

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

TUESDAY, THE 26TH DAY OF OCTOBER 2021 / 4TH KARTHIKA, 1943

WP(CRL.) NO. 269 OF 2021

PETITIONERS:

- 1 IMRAN MUHAMMAD,
AGED 39 YEARS
S/O. MUHAMMAD ALI,
BEARER OF PAKISTAN PASSPORT NUMBER FP1221842,
CURRENTLY RESIDING AT C/O. DR. ANILKUMAR G,
VAZHAKKALA, PBK MYNA ROAD ERNAKULAM 682 021.
- 2 ALI ASGHAR,
AGED 40 YEARS
S/O. MUHAMMAD ALI,
BEARER OF PAKISTAN PASSPORT NUMBER MJ1809981,
CURRENTLY RESIDING AT C/O. DR. ANILKUMAR G,
VAZHAKKALA, PBK MYNA ROD ERNAKULAM 682 021.
- 3 AAMRI REHAB INTERNATIONAL,
REPRESENTED BY ITS CHIEF MEDICAL OFFICER, DR. ANILKUMAR
G, AGED 39 YEARS S/O. GOPALAKRISHNAN PILLAI,
RESIDING AT VAZHAKKALA PBK MYNA ROAD, ERNAKULAM 682 021.

BY ADVS.V.J.MATHEW (SR.)
VIPIN P.VARGHESE
C.ANCHALA
KEVIN MATHEW GEORGE
ROWENA COLETTE DIAS

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ADDITIONAL CHIEF SECRETARY AND SECRETARY
TO GOVERNMENT OF KERALA, HOME DEPARTMENT , GROUND FLOOR,
MAIN BLOCK, SECRETARIAT, THIRUVANANTHAPURAM 695 001.
- 2 CITY POLICE COMMISSIONER,
COCHIN CITY, ABDUL KALAM MARG,
MARINE DRIVE, COCHIN 682 0111.

**BY ADVS.SHRI.SAJJU.S., SENIOR GOVERNMENT PLEADER
SHRI.P.NARAYANAN, ADDITIONAL PUBLIC PROSECUTOR
DIRECTOR GENERAL OF PROSECUTION**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
21.10.2021, THE COURT ON 26.10.2021 DELIVERED THE FOLLOWING:**

JUDGMENT

This is a writ petition filed under Article 226 of the Constitution of India seeking the following reliefs :-

- a) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the second respondent to consider Ext.P16 representation filed by the third petitioner – Hospital on behalf of the 1st and 2nd petitioner and issue a Police clearance certificate for their exit travel from India (Chennai) to Sharjah – Pakistan;
- b) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents to permit the 1st and 2nd petitioners to depart from India and close the crime wrongly registered against the petitioners 1 and 2.

2. Petitioners 1 and 2 are Pakistan nationals who have come to India on for medical treatment. The first petitioner is suffering from Cervical Spinal cord injuries for which he sought treatment from third petitioner hospital, AAMRI Rehab

International, Vazhakala, Ernakulam. Thus, he obtained Ext. P2 medical visa for a period of three months from 12.08.2021 till 11.11.2021. The second petitioner is his medical attendant. In other words, the visa of the first petitioner is a medical visa whereas the visa of the second petitioner is in the category of medical - 2 visa; he is the attendant of the first petitioner. The medical records indicate that the 1st petitioner had been suffering from cervical spinal cord injuries and paralysis and the third petitioner is designated as Indian host for the purposes of issuance of visa and for registration.

