

Vivek Kumar Vs. State of Delhi and anr

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Court : Delhi

Decided On : Jan-27-2012

Appellant : Vivek Kumar

Respondent : State of Delhi and anr

Judgement :

\$~49 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C.No.324/2012 % Judgment delivered on:27th January, 2012 VIVEK KUMAR Petitioner Through : Mr.K. K. Jha , Adv. versus STATE OF DELHI and ANR. Respondents Through : Mr.Navin Sharma, APP for respondent No.1/State with SI Ishwar Singh, police station I.P. Estate, New Delhi in person. Mr.Ashish Kumar, Adv for respondent No.2/Medical Council of India. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J. (Oral) Crl.M.A.No.1157/2012(exemption) Exemption is allowed subject to just exceptions. Criminal M.A. stands disposed of. + CRL.M.C.No.324/2012.

1. Notice issued..

2. Mr.Navin Sharma, learned APP on behalf of respondent No.1/ Crl.M.C.No.324/2012 *Page 1 of 10* State and Mr.Ashish Kumar, learned counsel on behalf of respondent No.2/ Medical Council of India accept notice..

3. With the consent of learned counsel for parties, matter taken up for disposal..

4. Vide instant petition, the petitioner has sought to quash the FIR No.566/2005 registered under Section 420/468/471 Indian Penal Code at police station I.P. Estate, New Delhi against him..

5. Learned counsel for petitioner submits that petitioner went to Russia for pursuing his medical course in the year 1993 and completed the same in the year 2000. Consequently, he was awarded a degree/ diploma of M.D.(Physician) by Russian State Medical University..

6. On returning to India and on moving the application, Medical Council of India, i.e. respondent No.2 issued to him provisional registration No.15587 for 12 months..

7. For the purpose of verification, on 09.08.2001 to 22.07.2004, respondent No.2 wrote numerous letters during the period mentioned above, to the Councillor (Education) Indian Embassy, Masco through Ministry of External Affairs, South Block, New Delhi for confirmation and authenticity of the documents as required under Section 13 (4) of the Medical Council Act, 1956. Vide a letter dated 29.12.2004, received from Indian Embassy by Dr.Prem Kumar, Deputy Secretary, Medical Council of India that the Dean of Foreign Students Training Department of Russian State Medial University (RSMU) had conveyed Crl.M.C.No.324/2012 *Page 2 of 10* that diploma DIS # 0009824 and registration No.302 had never issued to the petitioner he never studied at the said university..

8. Pursuant to the aforesaid letter dated 15.02.2005, respondent No.2 lodged a complaint with the DCP, Crime, Police Headquarter, I.P. Estate, New Delhi and requested for registration of FIR against petitioner for submitting false and forged documents. The said complaint culminated into registration of instant FIR on 22.11.2005 under Section 420/468/471 Indian Penal Code at police station I.P. Estate, New Delhi..

9. Petitioner approached learned Sessions Court for anticipatory bail which was rejected vide order 11.08.2006..

10. Being aggrieved, petitioner approached this Court and granted interim protection vide order dated 03.11.2006, while directing to re-verify, the documents i.e. diploma/degree submitted by petitioner, directly..

11. Thereafter, pursuant to the aforesaid direction of this Court, a letter dated 18.11.2006 was written to Dean of Foreign Students, Russian State Medical University, Masco (Russia), by Shri Alok Kumar, IPS, Deputy Commissioner of Police, Central District, New Delhi while requesting to verify the genuineness of the documents issued in favour of petitioner..

12. On 16.07.2007, in reply to the aforesaid communication, received from the Dean, Foreign Students, Russian State Medical Crl.M.C.No.324/2012 *Page 3 of 10* University, by Shri Alok Kumar, aforesaid police officer wherein it is stated that degree/ diploma submitted by the petitioner is genuine document, as per the record of the said university..

13. On receipt of aforesaid communication, on 18.09.2007 the SHO of police station I.P. Estate, New Delhi submitted a cancellation report under Section 173 Criminal Procedure Code before learned Trial Court and requested to cancel the FIR. Accordingly, notice was issued to the respondent No.2/complainant vide order dated 04.10.2007 by learned Trial Court..

