Analysis of Judgment in the case of acquiring passport with forged documents

Judgment Text-

(Disclaimer:-Text of Judgment is taken from website of Courts which is a public domain. Every effort is made to omit names of parties and Judge. The analysis of Judgment is for academic purpose to assist the law graduates and entry level Judges to learn the skill of writing Judgment. I analyse the Judgment on the basis of my experience but do not claim that my analysis is perfect. There may be another view different from my analysis.)

IN THE COURT OF METROPOLITAN MAGISTRATE,

(Presided over by)

J U D G M E N T
(Delivered on this)

a) The name of the complainant if any : The State *Police Station*

b) The name of the accused : ***1) Mr. A,***
2) Mr.K,

c) The offences complained of : U/Sec. 420,465,467,468 and 471 r/w.34 of IPC and Section 12 of The Passport Act, 1967.

Ld.A.P.P. for State. Ld.Adv. for both accused.

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1. It is the case of prosecution that during the course of investigation of case of Bomb Blast in the year 2006. It was revealed that the accused No.1 Mr.A had visited the Pakistan and returned back. He produced Passport Article-A issued by the Passport Office of . On inquiry it was revealed that the accused No.1, with the help of accused No.2 with malafide intention obtained the same by giving false information in respect of his name, date of birth and place of resident. Though his name is Mr.A, Passport was taken in the name of Mr.A. Further though his birth year was 1974, it was stated as 05.02.1971. Further his residential address of _____was shown but he was resident of Mumbai. Accordingly, on behalf of State, informant PSI lodged report with the Police Station. After investigation accused persons are chargesheeted under the aforementioned offences.

2. On being explained the particulars of offences, accused persons pleaded not guilty. Their plea were recorded and they were put on trial. After recording evidence of prosecution witnesses, they were examined underSection 313 of Cr.P.C. and their statement were recorded at Exh-32 and 33respectively. Their defence was that of total denial. According to the accused No.1, as earlier he had visited Pakistan and returned back, false case is imposed on him. However, they refused to examine themselves on oath andany other witnesses in their defence.

3. Heard both sides. I have gone through the evidence on record. The following points arise for my determination and I recorded my findings thereon for the reasons stated below ;

	POINTS	FINDINGS
1	Whether the prosecution prove that during the period from 1994 to 01.08.2006 at _____the accused persons in furtherance of their common intention, cheated the Government i.e. Passport Office by furnishing forged and purported documents for obtaining Passport in the name of *Mr.A* i.e. accused No.1 whose original name is as *Mr.AS* and thereby committed an offence punishable U/Sec. 420 r/w. 34 of the I.P.C. ?	... No.
2	Whether the prosecution further prove that on the aforesaid period and place, the accused persons in furtherance of their common intention, furnished forged and purported documents to Passport Office for obtaining Passport in the name of *Mr.A* i.e. accused No.1 with intent tocommit the fraud and thereby committed an offence punishable U/Sec. 465 r/w. 34 of IPC ?	... No.
3	Whether the prosecution further prove that on the aforesaid period and place, the accused persons in furtherance of their common intention, forged a certain documents purported to be a valuable security i.e. immovable property and birth date for procuring the Passport from the Passport Office and thereby committed an offence punishable U/Sec. 467 r/w. 34 of the I.P.C. ?	... No.
4	Whether the prosecution further prove that on the aforesaid period and place, the accused persons in furtherance of their common intention, forged a certain documents purported to be a valuable security i.e. immovable property and birth date for procuring the Passport from the Passport Office with intending that it shall beused for the purpose of cheating and therebycommitted an offence punishable U/Sec. 468 r/w. 34 of IPC ?	... No.
5	Whether the prosecution further prove that on the aforesaid period and place, the accused persons in furtherance of their common intention, fraudulently or dishonestly used as genuine a certain forged documents i.e. application form for procure passport which they knew at that time when it was used as itbe a forged documents and thereby committed an offence punishable U/Sec. 471 r/w. 34 of IPC ?	... No.

