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Ananthavalli vs State of Kerala

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Court : Kerala Orders

Decided On : Apr-08-2025

Judge : Honourable Mr. Justice G.Girish

Appeal No. : Crl.MC/231/2019

Appellant : Ananthavalli

Respondent : State of Kerala

Judgement :

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE G.GIRISH TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947 CRL.MC NO. 231 OF 2019 CRIME NO.42/2010 OF NEDUMBASSERY POLICE STATION, ERNAKULAM AGAINST THE ORDER IN CC NO.336 OF 2016 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ANGAMALY

PETITIONER/ACCUSED: ANANTHAVALLI, AGED 37 YEARS, D/O. PARVATHI, KLINE NO.14, KONNI ESTATE, KALLELY THOTTAM, RUBBER DIVISION, PATHANAMTHITTA-689691. BY ADVS. R.T.PRADEEP SRI.K.C.HARISH SMT.M.BINDUDAS

RESPONDENT/STATE: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. SRI. SANGEETHARAJ N.R., PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03.04.2025, THE COURT ON 08.04.2025 PASSED THE FOLLOWING: -:2:-

ORDER

The accused in C.C.No.336/2016 on the files of the Judicial First Class Magistrate Court, Angamaly, has filed this petition under section 482 Cr.P.C to quash the proceedings against her in the said case.

2. The prosecution case is that the petitioner forged a bogus

passport by incorporating her photograph in the passport issued to a person by name Shaji Reena and attempted to travel to Kuwait by making use of the above bogus passport at about 07:30 p.m on 08.01.2010. Thus, the petitioner is alleged to have committed the offence punishable under Section 12(1)(b)(d) of the Passports Act, 1967.

3. The case has been registered by the Nedumbassery Airport Police on 09.01.2010 consequent to the information received from the Airport authorities who detained the petitioner while she was

attempting to get emigration clearance to fly to Kuwait. After the completion of the investigation, the S.I of Police, Nedumbassery Airport Police Station laid the final report after getting the sanction

order under Section 15 of the Passports Act, 1967 from the

Government of Kerala. -:3:-

4. In the present petition, the petitioner would contend that

the sanction order issued under the orders of the Governor is legally invalid since there was no advice given by the Chief Minister and the Council of Ministers to the Governor under Article 163(1) of the Constitution of India to issue such an order.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

6. At the outset, it has to be stated that the challenge raised

by the petitioner in the above regard cannot be inquired into by this Court in view of the bar contained in Article 163(3) of the Constitution of India, which states that the question whether any, and if so what, advice was tendered by the Ministers to the Governor shall not be inquired into in any court. Therefore, it is not possible for this Court to inquire into the question whether the sanction order issued in this case under Section 15 of the Passports Act, 1967 preceded the advice of the Ministers to the Governor.

7. The learned Public Prosecutor argued that in exercise of the powers conferred under Article 166(3) of the Constitution of India, the Governor of Kerala framed Rules of Business of the Government of -:4:-

Kerala which is a classified document that regulates the allocation and disposal of State Government business. It is further submitted that these Rules are supplemented by the Kerala Government Secretariat Instructions, along with the Kerala Secretariat Office Manual. The learned Public Prosecutor further pointed out that Rule 175(1) of the

Kerala Law Department Manual states that every Government Order

must be subscribed By Order of the Governor and bear the name and designation of the highest approving officer. Referring to Article 166(2) of the Constitution of India, the learned Public Prosecutor pointed out that the validity of an order or instrument authenticated in accordance with the Rules made by the Governor, shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

8. The argument advanced by the learned Public Prosecutor

in the above regard is perfectly in accordance with the constitutional provisions and the relevant rules framed thereunder in connection with the promulgation of Government Orders by the State of Kerala. As far as the present case is concerned, the petitioner cannot be heard to say that the sanction order issued by the Government of Kerala

-:5:- (Annexure-III) is vitiated due to the absence of advice by the Council of Ministers as required under Article 163(1) of the Constitution of

India. Therefore, the challenge raised by the petitioner upon the above ground against the maintainability of the prosecution against her, is totally baseless. The other contentions raised by the petitioner that the allegations in the final report do not constitute the offence alleged against her, are also devoid of merit. A perusal of the final report filed by the investigating agency would reveal that the prosecution has garnered all the necessary materials to establish the

charge levelled against the petitioner. Therefore, the prayer in this petition to quash the proceedings in C.C.No.336/2016 on the files of the Judicial First Class Magistrate Court, Angamaly, cannot be allowed.

In the result, the petition is hereby dismissed. (Sd/-) G. GIRISH, JUDGE jsr/DST -:6:- APPENDIX PETITIONER ANNEXURES ANNEXURE-I:- CERTIFIED COPY OF F.I.R. DATED 9.1.2010 IN CRIME NO.42/2010 OF NEDUMBASSERY AIRPORT POLICE STATION. ANNEXURE-II:- CERTIFIED COPY OF FINAL REPORT DATED 5.5.2014 IN CRIME NO.42/2010 OF NEDUMBASSERY AIRPORT POLICE STATION. ANNEXURE-III:- TRUE COPY OF G.O. (RT) NO.1067/2014/HOME DATED 3.4.2014.

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