

Anitha, vs State of Kerala,

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Court : Kerala Orders

Decided On : May-31-2024

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Crl.MC/6471/2017

Appellant : Anitha,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
FRIDAY, THE 31ST DAY OF MAY 2024 / 10TH JYAISHTA, 1946
CRL.MC NO. 6471 OF 2017 CRIME NO.1254/2016 OF Attingal Police
Station, Thiruvananthapuram CC NO.1641 OF 2016 OF JUDICIAL
MAGISTRATE OF FIRST CLASSI,ATTINGAL PETITIONER/2ND
ACCUSED: ANITHA, RADHA NIVAS, NEAR MASS TOWER,
CHITTATTINKARA, ATTINGAL, THIRUVANANTHAPURAM. BY ADVS.
M.R.RAJESH SANDHYA E.S. RESPONDENTS/STATE, DEFACTO
COMPLAINANT:

1 STATE OF KERALA, REPRESENTED BY SUB INSPECTOR OF POLICE, *(MANGALAPURAM POLICE STATION, MANGALAPURAM) -
2 DR. JIKKI, D/O SREEKUMARI, NOW RESIDING AT KIZHAKKEVILA, NANDAIVANAM, NEDUMPARAMBU P.O., NAGARROOR, THIRUVANANTHAPURAM DISTRICT FROM RADHA NIVAS, NEAR MASS TOWER, CHITTATTINKARA, ATTINGAL, THIRUVANANTHAPURAM-695101. ADDL.3 THE SECRETARY TO GOVERNMENT, MINISTRY OF EXTERNAL AFFAIRS, SOUTH BLOCK, NEW DELHI-110011. ADDL.4 THE CONSUL (PASSPORT), CONSULATE GENERAL OF INDIA P.B. NO. 737, PLOT NO. 314, AL HAMARIYA DIPLOMATIC ENCLAVE, BUR DUBAI, UAE.

& CrI.M.Appl.2/24 2 ADDL.5 THE REGIONAL PASSPORT OFFICER, PASSPORT OFFICE, SNSM BUILDING, KARALKADA JUNCTION, PETTAH P.O., THIRUVANANTHAPURAM, KERALA- 695024. (*The name of the police station occurring in the address of the 1st respondent is corrected and substituted as Attingal as per order dated 26.07.2018 in CrI.M.Appl.813/2018 in CrI.M.C.No.6471/2017) (R3 TO R5 ARE IMPLADED AS ADDITIONAL RESPONDENTS 3 TO 5 RESPECTIVELY VIDE ORDER DT.3.5.2024 IN CRL.M.A.1/2024 IN CRL.M.C.NO.6471/2017)

BY ADVS. SMT.T.RESHMA KRISHNA T C A.JANI(KOLLAM) S.SIKKY, PUBLIC PROSECUTOR SRI M P PRASANTH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27.05.2024, THE COURT ON 31.05.2024 PASSED THE FOLLOWING: & CrI.M.Appl.2/24 3

A. BADHARUDEEN, J.

=====
CrI.M.C No.6471 of 2017-H &
CrI.M.Appl.No.2/2024 in CrI.M.C No.6471 of 2017-H
=====
Dated this the 31st day of May, 2024

ORDER

The 2nd accused in C.C.No.1641/2016 on the files of Judicial First Class Magistrate Court-I, Attingal, arising out of Crime No.1254 of 2015 of Attingal Police Station, who alleged to have committed offence punishable under Section 498A of the Indian Penal Code (IPC for short), has filed this petition under Section 482 of the Code of Criminal Procedure (Cr.P.C for short), to quash the final report, contending that there is no material to attract offence punishable under Section 498A of IPC against the petitioner. & CrI.M.Appl.2/24 4

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the relevant documents.

