

UNOFFICIAL TRANSLATION

DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE COURT
ALANDUR

PRESENT HON'BLE MR. S. ETHIRAJ, B.A., BL.,
DISTRICT MUNISIF CUM JUDICIAL MAGISTRATE, ALANDUR

C.C. NO. 151/98

DATE: FRIDAY, JULY 17, 1998

State by

Inspector, Airport Police Station

Cr.No. 660/96

--- Complainant

Vs.

Asghar Nikookar Rahimi

S/o Mohd. Oberay

--- Accused

This case was taken up on file on 7.4.98. The Asst. Public prosecutor for the government and the learned advocate Ms. P. Selvi for the accused appeared before me. Heard the arguments of both sides and after considering the documents, I am pronouncing this final.

ORDER

Following is the abstract of the charge sheet:

On 15.11.1996 at 6 a.m. when the complainant was on duty at the Chennai Anna International Airport in the Immigration Section checking the passports of the air passengers, the accused, who was to board the British Airways aircraft B.A. 035 bound for London, submitted his Passport N.H.843616 issued by the Iranian government. The complainant found out

that the photograph affixed in Page 2 of the passport was not that of the holder of the passport but that the photograph of the accused was affixed there' and that the said passport and the accused has no connection whatsoever; and that the accused claimed that the passport belonging to another person, as his own and had affixed his photograph on the passport and was caught by the complainant, when he was attempting to board the flight to London and the accused was handed over to the Airport Police Station; and since it was understood that the accused accepted the charges under Section 12 (1)(A) of the Passport Act; a charge sheet has been filed against him

2. Copies of all documents were given free of cost to the accused as per Section 207 of the criminal Procedure Code.

3. When the accused was informed in English, about the contents of the charge sheet, the accused accepted his guilt. The charge sheet under Section 12(1)(A) of the Passport Act was translated into English, explained to the accused in English and questions were asked in English. The accused accepted the above charges in English. Since the accused stated that he does not know Tamil and that he can speak and understand English, the charges against him were translated into English and made known to the accused.

4. The accused stated that he is willingly agreeing to the charges against him and an admission of guilt memo was filed on his behalf. Since it was brought to my notice that the accused was not under anyone's instigation to plead guilty, and since his acceptance of the charges were voluntary, and since the admission to plead guilty was willingly submitted by the accused, and since the accused has stated before this Court that he is pleading guilty to the offence; I hereby declare that the accused is guilty of an offence under Section 12(1)(A) of the Passport Act. The accused was informed, in English, about the Punishment to be imposed on

him. The accused stated that for 10 weeks he was kept under judicial custody and this may be imposed as a punishment on him, and that he is an Iranian refugee and that he does not have the money to pay the fine; and that his dependents are living as refugees in London and requested that the period in which he was under judicial custody may be treated as a punishment and to issue orders imposing minimum fine only.

5. The learned advocate who represented the accused, argued that a punishment, lower than the penalty imposed under Section 12(1) (A) of the Passport Act may be imposed on the accused and has cited, as examples, the following judgements:

1. 1986 CrLJ 876-Suhasini Baban Kate vs State of Maharashtra - page 876
2. AIR 1973 SC1457-BC Goswami vs Delhi Administration - page 1457
3. 1993 CrLJ Urmila Agnihotri vs State and another - page 950
4. 1997 SCC (Cri) 214-Kaka Singh vs State of Haryana - page 214
1986 CrLJ.876 (Bombay High Court) V.S.KOTWAL, J.Suhasini Babab Kate, Petitioner V. State of Maharashtra, Respondent Criminal Revn. Appln. No.253 of 1984, D/-9-7-84

6. Having regard to all these features as also having regard to the nature of the incident, in my opinion, it is unnecessary to send the lady back to jail and she can be released on the sentence already undergone in the interest of justice. It is true that under the Act the minimum sentence prescribed is to the tune of one month. However, in similarly situated circumstances when the accused was tried for an offence under the Prevention of Food Adulteration Act wherein also a minimum sentence is prescribed, as reported in Umrao Singh Vs. State of Haryana (1981) 3 SCC91. (1981CriLJ1704) the Supreme awarded a sentence less than the one that was prescribed and in fact the accused therein was released on the basis of the sentence already undergone.