6	Whether the prosecution further prove that onthe aforesaid period and place, the accused persons in furtherance of their common intention, the accused No.1 whose original name is as *Mr.AS* knowingly furnished false information i.e. name as *Mr.A* or suppressed material informationabout his original name and address with aview to obtain a Passport under this Act and obtained Passport No.00000 in the bogus name as Mr.A and bogus address as aforesaid with the help of the accused No.2 Mr. K from Passport Office by furnishing aforesaid false information and thereby committed an offence punishable U/Sec. 12 of The Passport Act , 1967 ?	... No.
7	What Order ?	As per final order.

-: R E A S O N S :-AS TO

POINTS NO.1 TO 7 :-

4. To prove the guilt of the accused persons, prosecution has examined three witnesses i.e. *Informant PSI (*P.W.1) at Exh.8,(P.W.2) Deputy Head Master at Exh.20 and the Investigating Officer (P.W.3) at Exh.27 and closed its evidence by filing a *pursis* at Exh.31.

5. It is the primary duty of the prosecution to bring home the guilt of accused beyond all reasonable doubt. I have to see whether prosecution has discharged its primary burden in this case.

6. The oral testimony of informant PSI (P.W.1) is in the lineof his report Exh.9. However, the same is not helpful to the prosecution for bring home the guilt of the accused persons. In his cross-examination, he has deposed in clear words that the genuineness of Passport Article-A was not verified from the Passport Office of . He further deposed that as earlier accused has visited the Pakistan, therefore, police had suspicion about him. Ultimately, he admitted the suggestions put up by the defence that Passport Article-A was found genuine.

7. For establishing the date and place of birth of accused No.1 Mr.A, the prosecution has examined the Deputy Head Master (P.W.2) School. In his evidence this witness has deposed about the true copies of extract of School Register Exh.21 and 22 as well as information of student Exh.23. Minute perusal ofthese documents would reveal that the same were related to Master Mr.AS. His date of birth was mentioned therein as 07.04.19XX and _____ as place of birth.

8. The defence has denied those documents. In his cross-examination at the hands of defence Deputy Head Master(P.W.2) deposed that while verifying the school record, he did not find any birth certificate. Considering the nature of allegations, according to me, the documents Exh.21 to 23 are not sufficient to establish that the same were related to the accused No.1. Some more and clear evidence on the part of prosecution was expected, but to no avail.

9. Minute perusal of evidence of Ld.I.O. (P.W.3) would reveal that he has restricted his evidence on the date of birth of accused No.1.He did not whisper in his testimony about the false information allegedly given by the accused regarding the name of accused No.1 and his place of resident. Moreover, he has clearly deposed that he had made search of houseof accused vide panchanama Exh.28 and 29 but nothing incriminating was found. Moreover, according to him, he made correspondence with the Officeof Tahasildar, for obtaining the details given while applying for Ration Card but vide letter Exh.30 it was informed by the said office that no suchrecord was available with it.

10. Though in his examination-in-chief Ld.I.O. has reported that he has collected birth certificate of accused No.1 Mr.A from the concerned school but in his cross-examination clearly stated that birth certificate was not received by him from the concerned school.

11. FIR Exh.9 was registered on 01.08.2006. However, in their cross- examination informant PSI(P.W.1) as well as Ld.I.O. (P.W.3) deposed that prior to 01.03.2006 accused No.1 Mr.A was not at all called for inquiry purposes.

12. This Court can take judicial note of the fact that before issuing the Passport the concerned Office used to call verification report of the concerned applicant from the Police Authority. However, this fact is denied by the Ld.I.O. (P.W.3) in his cross-examination. Prosecution has produced on record correspondence dated 28.8.2006 between Passport Office andthe Office of Deputy Commissioner of Police,. That letter isat Article-C. Along with that letter, the Passport Office of has submitted photocopies of the application for issuance of passport and documents attached with it. Perusal thereof would reveal that verification report of police is also included therein. After verifying all the information, the concerned police has issued positive report. On that basis the Passport Article- A appears to be issued.

