

(2016) 03 KL CK 0123
In the High Court Of Kerala
Case No : Crl. M.C. No. 4252 of 2015

N. Venkata Ram Babu

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 188
Passports Act, 1967 — Section 12, Section 12(1)(a), Section 3
Penal Code, 1860 (IPC) — Section 406, Section 420, Section 468

Citation : (2016) 03 KL CK 0123

Hon'ble Judges : B. Kemal Pasha, J.

Bench : Single Bench

Advocate : P. Chandrasekhar, Thomas M. Jacob, Akhil K. Madhav and T.R. Jerry Sebastian, for the Appellant; C. Rasheed, Senior Public Prosecutor, for the Respondent

Final Decision : Disposed off

Judgement

B. Kemal Pasha, J.—1. Petitioner is the accused in Crime No. 278/2015 of Thampanoor Police Station registered for the offences under Sections 406, 420 and 468 IPC and Section 12 of the Passports Act, 1967. The crime was registered on the basis of a complaint preferred by the de facto complainant before the Home Minister of the State of Kerala, alleging that the petitioner had induced him to supply diesel from his concerns, namely, Sun City Diesel & Fuel Trading and Super Diesel, in Dubai, on agreeing to pay its purchase price. The transactions started in the year 2009. Such business relationship existed till 2014.

2. Initially, payments were being made as per the mutual agreement. It is alleged that subsequently, the petitioner defaulted payments and the payments became in arrears. It is alleged that altogether an amount of Rs. 22,10,00,000/- is due to the de facto complainant from the petitioner. Even after repeated requests and demands, the petitioner allegedly evaded payment by representing that he had properties in India as well as in foreign countries and he could make

the payment at any time. Even then, no payments were made. When the de facto complainant was about to take coercive steps against the petitioner, the petitioner allegedly surrendered his original Indian passport No. K8339904 valid up to 30.09.2022 to the sponsor of the de facto complainant as security for making the payment.

3. On getting the original passport of the petitioner, which is valid up to 30.09.2022, the de facto complainant believed that he would get the payment. Thereafter, the de facto complainant came to know that the petitioner had escaped from Dubai. The de facto complainant, who did not get the payment, came to India and filed the present complaint before the Home Minister of the State, which was ultimately forwarded to the Thampanoor Police Station, Thiruvananthapuram City.

4. According to the learned counsel for the petitioner, the commercial offences alleged against the petitioner are not legally sustainable and the Thampanoor police has no jurisdiction to investigate that matter. It is also pointed out that the violation of the provisions of the Passports Act, 1967 in this case is also not a matter that can be investigated by the Thampanoor police.

5. On going through the matter, it seems that there are no sufficient ingredients to invite the offences under Sections 420 and 468 IPC, at present. The present stage is too premature to conclude that an offence under Section 406 IPC cannot be invited.

6. Regarding the violation of the provisions of the Passports Act, 1967, the learned Central Government Counsel has produced the copy of a letter issued by the Inspector of Police, II Town L & O Police Station, East Godavari District, Kakinada, to the Passport Officer, Visakhapatnam. By the said letter, the said Inspector of Police has requested to verify the records of the passport office to ascertain whether the passport of the petitioner was detained or seized by any one of the Ambassadors of the other countries. The said request was based on a petition allegedly preferred by the petitioner before the Superintendent of Police, East Godavari District, Kakinada.

7. Learned counsel for the petitioner has produced a copy of the petition preferred by the petitioner on 31.10.2015 before the Superintendent of Police, East Godavari District, Kakinada, by stating that his passports bearing Nos. Z1725870 as well as K8339904 valid up to 30.09.2022 issued from Visakhapatnam were found missing during his business trips from Hyderabad to Kakinada on 09.02.2015. As the pages in those passports had expired, another passport booklet was issued to the petitioner, which bears No. Z2959951. When a passport booklet expires due to entries, the Passport Officer will issue a fresh passport booklet with which the earlier passport/passports of which the pages are expired should be stapled together.

8. Through the said petition, it seems that the petitioner has reported that without the said two booklets appended with the last passport booklet, he had

made several business trips to U.K., Europe, Singapore, Gulf and Sri Lanka.

9. According to the learned counsel for the petitioner, the petitioner had never surrendered his passport to the de facto complainant. Per contra, the learned Senior Public Prosecutor has pointed out that the said passport surrendered by the petitioner to the sponsor of the de facto complainant as well as the de facto complainant, has been produced by them before the investigating officer in this crime and presently, that passport is with the investigating officer. The said matter requires investigation.

10. Even though the learned counsel for the petitioner has canvassed an argument that no offence will lie against the petitioner under the Passports Act, the said argument does not hold good. As per Section 3 of the Passports Act, 1967, no person shall depart from, or attempt to depart from India, unless he holds in this behalf a valid passport or travel document. When his earlier passport of which the pages were expired, which was appended with the last passport No. Z2959951, was allegedly furnished by him as security for his debt to a foreign national as well as the de facto complainant, it cannot be said that he was holding a valid passport enabling him to leave India. In such case, it is a violation of Section 3 of the Passports Act, which can invite an offence under Section 12(1)(a) of the Passports Act. Apart from that, it is a serious matter that the petitioner had allegedly furnished his passport, which is the property of the Union of India, as security to a foreign national as well as the de facto complainant. The same requires investigation. Let the matter be investigated into.

11. The learned counsel for the petitioner has pointed out that the Thampanoor police has no jurisdiction to investigate the offence. The present stage is too premature to hold that the Thampanoor police has no jurisdiction to investigate such an offence. When an information of a cognizable offence is furnished to the Thampanoor police, they have registered the crime. Of course, it is a matter to be decided in the course of the investigation whether the crime has to be transferred to any of the Police Station or not. Even though the learned counsel for the petitioner has invited the attention of this Court to the decision in *Rahman Qamarudheen v. State of Kerala* and another [2007 (3) KLT 369], this Court is of the view that the decision pertains to the provisions under Section 188 Cr.P.C. relating to inquiry and trial. The said provision cannot be extended to an investigation being conducted by the police. True that when the offences are allegedly committed outside India, sanction under Section 188 Cr.P.C. is required for taking cognizance of the offences after investigation. At the same time, when the petitioner has attempted to leave the country, by obtaining a false certificate once again from the passport authority, it seems that the part of the offence has been committed in India also.

12. Whatever it is, there is absolutely nothing at present to quash the offences under Section 406 IPC as well as Section 12 of the Passports Act, 1967. At the same time, this Court find that there are no sufficient materials to invite the offence under Section 420 IPC as well as 468 IPC, as presently alleged. In the

course of investigation, if an offence under Section 468 IPC relating to some other documents comes out, of course, the matter can be investigated into.

With the said observations, this Crl.M.C. is disposed of.