3. It is argued by the learned counsel for the petitioner that

the petitioner being roped into this crime without any justification and the prosecution records do not suggest her involvement in this crime to proceed against the petitioner and, therefore, the prayer in the petition is liable to be allowed. It is also pointed out that there were family disputes in between the defacto complainant, who is none other than the wife of the brother of the petitioner, and for which the petitioner periodically lodged complaints through e-mail and other modes to the police officials. In order to wreak vengeance against those complaints at the instance of the petitioner, she got incorporated into this proceedings, though no materials available to justify her involvement in this crime, in any manner. & CrI.M.Appl.2/24 5

4. The learned counsel for the petitioner also submitted

that on 20th March, 2023, an affidavit was filed by the defacto complainant stating that she had no dispute in allowing quashment in view of settlement. But the settlement was not materialised. Accordingly, the petitioner filed another affidavit retracting from the settlement. He also submitted that now the petitioner has been staying abroad and her passport also was renewed. But the passport authority insists on production of no objection from the Court or order of acquittal in this crime to avoid impounding of the

passport. Therefore, he also pressed for an appropriate order

facilitating travel of the petitioner abroad.

5. Though there is no representation from the defacto

complainant, the learned Public Prosecutor read out the relevant portion of the FIS as well as the statements available, which would suggest commission of offence punishable under Section 498A of IPC by the petitioner/2nd accused, as well. Therefore, the learned & Crl.M.Appl.2/24 6 Public Prosecutor would submit that quashment sought for is not liable to be allowed.

6. I have perused the F.I statement given by the defacto

complainant. There is specific allegation that the husband of the defacto complainant is a mental patient undergoing treatment for the last 30 years and as and when the petitioner herein reached home country from abroad, she used to persecute and ill treat the defacto complainant along with her mother, who is the 1st accused. There is an allegation that the accused persons in this crime even not allowed the defacto complainant to cook food at the kitchen of the house and she was forced to stay at a shed outside the house. It is alleged further that the mental disease of the husband of the defacto complainant was suppressed and she was forced to marry such a person.

7. Though, as pointed out by the learned counsel for the

petitioner, earlier there was a settlement, now the defacto & Crl.M.Appl.2/24 7 complainant retracted from settlement. Going by the prosecution records it is discernible that there are sufficient materials to see the commission of offence punishable under Section 498A of IPC by the petitioner also, prima facie, and merely because she also lodged complaints vide Annexures C to L, the same by itself would not give a clean chit to the petitioner.

8. In such view of the matter, the matter shall go for trial. Therefore, quashment sought for is liable to fail.

9. Coming to Crl.M.Appl.No.2/2024, which has been filed

by the petitioner seeking grant for permission/no objection to the issuance/renewal of the petitioners passport for a period of 10 years and to sustain the order of new issuance of passport issued by the additional 4th respondent, additional respondents 3 to 5 filed a detailed objection and the same reads as under: 2. That M.Anita Vikraman had submitted application for reissue of her Passport (previous & Crl.M.Appl.2/24 8

No.L4926334) under the Tatkal category on 26.09.2023. The passport application was processed on Post-Police Verification (I.e Passport will be issued first, police verification will be initiated afterwards) as per Ministry's guidelines; thus the passport no. Z6486657 was issued to her on 26.09.2023.

3. Later, the Police Verification Report (PVR) received from

ATTINGAL Police Station however was found to be ADVERSE against her with remarks that: The applicant is the accused in Attingal Police Station Crime 1254/2016 u/s. 498A,34 IPC and the case is pending before the Hon. Court.

4. Significantly, the scrutiny of the application form submitted

by Ms. Anita Vikraman explicitly exhibits that she deliberately suppressed the relevant information (on criminality/offence, etc.) as enshrined in the para 1 of Other Details of the passport application wherein she ticked N (indicating NOT) against col 1.1 to 1.4 though she chose to put her signature against the relevant col 3.1 to 5.3 only, after ticking N, for the reason best known to her.

5. While suppressing the pendency of criminal case against her in India, she also signed the Self-declaration in the application which among other elements of solemn promises, & Crl.M.Appl.2/24 9

also states I am aware that under the Passport Act, 1967, it is a criminal offence to furnish any false information or to suppress any material information with a view to obtaining passport or travel document. The very next line of the Self- declaration also states that I have read and

understood the contents of the above and by submitting this form certify that all the information submitted by me in the form is bona fide.