13. It appears that during the course of investigation no efforts weretaken for collecting the details of accused No.1 in respect of his name, birth certificate and place of resident. The material available on record is not sufficient to infer that with malafide intention the accused persons by giving false information to the Passport Office of and obtained the Passport Article-A. Not a single criminal antecedent of any of the accused is reportedby the prosecution. In such circumstances, according to me, the prosecutionmiserably failed to establish any ingredients of alleged offences against any of the accused persons. Therefore, certainly the accused persons are entitled for the benefit of doubt. Hence, I have no hesitation to answer the points No.1 to6 in the negative.

14. So far as seized train travelling ticket dated 03.08.2002 Article-B is concerned, it is required to be destroyed after the appeal period is over. However, so far as seized Passport Article-A is concerned, vide application/pursis Exh.35 the accused No.1 Mr.A has not claimed the same. As per Section 17 of The Passport Act,

1967 the Passport isthe property of Central Government. Therefore, it is necessary to send the Passport Article-A to the Passport Office, who had issued the same, after the appeal period is over. Consequently, in answer to point No.7, I proceed to pass the following order-

-: **O R D E R :-**

1. The accused No.1 and 2 are hereby acquitted for the offencespunishable under Section 420, 465, 467, 468 and 471 r/w.34 of The Indian Penal Code and Section 12 of The Passport Act, 1967 vide Section 248(1)of The Code of Criminal Procedure.
2. Their bail bonds stand *cancelled*.
3. Their bail bonds be continued for further period of six months for the purpose of compliance as per Section 437-A of Cr.P.C.
4. The muddemal property i.e. Passport No.Q-276366 Article-A be sentto the Passport Office of , after the appeal period is over.
5. The muddemal property i.e. Indian Railways travelling ticket dated 03-08-2002 ticket being worthless be destroyed after the appeal period is over.

( )

Date :- Metropolitan Magistrate,

Analysis

-Dr. Ajay Nathani

In the year 2006 there was a bomb blast in Mumbai. Terrorist organization having its roots in Pakistan have taken the responsibility of the bomb blast in which several persons have died. During the course of investigation, it was revealed that the accused no. 1 travelled to Pakistan and returned back on the strength of a passport procured by him with the assistance of accused no. 2 from Passport Office by giving forged documents regarding his name, date of birth and place of residence. After investigation charge sheet for commission of offence under section 420, 465, 467, 468 and 471 r/w Section 34 of the Indian Penal Code and Section 12 of the Passports Act was filed against the accused and his associate.

As mentioned by learned judge police officer who lodged report, head of the school, where the accused had taken education and investigating officer are the three witnesses examined before him.

At the onset I have to mention that the dates mentioned in the initial table of the trial are disturbing. The period of commission of offence is mentioned as since 1994 to 2006. Crime was registered in 2006. Charge-sheet was filed in 2007, however the trial concluded and judgment was delivered in 2017. The delay in trial of a case concerning issue of travel to a country which harbor's terrorists, who carry terrorist activities in India is disturbing.

The charge framed reveal that the accused no.1 has obtained passport in the year 1994 and his activity to use and renew it continued till 2006. If we consider all these facts in the light of security concerns of the country then we find that a case concerning travelling of a citizen to the neighboring country is neither investigated nor tried with seriousness. The judiciary cannot escape the responsibility by saying that the prosecution failed to bring witnesses before it in time which made it impossible for the Court to dispose of the case in time. Most amazing thing I noticed from the judgment is that particulars of the offence were explained to the accused and no charge was friend that means the case was tried as a summons case. I am told that in Metropolitan Courts there is no practice of giving case numbers according to classification of cases i.e., Warrant trial, Summons's trial so it is difficult to say whether it is tried as a summary case but it is certain that it is not tried by adopting warrant trial procedure under the CrPC.