3. Now the sequence of events can be stated first. Exts. P2 and P4 visas were issued from Oman by the Embassy of India on 12.08.2021 for a period of 90 days. Accordingly, petitioners 1 and 2 arrived Chennai International Airport on 18.08.2021 and the Immigration Officer, Anna International Airport issued the Exts.P7 and P8 residential permits respectively to petitioners 1 and 2. By virtue of Exts. P7 and P8, they have been authorized to

remain in India at the hospital of Dr. Anilkumar G., Vazhakala, PBK Myna road, Ernakulam i.e., the third petitioner. Thus, both of them reached Cochin through Kochi International Airport on 19.08.2021. The statement of facts indicate that they had reached the third petitioner hospital at 2.30 P.M., and at 5.51 P.M. itself, the matter was intimated to the Assistant Commissioner of Police, Special Branch, Ernakulam. According to the petitioners, going by the residential permits, Exts. P7 and P8, they have to report before the Superintendent of Police, Cochin. But that address is not specific. Anyhow, the petitioners contend that immediately on arrival, the second respondent was contacted and the office of the second respondent informed the third petitioner that the Special Branch, Ernakulam is the designated authority. Accordingly, the third petitioner hospital contacted the Special Branch, Ernakulam by telephone and informed them of the arrival of petitioners 1 and 2, within 24 hours. The Special Branch asked the third petitioner to e-mail the photographs of the

petitioners 1 and 2 along with the residential permits to the e-mail id of the Assistant Commissioner of Police, Special Branch, Ernakulam. Accordingly, on 19.08.2021, the third petitioner sent the photographs and other documents to the e-mail account of the Assistant Commissioner, Special Branch, Ernakulam, which is evident from Ext.P10. According to the petitioners, officers of the Special Branch, Ernakulam had visited the petitioners 1 and 2 at the third petitioner hospital on the next day itself and regularly thereafter, which is evident from the CCTV feed maintained in the Hospital.

4. The 1st petitioner underwent Ayurveda treatment in the hospital; after one month, under Ext.P11 he was discharged from the hospital on 19.09.2021. The copy of air tickets indicate that their travel plan was to fly to Chennai from Kochi by Indigo on 20.09.2021 and then to leave India on 21.09.2021 from Chennai for Karachi via Sharjah. But when reached Chennai, they were not allowed to leave the country for want of police

clearance certificate. Thus, they came back to Cochin and on 22.09.2021, the third petitioner gave the Ext.P16 representation to the second respondent seeking to grant police clearance certificate. But to their utter surprise, on 28.09.2021, not only that police clearance certificate was not issued, a crime was registered in Thrikkakara police station against the petitioners 1 and 2 alleging offence under Sections 11 and 14 of the Foreigners Act and that prompted the petitioners to approach this Court seeking the aforesaid reliefs.

5. I heard Adv. Sri. V.J. Mathew, learned Senior Counsel for the petitioners and Sri. P. Narayanan, learned Additional Public Prosecutor for the respondents.

6. According to the learned Senior counsel, it is a clear case of abuse of the process of law. Referring to various documents produced by the petitioners, learned counsel said that the petitioners 1 and 2 have a valid visa till 11.11.2021. Immediately, after their arrival at Kochi, they had contacted the

office of the second respondent and then on instruction, reported the matter to the Assistant Commissioner of Police, Special Branch and there was close monitoring by the Special Branch, still, when police clearance certificate was sought, the crime has been registered for which absolutely there is no basis. The learned counsel also relied on the decisions reported in **Kapil Agarwal and Others v. Sanjay Sharma and others [AIR 2021 SC 1241]** and **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another [(2017) 9 SCC 641]**.

7. On the other hand, the learned Public Prosecutor said that a relief for closing the FIR cannot be granted. In fact, the learned Public Prosecutor could not submit anything justifying the conduct of second respondent in directing the registration of a crime against the petitioners 1 and 2.

8. Ext. P17 is the copy of the FIR registered against the petitioners 1 and 2. It is stated that they have violated the

standing instructions of intimating their arrival in India and thus in violation of the standing instructions, remained in the third petitioner hospital and failed to report the matter to the second respondent. It is also evident from the FIR that the Assistant Commissioner had made a report to the second respondent and then the second respondent directed the registration of the crime and that was how Ext.P17 was lodged.