6. Therefore, the Consulate on the basis of available

information, found sufficient reason to believe that provisions of the clause (b) of sub-section (3) of Section 10 of The Passports Act, 1967 are attracted against the applicant which stipulates that the Passport Issuing Authority may impound/revoke a passport if it was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport.

7. The Consulate also on the basis of the information available

found to have sufficient reason to believe that provisions of clause (e) of sub-section (3) of Section 10 of The Passports Act, 1967 are also attracted against the applicant which stipulates that the Passport Issuing Authority may impound or revoke a passport if proceedings in respect of an offence are alleged to have been committed by the holder of the passport

& CrI.M.Appl.2/24 10 or travel document are pending before a criminal court in India.

8. Consequently, a Show Cause Notice was served to the

applicant namely Ms. Anita Vikraman seeking explanation from her as to why her passport should not be impounded/revoked under Section 10(3)(b) and 10(3)(e) of The Indian Passports Act, 1967. In this regard, it was also stated in the Show Cause notice that the applicant may produce a No Objection to issue passport or Acquittal order concerning the criminal case from the Hon. Court in India as per GSR No. 570(E)dated 25.08.1993.

10. Even though Crl.M.Appl.No.5/2024 along with reply to

the counter affidavit filed by respondents 3 to 5, has been filed by the petitioner, the contentions therein would not wipe off the finding of the passport authority, as stated in their counter affidavit extracted herein above. Therefore, there shall be a direction to the 3rd respondent to permit the petitioner to go abroad for a period of six months, since it is submitted by the learned counsel for the petitioner that the petitioner, being a resident of Dubai for the last & Crl.M.Appl.2/24 11 30 years having 2 sons, has to reach Dubai urgently and to renew the passport for the said period.

11. It is specifically ordered further that if the passport

authority feels any legal action against the petitioner in view of the contention raised by the counter statement, the authority is free to proceed with the same.

12. It is further ordered that the petitioner shall execute a

bond for Rs.50,000/- with two solvent sureties, before the trial court within 7 days from today undertaking that she would appear before the Court on expiry of 6 months, without fail, to co-operate with the trial and shall be available till the trial is over. The petitioner shall also furnish the details of her place of residence in Dubai with phone number abroad along with copy of her passport, before the trial court.

13. The trial court is directed to oversee the execution of

the bond and also to secure the presence of the petitioner for trial & Crl.M.Appl.2/24 12 after the expiry of six months in a case, which has been pending for the last 8 years, in accordance with law.

14. The trial court is further directed to dispose of the case

at the earliest within one year from the date of receipt of a copy of this order. In the result, Crl.M.C.No.6471/2017 stands dismissed. Crl.M.Appl.No.2/2024 stands disposed of as aforesaid. Sd/- (A.BADHARUDEEN, JUDGE) rtr/ & Crl.M.Appl.2/24

13 APPENDIX OF CRL.MC 6471/2017 PETITIONERS ANNEXURES ANNEXURE A THE CERTIFIED COPY OF THE FIR ALONG WITH THE FIS IN FIR

NO.1254/2016 OF THE ATTINGAL POLICE STATION. ANNEXURE B THE CERTIFIED COPY OF THE FINAL REPORT ALONG WITH OTHER CONNECTED DOCUMENTS IN C.C.NO.1641/2016 BEFORE THE JFMC-I, ATTINGAL. ANNEXURE C A TRUE COPY OF THE COMPLAINT SENT BY EMAIL DATED 19.04.2012 TO THE DY.S.P. ANNEXURE D A TRUE COPY OF THE COMPLAINT DATED