Let's examine whether the Metropolitan Magistrate is having any special powers regarding procedure to be adopted for the trial. Code of Criminal Procedure prescribes three types of trials which in common parlance known as summons trial, warrant trial and sessions trial. Procedure for these three types of trials is given in the Criminal Procedure Code. Chapter 18 specifies procedure for session's trial, Chapter 19 specifies procedure for warrant trial and Chapter 20 specifies procedure for summons trial. Warrant case is defined in the Code of Criminal Procedure as a case relating to offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Whereas summons case is defined as a case relating to the offence not being a warrant case that means summons case is a case relating to an offence punishable with imprisonment for a term not exceeding 2 years. As per Section 260 of the Code of Criminal Procedure, Metropolitan Magistrate can try an offence punishable with imprisonment not exceeding 2 years, offence of theft where value of property is less than 2000 rupees, offence of receiving stolen property where the value of money is less than 2000 rupees, offences under section 454, 456, 506, 504 of IPC and abetment of these offences and attempt to commit these offences and offences under the Cattle Trespass Act as summary trial without requirement of assignment of special powers. To try an offence listed above summarily or not is a discretion of the Magistrate and a rider is there as to how to use this discretion. As per Sub Section 2 of Section 260 when the Magistrate while conducting a case by adopting summary procedure finds that the nature of case is such that it is undesirable to try it summarily, the Magistrate may recall any witness who may have been examined and proceed to rehear the case in the manner provided by the Code.

Let's see whether the Metropolitan Magistrate under the Code is anything different than Judicial Magistrate for application of provisions of the Code. Section 16 of the Code speaks about establishment of the Court of Metropolitan Magistrate. Section 16 empowers the High Court to appoint Presiding Officer of the Court of Metropolitan Magistrate. Section 17 also empowers the High Court to appoint any Metropolitan Magistrate as Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate. As per Section 19 Metropolitan Magistrates are subordinate to Session's judge and same is the case with Judicial Magistrate. On amalgamation of cadre after acceptance of recommendations of First National Judicial Pay Commission, there is no recruitment of Metropolitan Magistrates. The High Court transfers judges of the cadre of Senior Civil Judges to the Court of Metropolitan Magistrate and they are designated as Metropolitan Magistrates presiding over Metropolitan Magistrate Courts. Section 6 of the Code is about classes of courts and Court of Judicial Magistrate First Class and Metropolitan Magistrates are placed in the same class. So, the Metropolitan Magistrates are nothing different than judicial Magistrates therefore wherever in the Code it is mentioned that Magistrate has to adopt particular procedure the said provisions are equally applicable to Judicial Magistrate, Metropolitan Magistrate, Chief Judicial Magistrate, Chief Metropolitan Magistrate, and Additional Chief Judicial/Metropolitan Magistrate.

The only difference I find is in Chapter 27 which is in respect of judgement in trial. Section 353 is in respect of pronouncement of judgement and taking care to protect the right of the accused to hear the judgement. This section is applicable to all Criminal Courts including Sessions Court. Section 354 speaks about language and contents of the judgement. These provisions are also applicable to all Criminal Courts including Sessions Court. In view of section 355 the judgements of Metropolitan Magistrate shall contain the particulars as mentioned under section 355. The section however also provides that in case in which appeal lies from the final order under section 373 and 374, a brief statement of reasons for the decision shall be there. U/s 374 (3)(a) appeal against conviction by Metropolitan Magistrate and Assistant Session Judge or Magistrate of First Class lies to the Court of Sessions. This section and subsequent sections in the chapter regarding appeal against conviction do not make any difference between appeal against conviction pronounced by Judicial Magistrate First Class and Court of Metropolitan Magistrate. In view of provisions u/s 378 of the Code Collector may direct the public prosecutor to present an appeal to the Court of sessions from an order of acquittal by Magistrate. So, may it be an order of conviction or acquittal by Metropolitan Magistrate it is necessary for him to give reasons in all the judgements.

