



2024:KER:88795

CRL.MC NO. 9520 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 26TH DAY OF NOVEMBER 2024/5TH AGRAHAYANA,

1946

CRL.MC NO. 9520 OF 2024

CRIME NO.4/2015 OF MINICOY POLICE STATION, LAKSHADWEEP

AGAINST THE ORDER DATED 12.09.2024 IN SC NO.4 OF

2019 OF DISTRICT & SESSIONS COURT, KAVARATHY

PETITIONER/2ND ACCUSED:

ISMAIL VALUMATHIGE
AGED 50 YEARS
S/O HASSAN, VALUMATHIGE,
FUNHILOL VILLAGE, MINICOY ISLAND,
LAKHSADWEEP, PIN - 682559

BY ADVS.
LAL K. JOSEPH
P. MURALEEDHARAN (THURAVOOR)
T.A. LUXY
SURESH SUKUMAR
AJMAL AHMED R.
ANZIL SALIM
SANJAY SELLEN
AKASH GEORGE

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1 UNION TERRITORY OF LAKSHADWEEP
REPRESENTED BY STATION HOUSE OFFICER,
MINICOY POLICE STATION UT OF LAKSHADWEEP,
MINICOY ISLAND, LAKHSADWEEP,
PIN - 682559



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2 REGIONAL PASSPORT OFFICER
REGIONAL PASSPORT OFFICE,
PANAMPILLY NAGAR P O,
KOCHI, PIN - 682036

SRI.R.V.SREEJITH, STANDING COUNSEL,
U.T.ADMINISTRATION OF LAKSHADWEEP
ADV.MINI GOPINATH, SR.PANEL COUNSEL FOR
REGIONAL PASSPORT OFFICER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 26.11.2024, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:



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ORDER

Dated this the 26th day of November, 2024

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking the following prayers:

- “(i) To call for the records pertaining to Annexure A6 order on the file of the Honourable Sessions Court, Kavarati, U.T. of Lakshadweep and set aside the same.*
- (ii) Direct the 2nd Respondent to release the passport bearing No.X2830538 of the petitioner.*
- (iii) Pass an order allowing Annexure A5 and permit the Petitioner to travel abroad for employment subject to any conditions as deemed fit in the interest of justice.*
- (iv) Order any other reliefs as deemed appropriate by this Honourable Court in the interest of justice.”*

2. Heard the learned counsel for the petitioner, the learned Standing Counsel appearing for the 1st



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respondent/Union Territory of Lakshadweep and the learned Senior Panel Counsel appearing for the 2nd respondent/Regional Passport Officer in detail.

3. The petitioner herein is the second accused in SC No.4/2019 on the files of the Sessions Court, Kavaratti, where the 1st accused (brother of the 2nd accused) and second accused are alleged to have committed offences punishable under Sections 498A, 354B, 323, 506, 377, 511 and 376 r/w Section 34 of the Indian Penal Code, 1860, (hereinafter referred to as 'IPC' for short).

4. As on 05.08.2024, the petitioner had filed Crl.M.P.No.90/2024 before the Sessions Court, seeking issuance of No Objection Certificate for issuance of passport on such terms and conditions to be imposed by the Sessions Court. In the petition, the petitioner contended that he did not commit the offences and also that he has been working as a seaman on various ships and vessels sailing at



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Lakshadweep. According to him, initially, a passport bearing No.X2830538 was issued to him from Regional Passport Office, Cochin on 19.01.2024. Thereafter, the Immigration Department seized the passport of the petitioner, being dissatisfied with the explanation given by him for the notice issued on 25.03.2024 with direction to the petitioner to approach the Passport Authority for more clarification. According to the learned counsel for the petitioner, at present the petitioner is jobless and he has to work abroad in order to maintain his family. Therefore, the petitioner wants a passport and accordingly he pressed for appropriate relief.

5. The learned Sessions Judge addressed the grievance of the petitioner at par with objection raised by the 1st respondent herein and finally disallowed the prayer mainly finding that the petitioner obtained a passport suppressing the pendency of criminal case and that he had been facing prosecution under Section 12 of the Passports Act, 1967.



Therefore, he was not entitled to get No Objection Certificate from the Court to obtain a fresh passport to legalise the fraud committed by him.

6. The learned Standing Counsel for the 1st respondent, while reiterating objection raised before the Sessions Court in the matter of suppression of material facts, submitted that the petitioner has been stalling the trial of the case, which is posted on 03.12.2024 for scheduling the trial. According to the learned counsel for the 1st respondent, applying for passport after suppressing details about criminal case is a serious matter and this is the plank on which the Sessions Court disallowed the prayer. The learned Standing Counsel submitted that therefore, trial may be expedited and closed at the earliest. Accordingly, the learned Standing Counsel opposed issuance of 'No Objection Certificate'.

7. The learned Senior Panel counsel appearing for the 2nd respondent would submit that as far as



the petitioner is concerned, he applied for re-issuance of passport after suppressing pendency of criminal case against him. That apart, when he applied for No Objection Certificate before the trial court as per Annexure A5 petition, he did not disclose seizure of the passport by the Authority by way of impounding. Thus the case of the petitioner is fledged with suppression of material facts and therefore, he does not deserve any relief from this Court. At the same time, the learned Senior Panel Counsel would submit that if the Court issues No Objection Certificate, the Passport Authority could very well issue a fresh passport as per law.