28.04.2016 SENT BY EMAIL AT 12.20 P.M TO THE STATE POLICE CHIEF, SUPERINTENDENT OF POLICE, THE DY.S.P. INSPECTOR OF POLICE, NRI CELL, POLICE HEAD QUARTERS, ANNEXURE E A TRUE COPY OF THE COMPLAINT DATED 28.04.2016 SENT BY EMAIL AT 12.37 P.M TO THE STATE POLICE CHIEF, SUPERINTENDENT OF POLICE, THE DY.S.P.INSPECTOR OF POLICE, NRI CELL, POLICE HEAD QUARTERS, ANNEXURE F A TRUE COPY OF THE COMPLAINT DATED 28.04.2016 SENT BY EMAIL AT 12.55 P.M TO THE STATE POLICE CHIEF, SUPERINTENDENT OF POLICE, THE DY.S.P.INSPECTOR OF POLICE, NRI CELL, POLICE HEAD QUARTERS, ANNEXURE G A TRUE COPY OF THE COMPLAINT DATED 28.04.2016 SENT BY EMAIL AT 1.26 P.M TO THE STATE POLICE CHIEF, SUPERINTENDENT & CrI.M.Appl.2/24 14 OF POLICE, THE DY.S.P.INSPECTOR OF POLICE, NRI CELL, POLICE HEAD QUARTERS, ANNEXURE H A TRUE COPY OF THE COMPLAINT DATED

29.04.2016 SENT BY EMAIL AT 2.09 P.M TO THE SUPERINTENDENT OF POLICE, NRI CELL, POLICE HEAD QUARTERS, ANNEXURE I A TRUE COPY OF THE COMPLAINT DATED 05.05.2016 SENT BY EMAIL AT 6.36 P.M TO THE SUPERINTENDENT OF POLICE, THE DY.S.P.INSPECTOR OF POLICE, NRI CELL, POLICE HEAD QUARTERS, ANNEXURE J A TRUE COPY OF THE COMPLAINT DATED 07.05.2016 SENT BY EMAIL AT 1.33 P.M TO THE SUPERINTENDENT OF POLICE, NRI CELL, POLICE HEAD QUARTERS, ANNEXURE K A TRUE COPY OF THE COMPLAINT DATED 25.05.2016 SENT BY EMAIL AT 1.06 P.M TO THE SUPERINTENDENT OF POLICE, NRI CELL, POLICE HEAD QUARTERS, ANNEXURE L A TRUE COPY OF THE COMPLAINT DATED 30.05.2016 SENT BY EMAIL AT 12.58 P.M TO THE SUPERINTENDENT OF POLICE, NRI CELL, POLICE HEAD QUARTERS,

ANNEXURE M THE TRUE COPY OF THE ACKNOWLEDGEMENT DATED 27.05.2016 TO THE COMPLAINTS DATED 28.04.2016. ANNEXURE N A TRUE COPY OF THE O.P.NO.704/2016 BEFORE THE FAMILY COURT, ATTINGAL. ANNEXURE O A TRUE COPY OF THE M.C.NO.45/2016 OF JFMC-I ATTINGAL FILED BY THE 2ND RESPONDENT. ANNEXURE P THE OBJECTION FILED BY THE PETITIONER TO ANX.N. & CrI.M.Appl.2/24 15 ANNEXURE Q A TRUE COPY OF THE M.C.NO.50/2016 OF JFMC-I ATTINGAL FILED BY THE PETITIONER. ANNEXURE R A TRUE COPY OF THE FIR NO.2115/2016 OF ATTINGAL POLICE STATION ALONG WITH CMP NO.4324/2016 OF JFMC-I ATTINGAL. ANNEXURE S A TRUE COPY OF THE FIR NO.2116/2016 OF ATTINGAL POLICE STATION ALONG WITH CMP NO.4324/2016 OF JFMC-I, ATTINGAL. ANNEXURE T A TRUE COPY OF THE REPLY GIVEN BY THE APPLICANT TO THE SHOW CAUSE NOTICE DATED 23.04.2024 TO THE 4TH RESPONDENT ANNEXURE U A TRUE COPY OF THE EMAIL SEND BY THE 4TH

RESPONDENT AT 1.27 PM ON 24.04.2024 ATTACHING THE SHOW CAUSE NOTICE AND THE REPLY BY THE APPLICANT DATED 01.05.2024 AT 11 AM ATTACHING HER EXPLANATION AND DOCUMENTS RESPONDENTs ANNEXURES Annexure R2(a) ORIGINAL COPY OF THE AFFIDAVIT FILED BY THE PETITIONER/2ND RESPONDENT DATED 25.3.2023 FOR SETTLEMENT OF DISPUTED BETWEEN THE PARTIES

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