



2024:KER:68254

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 9TH DAY OF SEPTEMBER 2024 / 18TH BHADRA, 1946

CRL.MC NO. 6618 OF 2024

CRIME NO.44/2024 OF Panangad Police Station, Ernakulam

AGAINST CC NO.748 OF 2024 OF JUDICIAL FIRST CLASS

MAGISTRATE - VIII, ERNAKULAM

PETITIONERS/ACCUSED 1 AND 2:

- 1 EGADWA MERCY ADAMBA
AGED 26 YEARS, D/O MACLOUD IGADWA,
UASINGGISHU,
KENYA
NOW AT SAKHI ONE STOP CENTRE
KAKKANAD, ERNAKULAM, PIN - 682030
- 2 GWARO MARGRET SEBINA
AGED 30 YEARS, D/O EZIEQUELE GWARO,
GUCHA DISTRICT, KENYA
NOW AT SAKHI ONE STOP CENTRE
KAKKANAD, ERNAKULAM, PIN - 682030

BY ADV ANEESH K.R

RESPONDENTS/COMPLAINANT/RESPONDENT NO.2:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 FOREIGN REGIONAL REGISTRATION OFFICES (FRRO)
REPRESENTED BY ITS AUTHORISED OFFICER
COCHIN INTERNATIONAL AIRPORT,
NEDUMBASSERY, ERNAKULAM, PIN - 683111

BY SMT.MINI GOPINATH, CGC



THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02.09.2024, ALONG WITH CrI.MC NO.6168/2024, THE COURT 09.09.2024 PASSED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 9TH DAY OF SEPTEMBER 2024 / 18TH BHADRA, 1946

CRL.MC NO. 6168 OF 2024

*CRIME NO.233/2024 OF Chengamanad Police Station, Ernakulam

CRIME NO.233/2024 OF Cheranalloor Police Station, Ernakulam

*(THE NAME OF THE POLICE STATION IS SUO MOTU CORRECTED AS

'CHERANALLOOR' AS PER ORDER DATED 09.09.2024)

AGAINST CC NO.183 OF 2024 OF JUDICIAL MAGISTRATE OF FIRST

CLASS -III, ERNAKULAM

PETITIONERS/ACCUSED:

- 1 CASSANDRA DRAMMESH
AGED 27 YEARS
PASSPORT NO PC 526754,
GAMBIA
NOW AT SAKHI ONE STOP CENTRE,
KAKKANAD, ERNAKULAM, PIN - 682030
- 2 COUDUFALL ALIAS FATHIMA
AGED 23 YEARS
PASSPORT NO AO1446953,
SENAGAL
NOW AT SAKHI ONE STOP CENTRE,
KAKKANAD, ERNAKULAM, PIN - 682030

BY ADV ANEESH K.R

RESPONDENTS/STATE/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031



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2 FOREIGN REGIONAL REGISTRATION OFFICES (FRRO)
REPRESENTED BY ITS AUTHORISED OFFICER
COCHIN INTERNATIONAL AIRPORT,
NEDUMBASSERY, ERNAKULAM, PIN - 683111

BY SMT.MINI GOPINATH, CGC

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
02.09.2024, ALONG WITH Crl.MC No.6618/2024, THE COURT ON
09.09.2024 PASSED THE FOLLOWING:

**"C.R."****BECHU KURIAN THOMAS, J.****-----
Crl.M.C No.6618 of 2024****&****Crl.M.C 6168 of 2024
-----**Dated this the 9th day of September, 2024**ORDER**

The distinction between section 14(a) and section 14A of the Foreigners Act, 1946 arises for consideration in these two cases. The question that requires resolution is whether section 14A of the Foreigners Act, 1946 would be attracted in cases where a foreign national had entered India with a valid passport and visa but had overstayed beyond the period permitted. Since the issues are identical, these cases are being disposed of through this common judgment.

2. Petitioners in these two petitions are four foreign nationals. The two petitioners in Crl.M.C No. 6168/2024 hail from Uganda and Kenya respectively, while both petitioners in Crl.M.C No. 6618 of 2024 are Kenyan Nationals. Petitioners are facing prosecution for the offences under the Foreigners Act, 1946 (hereafter referred to as 'the Act'), apart from offences under the Passports Act, 1967 (for short 'the Passports Act').



3. The prosecution alleges that the accused entered India with a tourist visa and continued their stay even after the expiry of their visa as well as their passports.

