was stated that there were fights between to

factions of Muslim community in Androth and there was also police firing in the course of that fight in which some persons had died. In connection with that a case was registered. The petitioner was the 68th accused in that case. When he filed an application for obtaining passport that criminal case was pending. That was the very reason which prompted the petitioner to furnish false information that he was a resident of Attingal and not of Androth. Because, had he furnished the information that he was a resident of Androth, then Androth police would definitely report that he is the 68th accused in the criminal case mentioned above and, that criminal case was pending, in which case there was no possibility for the petitioner to obtain a passport.

8. Therefore, the petitioner cannot feign ignorance of those facts and contend that incorrect information was innocuously or innocently incorporated by the person who filled up the form and that he is not responsible for furnishing such particulars. It cannot be said that the petitioner was unaware of the address furnished in the passport issued to him. He was holding that passport for quite a long time. He did not submit any application to correct those particulars. These factors were highlighted by the prosecution to unfold the fallacy of the plea raised by the accused.

9. It is vehemently argued by the learned counsel for the petitioner that there is no element of forgery and as such the offence u/s 469 of IPC shown in the charge sheet cannot be sustained. If charge u/s 469 is unsustainable then he cannot be fastened with criminal liability u/s 471 of IPC. There is merit in that argument. However, since it has been found that there is sufficient materials to proceed against the accused for the offence u/s 12(1) of the Passport Act, it is not necessary for this Court to go into the question as to the sustainability or otherwise of the charges under sections 469 and 471 of IPC.

10. To attract the offence u/s 419 there should be cheating by personation. There should be evidence to prove that the petitioner had cheated any person or authority by personating himself to be another person. According to the prosecution the petitioner personated himself as a resident of Thangal Manzil, Palace Road, Attingal, who was a different person, and not a person of Androth. The fact that the name and father's name are the same, cannot come to the rescue of the accused to say that there was no impersonation.

11. A dishonest concealment of facts is a deception within the meaning of Section 415 of IPC. Therefore, the concealment of fact that he was a resident of Androth and that he was involved in a criminal case would also negate the plea raised by the defence. Cheating by personation is committed where the individual personated is a real or imaginary person. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. Therefore, the accused who is a permanent resident of Androth, by pretending to be a person residing at Thangal Manzil, Palace Road, Attingal, wanted to substitute

that person as a resident of Attingal. And so, according to the prosecution, the offence of cheating by personation is also well sustainable.

12. Whether such wrong information was furnished fraudulently or dishonestly is a matter to be considered at the time of trial. According to the prosecution, had the petitioner not furnished such wrong information/wrong particulars, the passport authorities would not have issued the passport especially because the petitioner was involved in a criminal case. The contention that there is no evidence of damage or harm done to the passport authorities is also untenable because the passport authorities can issue passport only if the applicant satisfies his entitlement to obtain a passport. When the applicant obtains a passport by fraudulent or dishonest means, it cannot be said that there was no element of cheating. Therefore, the contention that the offence u/s 419 is not at all attracted, must also fall to the ground.

13. However, the petitioner can raise all such contentions before the trial Court. The decisions in Mathew v. George 1989 (1) KLT 470, Abdul Nazar Vs. State of Kerala and Ms. Suhara, and Rarichan and Others v. State of Kerala 2005 KHC 2078 are not applicable to the facts of the present case. In the light of what is stated above, this Criminal M.C. is liable to be dismissed. Hence, it is dismissed.