In view of the above discussion, it is apparent that the Court of Metropolitan Magistrate is not very different from the Court of Judicial Magistrate except for mode of writing judgement. The powers of summary trial for the Judicial Magistrate and Metropolitan Magistrate are limited to the offences enlisted in Section 260 of the Code open with caution that in case of serious offences the Metropolitan Magistrate shall not apply summary case. The Metropolitan Magistrate has to try Warrant trial cases by adopting the procedure laid down in the Code of Criminal Procedure to try warrant cases.

As mentioned in para no. 2 of the judgement. particulars of the offence were explained to the accused which

means charge was not framed as required by the provisions of Chapter 19 of the Code. The prosecution does not appear to have given any importance to led serious case and did not try to bring the entire evidence and try to prove the guilt of the accused. Before I further analyze the judgement, it will be appropriate to mention here some judgements of the Supreme Court about the role of a trial Court judge in trial. The observations are as under,

*In **All India Judges' Association vs. Union of India (1992) 1 SCC 119** hon. Supreme Court observed: "The Trial judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the proceedings in court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personalities, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful".*

*In **Khatri II vs State of Bihar (1981) 1 SCC 627** hon. Supreme Court observed: "This healthy provision enables the magistrates to keep check over the police investigation and it is necessary that the magistrates should try enforcing this requirement and where it is found disobeyed, come down heavily upon the police... There is however, no obligation on the part of the magistrate to grant remand as a matter of course. The police have to make out a case for that. It can't be a mechanical order".*

As I mentioned earlier the facts pleaded by the prosecution prima facie indicate serious crime. Any Indian citizen is free to travel in any other country by seeking passport and Visa. However, procuring a passport to travel to a country with which India is at cross terms, is required to be considered as a serious matter until it is established that the passport was not procured without practicing the act of forgery and cheating as alleged by the prosecution.

The prosecution is coming with a case that the accused no. 1 forged documents regarding his name, age and residence and tendered the said documents at the passport office and the passport office considering it to be correct issued him passport. In order to prove these allegations, it was necessary to place before Court documents tendered before the passport office and the documents depicting some different name, some different date of birth and some different place of residence of accused no. 1 coming from the source where the accused no. 1 has given information about his name, date of birth and address before 1994 in ordinary course of events.

In para no. 12 of Judgement Ld. Magistrate mentioned that photo copies of the application for issuance of passport and document annexed to it were produced before him. What was mentioned in these documents is not mentioned by the Ld. Magistrate in the judgement. He also has not mentioned whether he accepted all these documents as admissible evidence. While mentioning the facts of the case learned Magistrate has mentioned in para no. 1 that the accused has mentioned 5th of February 1971 as date of birth while applying for the passport. In para no. 7 evidence of PW 2 Deputy Headmaster of the school where accused no. 1 has taken education is scrutinized. As mentioned by Ld. Magistrate the witness deposed that as per the school record date of birth of the accused is 7th of April 1974 and his name was Mr.AS. Evidence of this witness discloses that in school record the date of birth and name of the accused is different than what he has informed while procuring the passport. In para no. 8 of the judgement Ld. Magistrate mentioned that in the school record birth certificate was not found and therefore he refused to believe entries in the school record regarding date of birth and name of the accused. In fact, entries in the school record regarding date of birth and a name are considered to be *ex-facie* evidence of name and date of birth because these entries come in existence on the basis of information given to the school authorities by parents or caretaker of pupil. Burden to rebut this presumption was on the defence which was not done.