9. After hearing counsel on both sides and perusing the documents produced by the petitioners, I do not have slightest doubt in my mind that the Ext.P17 is clearly an abuse of the process of law. The learned Public Prosecutor could not apprise the court how Section 11 of the Foreigners Act would be attracted in the given facts of the case. The genuineness of the documents produced by the petitioners is not under challenge. It is true that petitioners 1 and 2 are Pakistan nationals. They had reached India on 18.08.2021 under a valid visa issued by the Indian Embassy of Oman, Muscat; when they reached Chennai

International Airport on 18.08.2021, they were given residential permit by the Immigration Officer; they were allowed to reside in the third petitioner hospital and the visa has validity till 11.11.2021.

10. Thus the petitioners reached the third petitioner hospital at 14.30 hours on 19.08.2021. It is evident from Ext.P10 that immediately thereafter, as mandated in the residential permits, the second respondent was promptly contacted and may be on advice from his office, the Assistant Commissioner of Police, Special Branch was contacted and then they were told that their photographs should be sent. Of course, medical records do suggest that the first petitioner is a person suffering from serious illness with a cervical spinal cord injury and paralysis; he is in an immobile condition. Such a person cannot be expected to reach the police station and make a report physically. The second petitioner is his medical attendant. In that case, the third petitioner had contacted the second respondent and then the

Assistant Commissioner of Police, and on his advice the photographs were sent and Form C reports were duly submitted before the authorities concerned. The specific case of the petitioners is that on 20.08.2021 itself, officers of the Special Branch, had visited the petitioners 1 and 2 and thereafter, they had visited them regularly and had taken stock of things. Still it is not known as to how, police could register a case against the petitioners under Section 11 read with 14 of the Foreigners Act on 28.09.2021, that too after making Ext.P16 request.

11. On completion of the treatment, petitioners wanted to leave Cochin on 20.09.2021 and then leave India for Karachi via Chennai on 21.09.2021. The only fault, in my assessment, committed by the petitioners is that they did not make any written request for getting police clearance certificate from the second respondent, prior to their departure from Kochi. It was only after reaching Chennai that they realized their omission that they had not obtained police clearance certificate from Kochi and

that was why they could not leave the country on 21.09.2021 as originally planned. Thus, they came back to Kochi and the third petitioner gave the Ext.P16 request to the Superintendent of Police, may be the second respondent, for getting police clearance certificate and then the crime was registered on 28.09.2021.

12. In no stretch of imagination, the act of the respondents in registering a crime against the petitioners can be justified. The learned Public Prosecutor could not convince how offence under Section 11 of the Foreigners Act is attracted. In my view, in fact such an act of the second respondent has only brought ignominy to our system. Petitioners, especially the third petitioner has taken extra care to follow the procedural formalities; immediately on arrival of petitioners 1 and 2 in Kochi, police officials were contacted and Form C intimations were submitted. Ext.P10 clearly indicates that the communication was sent via e-mail. The contention that the police officials of the

Special Branch were duly monitoring the stay of the petitioners 1 and 2 in 3rd petitioner hospital also has not been disputed. But it appears that there was lack of co-ordination in the police department. The respondents have no case that petitioners have violated the terms of the visa or the residential permits or had caused any threat to the national security or done anything prejudice to our interests. Their visit was under medical visa and the second petitioner had accompanied the 1st petitioner only as medical attendant. The crime was registered without making proper enquiry or doing home work by the respondents.

13. It is expected that when foreign nationals are involved, responsible officials would exhibit little more sensibility and act cautiously. Exception has to be taken for registering a crime at the drop of a hat. Here absolutely no reason is made out for initiating criminal prosecution against the petitioners 1 and 2 who had reached India with valid travel documents; their arrival was duly intimated to the Special Branch

and the officials of the Special Branch were monitoring them.