8. Analysing the history of the case, it is seen that the prosecution alleges above offences against accused Nos.1 and 2 (the latter is petitioner herein) and the allegation is that while the defacto complainant in this case was staying at the matrimonial home, the 1st accused, who is the husband of the defacto complainant, persuaded and compelled the



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defacto complainant to co-operate with the 2nd accused/petitioner for his sexual desires and when she denied the said demand, both accused harassed her mentally and physically and thereby committed the above offences. It is noticed that the crime is of the year 2019 and has been pending for the last 5 years, therefore, disposal of the case is the need of the hour. According to the learned counsel for the petitioner, the petitioner is a person knowing only Mahl language and he did not have any willful intention to suppress criminal case at the time when he applied for renewal of passport. According to the learned counsel for the petitioner, the above omission was not willful and it was so happened because of communication gap between the petitioner and the agency, who applied for renewal of passport. According to the learned counsel for the petitioner, since petitioner is a bosun and at the time of fishing, fish may overlap the territory outside India, he could not do the job



without obtaining a passport. Therefore, issuance of 'No Objection Certificate' is absolutely necessary.

9. On evaluation of the facts of the case, suppression of criminal case at the time when applying for renewal of a passport is a serious matter. When the Passport Authority seized his passport, even if he might not have been aware of the same as a process of impounding, he should have disclosed the seizure of his passport by the Authority. Therefore, suppression is discernible as pointed out by the learned Senior Panel Counsel for the 2nd respondent. At present, the earlier passport issued, which was renewed by suppressing pendency of criminal case, stands impounded and therefore, return of the said passport or renewal of the same could not be considered. However, on filing of fresh application, issuance of new passport can be considered as per law.



10. Addressing the grievance of the petitioner in the above line, it is pertinent to note that pendency of criminal case is a matter which would negate the issuance/re-issuance of passport, unless No Objection Certificate from the Court concerned would not be produced. Therefore, when an accused applies for No Objection Certificate in the matter of issuance/re-issuance of passport, the Court shall consider various aspects, viz., the seriousness of the offence/offences, the possibility of stalling trial by abscondence etc. When matrimonial dispute is the base where from the criminal case arose, the court shall be so liberal in the matter of issuance of No Objection Certificate, otherwise the right to go abroad, with permission of the court to do some employment therein without obstructing the trial, would be in peril. Similar is the principle to be followed while considering issuance of No Objection Certificate in cases involving trivial and simple offences. In case of murder,



attempt to commit murder, rape, offences under the Protection of Children from Sexual Offences Act and Narcotic Drugs and Psychotropic Substances Act, while issuing No Objection Certificate, the court must ensure that on the strength of the passport, the accused would not abscond and stall the trial. In such cases, after imposing necessary conditions to secure the presence of the accused for trial, No Objection Certificate or Emergency Certificate in the case of persons, who are already abroad and their passport expired has to be considered favourably. In cases arising out of matrimonial disputes and trivial offences, even if some omissions on the part of the accused are found, that shall not stand in the way of issuing No Objection Certificate or Emergency Certificate, as the case may be, to ensure the right to life of the accused. Thus this is a fit case to issue No Objection Certificate.



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11. In view of the above, there shall be a direction to the 2nd respondent to consider the application of the petitioner for getting a passport afresh, if filed within a period of one month and to consider issuance of a new passport and for which this Court hereby issues 'No Objection Certificate' by setting aside the order impugned.

12. At the same time, the petitioner is directed to co-operate with the investigation as proposed without stalling the same in any manner. The learned Special Judge is directed to expedite the trial and dispose of the same within a period of three months from the date of receipt of a copy of this order.

Registry is directed to forward a copy of this order to the jurisdictional court for information and further steps.

**Sd/-
A. BADHARUDEEN
JUDGE**

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APPENDIX OF CRL.MC 9520/2024

PETITIONER ANNEXURES

- Annexure A1 A TRUE COPY OF THE LETTER DATED
25.03.2024 ISSUED FROM THE 2ND
RESPONDENT TO THE PETITIONER
- Annexure A2 A TRUE COPY OF THE REPLY DATED
10/3/2024 TO THE ANNEXURE A1 LETTER
ISSUED BY THE PETITIONER
- Annexure A3 A TRUE COPY OF THE SEIZURE SLIP DATED
29.07.2024 FROM THE IMMIGRATION
DEPARTMENT WITH TYPED COPY
- Annexure A4 A TRUE COPY OF THE LETTER DATED
19.08.2024 ISSUED BY THE 2ND
RESPONDENT
- Annexure A5 A TRUE COPY OF THE APPLICATION
CRL.M.P. NO.90/2024 FILED BY THE
PETITIONER BEFORE THE HONOURABLE
SESSIONS COURT, KAVARATTI SEEKING 'NO
OBJECTION CERTIFICATE' DATED
05.08.2024
- Annexure A6 THE CERTIFIED COPY OF THE ORDER DATED
12.09.2024 IN EXT P3 APPLICATION
PASSED BY THE HONOURABLE SESSIONS
COURT, KAVARATTI
- Annexure A7 A TRUE COPY OF THE EMPLOYMENT CONTRACT
DATED 24.05.2024 ISSUED TO THE
PETITIONER

RESPONDENTS ANNEXURES : NIL