While analyzing evidence of investigating officer in para no. 9 of the judgement it is mentioned that the witness hasn't deposed about the false information given by the accused regarding his name and place of residence. It is also mentioned that during the search of the house of the accused no incrementing evidence was found. In order to get evidence or proof of the forgery and tendering of false documents it was necessary to compare documents tendered by the accused with the passport office and the documents proved by the prosecution through its witnesses. It was not expected that documents regarding real name of the accused no. 1 are going to be found in the house of the accused. It is not the case of the prosecution that the accused has hidden original or documents in his house. Considering these reasons there was no reason for the prosecution to search the house of the accused and even if it is done by the investigating officer in order to find out the documents depicting real name and date of birth of the accused, if nothing was found in the house the prosecution shouldn't have been blamed for absence of these documents in the house of the accused. Again, the prosecution is blamed in the same para for not finding any record though enquiry was made with the Tehsildar to obtain details about the ration card to prove the address of the accused. When investigating officer is investing the case, he has to try in all directions to get the evidence. If he doesn't get evidence in any place from where he was expecting to get the evidence, the prosecution cannot be blamed for such failure when it succeeded to procure it at any other place. These documents in the present case are produced from school record.

In para no. 10 of the judgement, it is mentioned that investigating officer mentioned in examination in chief that he collected birth certificate of accused no. 1 from the school where he has taken education but in cross examination, he stated that certificate was not received by him from the concern school. What is the finding of the judge for this statement is not recorded in para no. 10 however, it seems that this aspect was considered as one of the reasons to reach to the finding that the prosecution failed to discharge the burden? As discussed above headmaster of the school clearly stated about record of the school so something brought in the cross examination of the investigating officer that record was not received from the school cannot go against the prosecution particularly when the defence is not denying that accused no. 1 was taking education in the school from where the documents of date of birth and name are produced.

In para no. 11 of the judgement is mentioned that accused number one obtained passport in year 1994 and continued to get it renewed but he was not called for enquiry before 2006. The judge has not mentioned his conclusion on the basis of this fact emerging from the evidence however, it seems that this has been considered adverse to the prosecution. As mentioned by the judge while summarizing the facts it is the case of the prosecution that during investigation of bomb blast in Mumbai in year 2006 the police came to know that the accused no. 1 traveled to Pakistan on the basis of passport obtained by giving incorrect information. Considering this aspect, as the facts constituting offence were not discovered till 2006 and hence success of the accused no. 1 to use cannot be considered adverse to the prosecution.

Ld. Judge in para no. 13 mentioned that the evidence placed on record by the prosecution is not sufficient to prove that incorrect information given to obtain passport was with *malafide* intention. Provisions of Section 12 of the Passport Act doesn't incorporate intention for commission of offence. Commission of offence of cheating is complete when

passport authority was induced to issue passport by the act of deception by giving incorrect information and by tendering false documents as correct information and genuine documents. The offence of forgery is to create the documents with incorrect information and made it to look as the document containing true information. *Mens rea* regarding use of the forged document is complete when forged documents are tendered as original and the person induced to do particular act which he would not have done if he had knowledge that the documents are not original. It was not necessary for the prosecution to prove that the passport was procured or used for *malafide* intention by the accused.

Ld. Judge has also mentioned that he is giving benefit of doubt to the accused. Giving benefit of doubt to the accused is a factor which arises when the prosecution succeeds to prove its case but the defence was also equally balancing and defence succeeds to point out that there is an equally balancing possibility to believe that the things may not have happened as projected by the prosecution which create doubt about the prosecution case. From the reasons given by the judge and statements made by him in judgment it seems that the judge did not believe the prosecution case.

Concluding the analysis, I have to mention that the writer of the judgement should be very clear about the conclusion drawn on the basis of crude facts so that there should not be wavering in the conclusion such as whether the prosecution totally failed to prove the guilt or the evidence of prosecution was leading to certain conclusions but considering the defence suspicion was created some suspension and benefit of doubt was given to the accused. The writer of the judgement should also be conscious about the nature of case before him. Case like this evoke interest of all sections of society, government and even of the foreign government. Judgments regarding such facts evoking media publicity are studied by academicians and students. I am aware that huge burden of the cases and workload on Metropolitan Magistrates make it difficult for them to give time to write qualitative judgements but such cases do give opportunity to write a qualitative judgement and it should not have been missed.