14. It is the settled proposition of law that where the allegations made in the FIR or the complaint even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused or where the allegations in the FIR and other materials do not disclose a cognizable offence justifying investigation by police, the court is justified in quashing the proceedings at the threshold. Here, as noticed earlier, petitioners 1 and 2 had reached India with valid documents. The matter was duly intimated to police officials, the Assistant Commissioner of Police, Special Branch. It was not heard contending that the police was not aware of their arrival and stay at the third petitioner hospital. Still when a representation was given for issuing police clearance certificate, the police registered a crime which is totally unfounded and illegal. I have no hesitation in holding that all the proceedings pursuant to Ext.P17 are illegal

and therefore, proceedings initiated pursuant to the Ext.P17 are hereby quashed.

15. The second respondent is hereby directed to issue police clearance certificate, as per law, to the petitioners 1 and 2, within three days from today.

The W.P. (Crl.) is allowed as above.

SD/-

K. HARI PAL

JUDGE

DCS/25/09/2021

APPENDIX

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE 1ST PETITIONER'S PASSPORT
NUMBERED FP1221842 ISSUED ON 16.10.2017.
- Exhibit P2 TRUE COPY OF THE 1ST PETITIONER'S INDIAN
MEDICAL VISA NUMBERED VL4514081 ISSUED ON
12.08.2021.
- Exhibit P3 TRUE COPY OF THE 2ND PETITIONER'S PASSPORT
NUMBERED MJ1809981 ISSUED ON 22.12.2012.
- Exhibit P4 TRUE COPY OF INDIAN MEDICAL X VISA NUMBERED
VL4514080 ISSUED ON 12.08.2021.
- Exhibit P5 TRUE COPY OF INITIAL PROCEDURE REQUEST AND THE
REPORT OF KWALAH HOSPITAL, MINISTRY OF HEALTH,
SULTANATE OF OMAN DATED 11.03.2019.
- Exhibit P6 TRUE COPY OF THE 3RD PETITIONERS REQUEST TO
THE HIGH COMMISSIONER OF INDIA TO OMAN DATED
04.02.2021.
- Exhibit P7 TRUE COPY OF RESIDENTIAL PERMIT ALONG WITH THE
IMMIGRATION SHEET DATED 18.08.2021 ISSUED TO
THE 1ST PETITIONER.
- Exhibit P8 TRUE COPY OF RESIDENTIAL PERMIT ALONG WITH THE
IMMIGRATION SHEET DATED 18.08.2021 ISSUED TO
THE 2ND PETITIONER.
- Exhibit P9 TRUE COPY OF FILLED FORM C DATED 19.08.2021.
- Exhibit P10 TRUE COPY OF COMPUTER COPY OF THE EMAIL TO
ASSISTANT COMMISSIONER OF POLICE, SPECIAL

BRANCH ERNAKULAM DATED 19.8.2021.

- Exhibit P11 TRUE COPY OF DISCHARGE CERTIFICATE ALONG WITH DISCHARGE SUMMARY DATED 19.09.2021.
- Exhibit P12 TRUE COPY OF CALL LOG EVINCING THE 3RD PETITIONER'S CALL TO THE SPECIAL BRANCH, ERNAKULAM OFFICE.
- Exhibit P13 TRUE COPY OF INDIGO FLIGHT 6E 539 TICKETS FROM COCHIN TO CHENNAI 14.09.2021.
- Exhibit P14 TRUE COPY OF AIR ARABIA FLIGHT G9472 FROM CHENNAI O SHARJAH DATED 13.09.2021.
- Exhibit P15 TRUE COPY OF PAKISTAN INTERNATIONAL AIRLINES FLIGHT PK 306 FROM KARACHI TO LAHORE DATED 21.09.2021.
- Exhibit P16 TRUE COPY OF REPRESENTATION /LETTER DATED 22.09.2021 ISSUED BY THE 3RD PETITIONER TO THE 2ND RESPONDENT.
- Exhibit P17 TRUE COPY OF CRIME NUMBER 1266 OF 2021 DATED 28.09.2021.