AIR 1973 Supreme Court 1457(V60 C332)

B.C. Goswami vs. Delhi Administration (Dua J) (Prs.1-5) S.C.1457 (From Delhi: AIR1970Delhi95)

K.K. Mathew and I.D. Dua, JJ, B.C. Goswami, Appellant V. Delhi Administration, Respondent.

Criminal Appeal No.23 of 1970.D/-4.5.1973

"In considering the special reasons the judicial discretion of the court is as wide as the demand of the cause of substantial justice.

10. The sentence of imprisonment imposed by the High Court for both these offences is one year and this sentence is to run concurrently. The only question which arises is that under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act the minimum sentence prescribed is rigorous imprisonment for one year and there must also be imposition of fine. The sentence of imprisonment can be for a lesser period but in that event the Court has to assign special reasons which must be recorded in writing. In considering the special reasons the Judicial discretion of the Court is as wide as the demand of the cause of substantial justice".

"1993 CrL.L.J.950

(Delhi High Court)

Dalveer Bhandari J.

Smt. Urmila Agnihotri, Petitioner, Vs. State and another, Respondents.

CrL. Revn. No.205 of 1991,D/-6.2.1992

Customs Act (52 of 1962), Sc.132,135-offence of smuggling-sentence-Reduction of-Non-consideration of advanced age of accused, her multiple ailments and her husband's serious ailment by trial court sentence reduced to already undergone(para6) On the special and exceptional facts and circumstances of this case, particularly the advanced age of the petitioner, her multiple ailments, her husband's serious ailment, in my opinion the ends of

justice would meet it the penalty of fine is enhanced from Rs 25000/ to Rs.75,000/-but because of the facts and circumstances enumerated above the sentence of imprisonment is reduced to the one already undergone."

"Supreme Court Cases (Criminal)1997 Supreme Court Cases (cri)214
(Before G.N.Ray and Faizanuddin, JJ)

Kaka Singh Appellant Vs. State of Haryana Respondent

Accused on bail and settled in life-sentence reduced to the period already undergone, Viz., more than seven months-Terrorist and Disruptive Activities (Prevention) Act, 1985,S.6 (1)-Arms Act, 1959,S.25. (Paras 2,3 and 4)"

The laws mentioned in the above judgements, a minimum penalty has been mentioned for the offences under the law. It was stated that even though the minimum sentence is prescribed under the Act for a particular offence, the Court is having the discretionary power to grant lesser sentence than the prescribed minimum sentence if the nature of the offence, in the opinion of the Court is very meager. Since the accused in this case is an Iranian refugee and the incident happened on 15-12-96 and on the government side it was stated that the charge sheet was filed after that and since it was understood that he was in prison for nearly 2 1/2 months from 1996;since the accused has not been able to return to his home country for the past 3 years, and since upon scrutiny of his petition it was noted that the accused is an Iranian refugee, and since he is young at age and since he has pleaded guilty to the charges and has requested for leniency in punishment and on behalf of the accused it was requested that an opportunity may be given to him to be a good citizen in future, I feel that the period of his stay in prison may be treated as a punishment and a fine may be imposed and order accordingly.

So the accused is an offender, under Section 12(1)(A) of the Passport Act and taking into consideration the information contained in his petition, I order that the accused may undergo rigorous imprisonment of 2 months and pay a fine of Rs.10,000/- failing which to undergo another two months of imprisonment under Section 12(1)(A) of the Passport Act. I order that the period of imprisonment from 15.11.96 to 21.1.197 is to be considered as punishment, for the accused and the said period shall be set off under Section 428 of the criminal Procedure Court. Total fine amount is Rs.10,000/-

In this case, no properties were acquired.

This order was dictated by me to the stenographer, typed by the stenographer, corrected by me, and was delivered in the court on this day 17 July 1998.

Sd/-S.Ethiraj

Judicial Magistrate, Alandur

Enclosures: Nil

Sd/-

Judicial Magistrate, Alandur