14. On 25.02.2008, petitioner approached this Court by filing a Writ Petition (Civil) seeking direction to the respondent No.2 for grant of permanent registration number, however, same was dismissed as withdrawn..

15. Later on, on being received the another contradictory report qua the documents of the petitioner, produced by respondent No.2, before the Trial Court..

16. On 25.10.2008, a protest petition was filed by the respondent No.2. Accordingly, the IO was summoned to explain the final report. On 20.08.2009, respondent No.2 filed copy of the letters dated 15.01.2008 and 06.02.2009 with respect to forging of degree/ diploma and submitted that the diploma is a fake one - as per letter dated 15.01.2008, therefore, the IO was directed to verify the letter dated 15.01.2008 and report to the Court accordingly. Crl.M.C.No.324/2012 *Page*

17. Pursuant to the aforesaid direction, on 28.07.2010 a report was filed on behalf of the IO and submitted that no reply to the letter has been received from Masco regarding the letters dated 16.07.2007 and 15.01.2008 as the report was awaited..

18. On 10.03.2011 SI Ishwar Singh/IO of the case filed re- verification report in the Court of learned Magistrate wherein it was submitted that two different reports had been received regarding the authenticity of (M.D.) Physician degree/ diploma issued to the petitioner from Russian State Medical University. In one of the reports being received through Ministry of External Affairs dated 14.01.2011 no diploma was issued to the petitioner, however, vide another letter received on 14.02.2011 from Vice-chancellor of Russian State Medical University, that degree/ diploma is genuine..

19. Due to the controversy arose, the petitioner has filed instant petition and sought for quashing the aforementioned FIR..

20. Learned counsel for petitioner submitted that first verification report received by respondent No.2 was not of the petitioner; however incidentally the name was same. The said fact has been clarified in the letter dated 14.02.2011 issued by Vice-chancellor of Russian State Medical University, Masco addressed to District Investigation Unit, Central District, Police Station Darya Ganj Building, Delhi, in regarding to the final report of Dr.Vivek Kumar, Diploma No.0009824 and stated that in reference to the letter No."1 ACP/DIU/C" Vivek Kumar, s/o Suresh Chandra, was the student of Russian State Medical Crl.M.C.No.324/2012 *Page 5 of 10* University since September 1993 to June 2000. It is further submitted that he has been awarded diploma No.0009824 and registration No.302. It is further clarified that they had already sent a letter on 16.07.2007 regarding the same concerned that diploma No.0009824 and registration No.302 is genuine..

21. It is further clarified that in response to another letter, which they received from District Investigation Unit, vide letter MOS/EDN /FOR/2009-217 regarding the same concerned about diploma verification, however, clarified that due to some manual mistake or technical problem, they had posted 08-02/93 with negative

remarks..

22. Learned APP as well as learned counsel for respondent No.2 have jointly stated that on verification through Ministry of External Affairs, vide a communication dated 13.01.2011 it is emerged as under:- "No.MOS/EDN/FOR/2009-003 dt. January 13, 2011. Dear Ministry, Please refer to your letter No.T.4113/84/2010 dated 09.06.2010 forwarding the letter NO.451/ACP/DIU/C dated 04.06.2010 regarding authenticity of documents in respect of Vivek Kumar who is stated to have undergone studies at the Russian State Medical University(RSMU)..

2. The Embassy forwarded the documents the University and sought reconciliation of contradictory communications, vide letter Crl.M.C.No.324/2012 *Page 6 of 10* No.MOS/EDN/FOR/2009-161 dt. August 4, 2010 and reminders on the same subject vide letter Nos.MOS/EDN/FOR/2009-217 dt. Nov.