4. In Crl.M.C No. 6168/2024, the petitioners are the accused in C.C. No.183/2024 on the files of Judicial First Class Magistrate's Court-III, Ernakulam, which arises from Crime No.233/2024 of Cheranalloor Police Station. The specific allegation against the first petitioner is that she was in possession of passport No.PC 526754 with validity till 18.05.2021 and a tourist visa with validity till 07.12.2020, while the second petitioner is alleged to have had a passport bearing No.AO1446953 with validity till 26.03.2022 and visa validity till 30.04.2018. Both accused failed to produce their passports or visa when demanded by the authorities and instead, produced the passport and other documents of another person and they were found occupying rooms in a hotel on 19.03.2024 and thereby committed the offences under sections 14A(b),14(a),14(b) and 14(c) of the Act, apart from section 12(1)C, 12(1A) and 12(1)(d) of the Passports Act.

5. In Crl.M.C No.6618/2024, the accused are facing prosecution in C.C. No.748/2024 on the files of the Judicial First Class Magistrate's Court-VIII, Ernakulam which arises out of Crime No.44/2024 of Panangad Police Station. The prosecution in the said case alleges that the first accused was in possession of a Kenyan passport bearing



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No.AK0077168 with a valid visa till 24.05.2018 and the second accused with a Kenyan passport bearing No.B222440 and visa valid till 16.01.2018. Both petitioners had entered the country with valid documents but thereafter continued to stay in violation of the visa conditions and when they were asked to produce the passport and visa, they failed to do so and they were found in possession of the passport of another person thereby committing offences under sections 14A, 14(a), and 14(b) of the Act, apart from section 12(1)C, 12(1)d and 12(1A) of the Passports Act.

6. Sri. Aneesh K.R., the learned counsel appearing for the petitioners, contended that incorporation of section 14A of the Act and section 12(1A) of the Passports Act is totally illegal, and those offences are not attracted even going by the uncontroverted allegations in the final report.

7. Sri. K.A.Noushad, the learned Public Prosecutor, on the other hand, contended that the applicability of section 14A of the Act arises even in cases where a foreigner stays in India without authority, and therefore, the accused are bound to be proceeded against, considering the seriousness of the offences. It was also submitted that the applicability of the sections of the Passports Act and the Foreigners Act are all to be decided during trial.

8. I have considered the rival contentions.



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9. All four petitioners are foreign nationals. The Foreigners Registration Officer has informed that petitioners had a valid visa and passport at the time of their entry into India. The final report also indicates that petitioners were in possession of valid documents at the time of their entry. Thus, petitioners' entry into India was legal.

10. The Act is the main legislation that governs the entry into and departure of foreigners from India. Infiltration into India by foreign nationals has been a perennial problem. Despite various measures to curb the menace of infiltration, there were no signs of any recession and instead, the problem only aggravated. The Act was amended in 2004 to include stricter measures to prevent infiltration into the country. Section 14 of the Act as it stood earlier, was substituted by Act 16 of 2004, and the present section 14 and section 14A were incorporated w.e.f. 20-02-2004.

11. For the purpose of reference, sections 14(a) and 14A of the Foreigners Act are required to be extracted and they read as follows:

"14. Penalty for contravention of provisions of the Act, etc. — Whoever. —

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(c) contravenes the provisions of this Act or of any order made



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thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act,

shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

14A. Penalty for entry in restricted areas, etc. —

Whoever. —

(a) enters into any area in India, which is restricted for his entry under any order made under this Act, or any direction given in pursuance thereof, without obtaining a permit from the authority, notified by the Central Government in the Official Gazette, for this purpose or remains in such area beyond the period specified in such permit for his stay; or

(b) enters into or stays in any area in India without the valid documents required for such entry or for such stay, as the case may be, under the provisions of any order made under this Act or any direction given in pursuance thereof,

shall be punished with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting court why such penalty should not be paid by him.



12. A perusal of the above-extracted provisions reveals that when the entry of a foreign national into India is based on valid documents and the foreigner continues to stay in the country beyond the validity of the period in the visa or does any act in violation of the visa conditions, the offence under section 14(a) of the Act gets attracted. The punishment provided is imprisonment upto five years along with fine. However, in comparison, section 14A of the Act applies when the foreigner enters into the country without any document and continues to stay without any authority or enters into any area which was restricted for his entry and continues to stay in the area without valid documents. The punishment provided under section 14A of the Act is imprisonment which can extend to eight years with a minimum term of two years, and with a fine of not less than ten thousand rupees.

13. The distinction between the two provisions concerns the validity of the initial entry. Section 14(a) of the Act applies when the initial entry into the country was with valid documents, while under section 14A of the Act, the initial entry into the country or a particular area must have been without any valid documents. This difference has resulted in providing a minimum punishment for section 14A in contradistinction with section 14(a) of the Act.

