

Viju. Vs. the State of Kerala.

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Court : Kerala

Decided On : Dec-09-2010

Judge : M.Sasidharan Nambiar, J.

Acts : Passport Rules, 1980 - Rule 13, Passport Act - read with section 12(1)(b)

Appeal No. : Crl.MC.No. 4474 of 2010

Appellant : Viju.

Respondent : The State of Kerala.

Advocate for Pet/Ap. : SRI.SUMAN CHAKRAVARTHY, Adv.

Judgement :

1. Petitioner is the accused in Crime 757/2010 of Alappuzha North Police Station registered for the offence under Rule 13 of Passport Rules 1980 read with section 12(1)(b) of Passport Act. The petitioner filed CMP 4429/2010 before Chief Judicial Magistrate Court, Alappuzha for releasing the passport contending that he got employment in Dubai and unless the passport is released, he cannot go and work there. As the learned Chief Judicial Magistrate did not pass orders petitioner filed this petition under section 482 of Code of Criminal Procedure for a direction to dispose the petition expeditiously and also for a direction to the Chief Judicial Magistrate to release the passport and the travel documents to the petitioner.

2. Learned counsel appearing for the petitioner and learned Public Prosecutor were heard.

3. Learned counsel argued that subsequently recording the reason that this petition is pending, learned Magistrate dismissed CMP 4429/2010. Learned counsel submitted that unless the passport is released, petitioner cannot go abroad and it would be denial of his employment. Learned counsel also submitted that the petitioner is only having one passport No.H-6888794 and he has not obtained any other passport and Rule 10 of the Passport Rules has no application and the maximum punishment provided for an offence under section 12(b) of Passport Act is only imprisonment for a term which may extent to two years or fine which may extent to five thousand rupees or both and in such circumstances petitioner may not be denied his employment in a foreign country.

4. Learned Public Prosecutor made available photocopies of three passports one the admitted passport of the petitioner and two other passports with the photographs of the petitioner but with different names, parents names and date of birth. Out of the two, one is in the name of Sivakumar Krishna Pillai with date of birth 3.4.1965 showing the name of the parents as Krishna Pillai and Chellamma and the name of the wife Kavitha. The other passport is in the name of Jose Thomas with the name of parents Thomas and Annamma, which does not disclose the name of spouse and date of birth 15.5.1969. Learned Public Prosecutor submitted that as it is prima facie seen that petitioner has obtained more than one passport and that too in different names matter has to be investigated and petitioner cannot be permitted to go abroad.

5. Petitioner has not sought permission to go abroad. Petition is only for a direction to the Chief Judicial Magistrate to consider the application which was subsequently dismissed. An additional prayer was made for a direction to the magistrate to release the passport and travel documents. Petitioner has not produced any materials to show what the travel documents seized is and what are to be released. Therefore no such direction could be issued.

6. The only question is with regard to the passport namely H6888794. There is no dispute that it is the passport issued to the petitioner from the passport authority. Though F.I.R is registered alleging that offence was committed under Rule 10 of the Passport Rules 1980, Rule 10 deals with refund of fees which have no

application to the case in hand. It may be that Rule 13 was intended, which prohibits obtaining another passport when a person is holding a passport. The offence under section 12(b) is attracted when a person knowingly furnishes any false information or suppresses any material information, with a view to obtain a passport or travel document under the Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document. There is no case that for obtaining passport H6888794, any false information was furnished or that passport was obtained by suppressing any material information.

7. If at all, the case could only be that subsequently other passports were obtained suppressing the material information or furnishing false information. If petitioner obtained those passports by furnishing any false information or suppressing material information, definitely he could be prosecuted. It is a matter for the Investigating Officer to consider and properly investigate.

8. The short question now is whether passport H6888794 is to be released to the petitioner. When there is no allegation that that passport H6888794 was obtained by furnishing false information or by suppressing any material information, there is no necessity to retain the said passport, as it is not for the court to keep the passport in custody and impliedly impound the same. The passport can be impounded as provided under the Passport Act by the authority as provided thereunder. In such circumstances, as there is no necessity to retain passport H6888794, petitioner is entitled to get the said passport released.

9. Petition is disposed. Chief Judicial Magistrate, Alappuzha is directed to release passport H6888794 to the petitioner executing a bond for Rs.50,000/- with two solvent sureties for the like sum to the satisfaction of the learned Magistrate undertaking to produce the same as and when required. It is made clear that releasing of the passport will not affect the right or the powers of the passport authorities to impound the passport or to proceed against the petitioner in accordance with law, if warranted.