23. and MOS/EDN/FOR/2009-241 dt. Dec. 27, 2010. The University, vide its letter No.08-02/293 dt. 30.11.2010 (received at the Mission on 12.01.2011) has stated the following: Vivek Kumar joined the course I of the Second MOLGMI named N. I Pirogov (RSMU) in 1991, after completing the Preparatory Course at Dagestan State Medical Institute and attended course I for two months from 01.09.1991 to 30.10.1991. Later, based on telegram concerning poor health of one of his relatives, he requested for exit visa for India and after departure he did not return. Hence he did not study at RSMU and no diploma was issued."

23. In addition to above, Russian State Medical University, under signature of G.N.Bespalyuk, Head of Foreign Students' Desk had issued a certificate dated 30.11.2010 as under:- "No.08-02/293 dated November 30, 2010 Ref to No.MOS/EDN/FOR/2009-217 of 23.11.2010. Embassy of India in the Russian Federation CERTIFICATE Russian State Medical University presents its compliments to the Embassy of India in the Russian Federation and through the Foreign Students Desk of the University has the honour to inform that Mr.VIVEK KUMAR mentioned in the Embassys letter joined our University in 1991 (former 2nd Moscow State Medical Institute) after Crl.M.C.No.324/2012 *Page 7 of 10* completion preparatory faculty at Dagestan State Medical Institute. He was 1st year

student for two month only - from 01.09.1991 to 30.10.1991. Then he asked for an exit visa to India on the basis of the telegram received by him from home about poor health condition of one of his relatives and he left. He has never come back to the University. Consequently, he did not study at the Russian State Medical University and no Medical Degree was awarded to him by the University."

24. Both learned counsel for respondents submit that two communications are against the petitioner and communications are in favour of the petitioner, therefore, at this juncture, FIR cannot be quashed as trial is required. The authenticity of the letters in favour of the petitioner and against him can be proved only after leading the evidence by prosecution and by petitioner in his defence, therefore, quashing of the FIR at this stage, would not be in the interest of justice..

25. To buttress this contention, learned APP has relied upon *Hamida v. Rashid* 2008 (1) SCC 474 wherein it has been held as under:- "Before parting with the case, we feel constrained to observe that in spite of repeated pronouncements of this Court that inherent power under Section 482 Cr.P.C. should be exercised sparingly with circumspection in rare cases and that too when miscarriage of justice is done, the High Court entertained the petition under Section 482 Cr.P.C., the ultimate result whereof was that the order of bail granted in favour of the accused for an offence under Sections 324, 352 and 506 IPC ensured to their benefit even after the offence *CrI.M.C.No.324/2012 Page 8 of 10* had been converted into one under Section 304 IPC and also subsequently when charge had been framed against them under Section 302 read with Section 34 IPC. The accused did not remain in custody even for a single day nor did they approach the Court of Chief Judicial Magistrate or Sessions Judge for being granted bail under Section 304 or 302 IPC, yet they got the privilege of bail under the aforesaid offences by virtue of the order passed by the High Court. The dockets of the High Courts are full and there is a long pendency of murder appeals in the High Court from which this case has arisen. Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under Section 482 Cr.P.C. at an interlocutory stage which are often filed with some oblique motive in order to circumvent the prescribed procedure, as is the case here, or to delay the trial which will enable the accused to win over the

witnesses by money or muscle power or they may become disinterested in giving evidence, ultimately resulting in miscarriage of justice."

26. In the circumstances, finding force in the submission learned APP and learned counsel for respondent No.2, the Trial Court may consider the contention and submission of petitioner at the appropriate stage, in accordance with law..

27. Admittedly, the communications received by respondents are contradictory to each other. The true fact can be established in trial after considering the evidence led by the parties. The instant petition is pre-mature one; therefore, I am not inclined to entertain the same. CrI.M.C.No.324/2012 Page 9 of 10.

28. Before parting with present order, it is made clear that nothing opined herein shall be construed as an observation on the merits of the case, as same is still pending consideration before learned Trial Court..

29. Consequently, Criminal M.C.No.324/2012 is dismissed..

30. In view of above, Criminal M.A.No.1156/2012 becomes infructuous and disposed of. SURESH KAIT, J JANUARY 27, 2012 Mk CrI.M.C.No.324/2012 Page 10 of 10