

Abdul Munaf Bin Mohd Ismail (but charged as Kathar Abdul Gafoor) v Public Prosecutor
[2004] SGHC 4

Case Number : Cr Rev 16/2003
Decision Date : 09 January 2004
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : S Skandarajah and P Thirumurthy (Murthy and Co) for petitioner; David Chew (Deputy Public Prosecutor) for respondent
Parties : Abdul Munaf Bin Mohd Ismail (but charged as Kathar Abdul Gafoor) — Public Prosecutor

Criminal Procedure and Sentencing – Revision of proceedings – Petitioner pleaded guilty to charge of entering Singapore without valid pass as an Indian national – Whether conviction and sentence could be set aside on the ground that petitioner could produce Malaysian passports and certificate of citizenship to show that he was a Malaysian citizen.

1 This is a petition by Abdul Munaf bin Mohd Ismail (“the petitioner”), who was charged and convicted in the District Court on his plea of guilt to a charge of committing an offence under the Immigration Act (Cap 133, 1997 Rev Ed), to set aside his conviction and sentence. The petitioner says that he is a 58-year-old Malaysian citizen. His wife who is 44 years old is in India, but his father-in-law, Dawood Hamardin, who deposed that he is 72 years old, is a Singapore citizen. He is a retired hawker.

2 The petitioner was charged in District Arrest Case No 55723 of 2003 as Kathar Abdul Gafoor. He pleaded guilty to the charge under s 6(1)(c) of the Immigration Act for entering Singapore without a valid pass. He admitted, without qualification, the facts set out in the Statement of Facts, which is a short four-paragraph statement, reproduced here for easy reference:

1 The Accused, an Indian national, 40 years of age, was detained by Enforcement Officers from Field Ops 2 Branch (ICA) on 11.11.2003 at the vicinity of Blk 248 Simei Street 1, Hola Cafeteria, when he was suspected of being in possession of a photo-substituted Malaysian Restricted passport.

2 Investigations revealed that the Accused wished to enter Singapore in order to seek employment. As he was unable to obtain a visa to enter Singapore directly on his own Indian passport, Accused through some prior arrangement, was to be given a false Malaysian Restricted Passport to enable him to enter Singapore. Accused accepted the arrangement to enter Singapore unlawfully by passing himself off as one Malaysian named ABDUL MUNAF BIN MOHD ISMAIL. Sometime in August 2002, whilst in Malaysia, a male Indian known to him as “RAMU” gave him a Malaysian Restricted Passport No J675185. The said “RAMU” also assured Accused that he would not have any problem entering Singapore as his photograph was affixed on the said Malaysian Restricted Passport.

3 Further investigation revealed that the Accused on 30 October 2003, used the said Malaysia Restricted Passport to enter Singapore through the Woodlands Checkpoint. The Immigration officer unaware that the Accused had produced to him a photo-substituted [Malaysian] travel document that did not belong to him, allowed the Accused to enter Singapore on a 14-day Visit Pass, which was not lawfully issued to him.

4 The Accused, by passing himself off as the said ABDUL MUNAF BIN MOHD ISMAIL had obtained a Visit Pass, which was not lawfully issued to him. As he is unable to show that he was in possession of a Visit pass lawfully issued to him, he is deemed to have

entered Singapore unlawfully in contravention of section 6(1)(c) of the Immigration Act (Cap 133) punishable under section 6(3) of the said Act.

3 The petitioner was consequently found guilty and sentenced to two months' imprisonment and fined \$2,000. He paid the fine and had been serving his term of imprisonment from 12 November 2003 but was scheduled for release on 23 December 2003.

4 The petitioner's counsel, Mr Skandarajah, produced six old passports dating back to 22 April 1967. They were passports bearing the name of Abdul Munaf and the photographs in these passports show what appears to be the man before me, in the various stages of ageing. The Prosecution produced the seventh passport which was the one seized by the immigration officers when they arrested the petitioner. This passport was issued on 2 September 2002. The seven passports were issued by the Malaysian authorities. A Malaysian identity card with the name and photograph of Abdul Munaf was seized together with the seventh passport. The petitioner also produced a document which he said was his certificate of registration of citizenship in Malaysia. Mr David Chew, the Deputy Public Prosecutor, submitted that the investigating officer needed time to verify the thumbprint on the identity card and obtain verification from the Malaysian authorities that the petitioner was indeed Abdul Munaf. Counsel conceded that this procedure was likely to take time and by the time confirmation came through, the petitioner would already have served his term of imprisonment.

5 The petitioner had admitted to the Statement of Facts and the charge and this must be weighed strongly against him. His explanation before me was that he was coerced into making the admission. If there was no coercion the petitioner's story is, of course, less likely to be true, but this is not the forum to inquire into the conduct of the investigating or arresting officers given the urgency of the matter. If the petitioner is indeed innocent, he ought not to spend a minute longer in prison; the court in such circumstances is bound to see if there is other strong or reliable evidence that can be taken into account without having to inquire into the issue of coercion.

6 In this case, the seven passports as well as the certificate of citizenship appear to me have to the look, the feel, and the smell of authenticity about each of them. The testimonies of the petitioner and his Singaporean father-in-law, Dawood Hamardin, the 72-year-old retired hawker, sufficiently impressed me that they were telling the truth. Furthermore, they, especially the father-in-law who appears mentally alert and sharp, know that by this application, the petitioner is staking three days of imprisonment against a much longer sentence should they perjure themselves before me.

7 On the evidence, I am satisfied that the petitioner before me is probably Abdul Munaf and not Kathar Abdul Gafoor. Given the circumstances, there was insufficient time or opportunity for counsel to address me as to whether the burden of proof on the petitioner in a criminal revision is that of a balance of probabilities or merely the raising of a reasonable doubt. The court in *Chan Chun Yee v PP* [1998] 3 SLR 638 appears to have applied the balance of probabilities test, but it was a remark made in passing. In the present case before me, the petitioner was able to satisfy me on the higher test and so the issue of which is the applicable test need not be argued and considered.

8 For the reasons above, I set aside the conviction and sentence of the petitioner who was convicted in the name of Kathar Abdul Gafoor.