14. Entry into the country and entry into restricted areas, without



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any valid documents are both treated as infiltration. Staying in the country with impunity after infiltrating has to be treated differently from staying beyond the period permitted after legal entry. A reading of the provisions makes it explicit that the intention of the legislature was to impose stricter punishment for those who entered the country without any valid documents and continued their stay, while a lesser punishment was intended for those who entered and stayed in the country with valid documents but continued to stay after the permitted period. The erstwhile Section 14 of the Act was substituted with section 14 and section 14A of the Act to effectively deal with the problem of infiltration of foreign nationals and to provide a punishment according to the gravity of the offence committed. The aforesaid purport of the amendment throws light on the scope of the provisions under consideration.

15. In the instant case, all the petitioners had, concededly, entered India with valid documents. They cannot be treated as infiltrators. Hence, the uncontroverted allegations in the final report can only indicate an offence under section 14(a) of the Act and not section 14A of the Act. Inclusion of section 14A of the Act against the petitioners is therefore an abuse of the process of court and is liable to be interfered with.

16. Apart from the above, petitioners are also indicted for the offence under sections 12(1)C, 12(1)d and 12(1A) of the Passports Act.



Section 12(1A) reads as follows:

"Section 12(1A). *Whoever, not being a citizen of India,-*
(a) makes an application for a passport or obtains a passport by
suppressing information about nationality, or
(b) holds a forged passport or any travel document,
shall be punishable with imprisonment for a term which shall not
be less than one year but may extend to five years and with fine
which shall not be less than ten thousand rupees but which may
extend to fifty thousand rupees] or with both. "

17. The basis of the allegations for including section 12(1A) against the petitioners is that they had produced passports belonging to another person when demanded. However, the mere production of another person's passport will not amount to holding a forged passport. The term 'forgery' has not been defined in the Passports Act. Therefore the definition of the term forgery in the Indian Penal Code, 1860 has to be resorted to. 'Forgery' as per section 463 IPC arises only when a person makes a false document. Making a false document is defined in section 464 IPC, which reads as below:

"S.464. *Making a false Document. A person is said to make a false document or false electronic record:*

First— *Who dishonestly or fraudulently—*

- 1. makes, sign, seals or executes a document or part of a document;*
- 2. makes or transmits any electronic record or part of any electronic record;*
- 3. affixes any digital signature on any electronic record;*



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4. *makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority or a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or*

Secondly— *who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*

Thirdly— *who dishonestly or fraudulently causes any person, sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.*

18. Mere production of passport belonging to another person is not forgery either under the Indian Penal Code or under the Passports Act. Hence inclusion of the offence under section 12(1A) of the Passports Act against the petitioners is also an abuse of the process of law.

19. Thus, prosecution of the petitioners for the offences under section 14A of the Foreigners Act, 1946 and under section 12(1A) of the Passports Act, 1967 is without any legal basis and those sections are



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liable to be eschewed, while the prosecution for the remaining offences can continue.

Hence, the prosecution of the petitioners as accused for the offences under section 14A of the Foreigners Act, 1946 and under section 12(1A) of the Passports Act, 1967 in C.C. No.183/2024 on the files of Judicial First Class Magistrate's Court-III, Ernakulam, and in C.C. No.748/2024 on the files of the Judicial First Class Magistrate's Court-VIII, Ernakulam is quashed.

Crl.M.C No. 6168/2024 and Crl.M.C No.6618/2024 are allowed in part.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX OF CRL.MC 6168/2024

PETITIONER'S/S' ANNEXURES

- Annexure A1** THE TRUE COPY OF THE FIR IN CRIME NO 233 OF 2024 OF CHERANALLOOR POLICE STATION FOR THE OFFENCES FALLING UNDER SECTION 14A, 14(a), (b) AND (c) OF THE FOREIGNER ACT AND 12(1)(c) (d) OF THE PASSPORT ACT
- Annexure A2** THE ACCUSED COPY OF THE FINAL REPORT IN CRIME NO 233 OF 2024 OF CHERANALLOOR POLICE STATION FOR THE OFFENCES FALLING UNDER SECTION 14A, 14(a), (b) AND (c) OF THE FOREIGNER ACT AND 12(1)(c) (d) OF THE PASSPORT ACT
- Annexure A3** THE RELEVANT PAGES OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT IN CRL MC NO 5177/2024 BEFORE HIGH COURT OF KERALA

APPENDIX OF CRL.MC 6168/2024

RESPONDENT'S/S' ANNEXURES

- Annexure R2(a)** A TRUE COPY OF THE ORDER IN Cr1.P No.6578 OF 2019 DATED 19.5.2020 OF THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALURU
- Annexure R2(b)** TRUE COPY OF THE ORDER IN CRL.P.NO.200595 OF 2020 DATED 04.09.2020 OF THE HON'BLE HIGH COURT OF KARNATAKA, KALABURAGI BENCH
- Annexure R2(c)** TRUE COPY OF THE ORDER IN BA NO.1852 OF 2024 DATED 12.4.2024 OF HON'BLE HIGH COURT OF KERALA