

(2012) 05 DEL CK 0049
In the Delhi High Court
Case No : Criminal M.C. No. 74 of 2011

Veronica Vas

APPELLANT

Vs

Govt.of N.C.T. of Delhi and Anr

RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 161, 482
Passports Act, 1967 — Section 12
Penal Code, 1860 (IPC) — Section 419, 420, 467, 471, 474

Citation : (2012) 3 JCC 1527

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Arnav Kumar, for the Appellant; Fizani Husain, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—The present petition has been filed u/s 482 Cr.P.C. seeking quashing of FIR No. 84/2004 and charge sheet filed u/s 419/420/467/471/474 IPC read with Section 12 of the Passport Act pending in the Court of Chief Metropolitan Magistrate, Tis Hazari, Delhi. The brief facts of the case are that on 24th March, 2004 on receiving a secret information, the Petitioner was apprehended from Aurangzeb Road by ASI Imroj Man and a passport bearing number E6424484 in the name of Deena Asthamakar Yoma Desouza was found in her possession. The petitioner had told her name to be Deena to the ASI. Her personal search was conducted by Lady Ct. Jaywanti and another passport bearing No. A-7889977 in the name of Veronica Vas was found in her bag along with its photocopy. After preparation of site plan and registration of case u/s 12 of the Passport Act, the petitioner was interrogated by the police. During her interrogation, the petitioner gave her statement that she had resided in Israel in May 1999 and had now got a job there, but due to strict Visa rules she was not able to get Israeli Visa on her original passport so she took the assistance of an agent to obtain a passport in the name of Deena and was also issued visa for one

month on the fake passport. After completion of investigation, the charge-sheet under the above mentioned Sections was filed in the Court of Id. CMM, Delhi and the said case is pending trial. The charges were framed on 24th April, 2010 and PW ASI Rajender Prasad has already been examined in the case.

2. The learned counsel for the Petitioner has pressed for quashing of the charge-sheet by submitting that the Petitioner has been wrongly framed in the case by the agent that she had employed to obtain a visa of Israel after she got a job there. It has been submitted that on the day she was apprehended she had gone to collect her visa and had submitted the passport in her name with the agent, but on reaching there she was handed over the passport in the name of Deena by her agent and she had no role in obtaining or applying for the fake passport. It has been further submitted that the prosecution has not placed any material in support of the fact that any offence was committed by the petitioner and there is no material to connect the Petitioner with the offence and thus the charge sheet filed against her must be quashed in the interest of justice and spare the Petitioner from unnecessary hardship. Reliance has been placed on Roy V.D. Vs. State of Kerala, U.P. Pollution Control Board Vs. Dr. Bhupendra Kumar Modi and Another, and Shakson Belthissor Vs. State of Kerala and Another, etc. to bring home the point that when the complaint or charge sheet filed in the Court does not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive, then the FIR and charge sheet ought to be quashed by this Court in the interest of justice.

3. On the other hand, the learned APP for the State has submitted that in addition to the statement of the public witnesses recorded u/s 161 Cr.P.C., there is sufficient evidence on record which points out that a prima facie case is made out against the Petitioner and hence the prosecution case should not be inadvertently thrown out at its initial stage. It has been further submitted that the perusal of the charge sheet filed in the trial Court discloses a prima facie case being made out against the petitioner and it is not a fit case for the exercise of inherent powers by this Court u/s 482 Cr.P.C.

4. The scope and ambit of the powers of the High Court u/s 482 Cr.P.C. are very wide, but that should be exercised with great caution so that a legitimate prosecution is not stifled. In State of Haryana vs. Bhajan Lal, 1992 AIR 604 the categories wherein such powers could be exercised either to prevent abuse of process of any Court or otherwise to secure the ends of justice have been laid down as follows:-

(a) 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

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of

a Magistrate within the purview of Section 155(2) of the Code

(c) 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

(d) 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 u/s 155(2) of the Code

(e) 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;

(f) 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

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. More recently, in *State of Orissa and Others Vs. Ujjal Kumar Burdhan*, , the Apex Court has held that,

7. It is true that the inherent powers vested in the High Court u/s 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extra-ordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged.

6. From the afore-noted judicial pronouncements, it is clear that to arrive at a conclusion that whether a case is fit for the exercise of the powers of this Court u/s 482 Cr.P.C., meticulous sifting of evidence placed on record is not required. The Court must only limit itself to the issue that whether the allegations in the complaint or FIR or charge sheet prima facie disclose the commission of an offence or not, and if the answer is in the affirmative, then the courts must desist from nipping the prosecution case in the bud.

7. Adverting to the facts before us it is seen that during investigation of the case it was revealed that the petitioner was issued a passport in her name in the year 1999 and the petitioner had resided in Israel for some time in 1999. In the year 2003, she managed to get a call letter from Israel in the name of Deena and submitted documents like birth certificate, ration card, call letter etc. in the

passport office for the purpose of obtaining a passport in the name of Deena. She had also managed to get Israeli visa for a period of one month, but was nabbed by the police authorities before she could leave the country.

8. The documents that were submitted by the Petitioner for obtaining the passport in the name of Deena were sent to GEQD CFSL, Hyderabad for examination along with the specimen signature of the Petitioner which revealed that it was the Petitioner who had signed in the name of Deena on the application form of the passport. The report of the FSL prima facie points a finger at the Petitioner and a strong suspicion is raised against the Petitioner which can be rebutted only in the trial court proceedings with minute examination of the evidence which would be placed on record.

9. Further, PW Const. Hari Prakash and PW Lady Const. Jaywanti in their statements u/s 161 Cr.P.C. have stated that when the Petitioner was apprehended by the raiding party and she was asked that what was her name she mentioned her name as Deena Ashtamakar and a passport in the same name was recovered from her person, whereas on the search of her bag, another passport issued in the name of Veronica Vas was recovered from her possession. Thus, it cannot be presumed that she had no role in the issuance of the passport in the fake name of Deena or that it was done by her agent without the Petitioner's instructions or knowledge.

10. Moreover, the letter of appointment recovered from the Petitioner has been addressed to Deena Ashtamakar and not to Veronica Vas, which also raises a question that how did she manage to secure a call letter in the name of Deena. It has to be unearthed that how and with whose assistance the petitioner managed to secure a call letter in the name of another person.

11. Lastly, the conduct of the petitioner has not been that of an innocent person. The petitioner was not joining the investigation and thus the Court was constrained to issue a notice to the petitioner's surety who expressed his inability to produce the petitioner and withdrew himself as the surety. Consequently NBW was issued against the petitioner who is currently absconding.

12. The crux of the judgments relied upon by the counsel for the petitioner is that if from the perusal of FIR or charge sheet no offence is disclosed, this Court is within its jurisdiction to quash the FIR or charge sheet. This legal proposition is uncontroverted, but I am afraid that the present case does not fall in the ambit of cases warranting quashing of charge sheet or FIR. There is ample indication of the involvement of the petitioner in the offences mentioned in the charge sheet. Hence, no help can be derived by the learned counsel for the petitioner from the case law cited by him.

13. In the light of multiple incriminating facts and strong suspicion raised against the petitioner, the submissions of the learned counsel for the petitioner are clearly indefensible. It would be a deliberate attempt to thwart the prosecution case in its burgeoning stage if the quashing of the charge sheet is allowed. The

charge sheet discloses a prima facie offence being committed by the petitioner and all the defenses taken up by the petitioner are triable issues which will be looked into by the trial Court. Consequently, the petition being without any merit is hereby dismissed.