

IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS, ANGAMALY

Present: Smt. Alpha Mamai K., Judicial First Class Magistrate

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Dated, this the 12th day of January, 2024

CMP No. 1220/2023 in CC No. 467/2018

Petitioner/Accused : Nisar, aged 46/10, S/o. Hassankutty,
T/C 35/758, Airport Road,
Vallakadavu, Pettah Village,
Thiruvananthapuram.

(By Adv. Sri. Jose Paul)

Respondent/
Complainant : State rep. by the Sub Inspector of Police,
Nedumbassery Police Station.

Cr. No. 409/2010 of Nedumbassery
Police Station.

(By Smt. Divyadas, Asst. Public
Prosecutor, Court of JFCM,
Angamaly).

Petition : U/s. 239 of The Code of Criminal
Procedure, 1973.

ORDER

This is a petition filed by the accused in CC 467/2018 on the file of this court, u/s. 239 Cr. PC, seeking discharge.

2. Petition averments are as follows:

Petitioner is the accused in the above case. The offences alleged are under sec. 419, 468, 471 IPC and Sec. 12 (1) (b) (d) of The Passports Act. Accused is innocent. Accused has not deceived any person or fraudulently or dishonestly induced, using the passport mentioned in the prosecution case. There was no omission or act which is likely to cause loss to the witnesses, on the part of the accused. Prosecution has no case that, accused had an unlawful gain. There is no dishonest concealment of facts

on the part of the accused. No document produced on the prosecution side to connect the accused with the alleged incident. There is no complaint filed by Mr. Jabbar Shahjahan, stated in the prosecution case. Hence, seeks to discharge the accused in the above case.

3. Objection was filed by the learned Asst. Public Prosecutor as follows:

The above petition is devoid of merit and not maintainable either on law or on the facts of the case. The case of the prosecution is that, accused procured a passport issued to another person by affixing his photograph and thereby committed impersonation and the accused was deported from Saudi Arabia, since it was revealed that the address in the passport was fake. Accused obtained the passport issued to another person with a fraudulent intention to cheat the authorities and to travel outside India. Passport is the property of the Central Government and is a political document for benefit of its holder. All the documents and statements of the witnesses supports the prosecution case. There exist prima facie case against the accused. Hence, accused/petitioner is not entitled to get discharge, as sought in the petition. Hence, seeks to dismiss the petition filed by the accused/petitioner, seeking discharge.

4. Heard both sides.

5. Case of the prosecution case is that, accused with intend to commit cheating by committing personation, obtained the passport bearing no. B5970282 issued to Jabbar Shajahan, Kandachirayil, from Thiruvananthapuram Passport office illegally and affixed the photo of the accused in the said passport and thereby created a forged passport and used as a genuine the said passport and was deported from Saudi Arabia and reached Nedumbassery Airport in Flight no. A1928 13.00 hours and thereby accused committed offences punishable u/s. 419, 468, 471 IPC and Sec. 12 (1) (b) (d) of The Passports Act.

6. Perusal of records would go to show that, accused/petitioner was apprehended from the Airport by the Sub Inspector of Police, Aluva Crime Detachment, Aluva Rural on 02.04.2010 and he was arrested and produced before this court on 03.04.2010, along with the remand report and he was remanded to judicial custody and thereafter accused/petitioner was granted bail. After

investigation, final report was filed before this court by the Sub Inspector of Police, Nedumbassery Police station and was taken on file as CC 467/2018 on the file of this court and cognizance was taken for offences punishable u/s. 419, 468, 471 IPC and Sec. 12 (1) (b) (d) of The Passports Act and summons was issued to the accused for appearance. But accused did not enter appearance on summons and on continuous coercive process, on 09.02.23, entered appearance. He was released on bail on the same day. When the case was posted for hearing on framing charge, on 17.05.23, accused filed this petition u/s. 239 Cr. PC, seeking discharge.

7. There are 11 witnesses cited in the final report by the investigating officer. CW1 is the then Inspector of Police, Immigration Wing, CIAL, Nedumbassery who apprehended the accused and filed report to the Station House Officer, Nedumbassery Police station for taking appropriate action. CW2 is the then Sub Inspector of Police, Immigration Wing, CIAL who informed CW1 regarding the forgery and personation and seized the articles in the possession of the accused, as per inventory. CW3 is the brother of accused, who identified that the photo in the passport is of accused, but the address is not that of accused. CW4 is a relative of accused, who states that, the photo seized in the passport in this case is that of accused but the address in the passport is not that of accused. CW5 is the then Village officer, Petta Village Office, Thiruvananthapuram who issued the nativity certificate of accused. CW6 is the then Village Officer, Mayyanad Village Office, Kollam who issued the nativity certificate of the person shown in the address of the passport seized from the accused. CW7 is the then Superintendent, Regional Passport Office, Thiruvananthapuram who issued the details of passport bearing no. B5970282, involved in this case. CW8 registered the First Information Report as per the report of CW1. CW9, CW10 and CW11 are the investigating officers.

8. During the course of investigation, the passport bearing no. B5970282 issued to Jabbar Shajahan from Passport Office, Thiruvananthapuram seized from the accused and produced before this court as per Form 15 and the arrival card and the deportee form advice also produced along with the prosecution records. Perusal of prosecution records would show that, Indian Passport bearing no. B5970282 issued in the name of Kandanchirayil Jabbar Shajahan issued from Passport Office,

Thiruvananthapuram seized from the possession of the accused by the Emigration Authorities at CIAL and as stated, the passport produced before this court. Hence, a very strong prima facie case is made out against the accused as per the prosecution case. The intention of the accused, whether he had a fraudulent or dishonest intention or not, can be revealed only after trial, i.e., after adducal of evidence. The statements of CW1 and CW2, the then officials at Immigration Wing, CIAL, Nedumbassery shows that, accused was apprehended with forged passport bearing no. B5970282 issued to one Jabbar Shajahan in which the photo of accused was affixed falsely, on 02.04.2010. Hence, as stated, a very strong prima facie case is made out against the accused, as per the prosecution records.

9. It is the settled position of law that, at the stage of hearing on charges, the entire evidence produced by the prosecution is to be believed. In case no offence is made out then only, accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused.

10. As stated above, as per the prosecution records, a strong prima facie case is made out against the accused. Hence, after considering the police report and the documents send along with the police report u/s. 173 Cr. PC and after hearing both sides, I am of the finding that, there is ground for presuming that, accused committed the offences alleged in the prosecution case. Hence, I am of the finding that, accused/petitioner is not entitled to discharge, as sought in the petition. Hence, petition dismissed.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court, this the 12th day of January, 2024.)

Judicial First Class Magistrate

Angamaly.