

Nrisingha Murari Chakraborty & Ors vs State Of West Bengal on 12 April, 1977

Equivalent citations: 1977 AIR 1174, 1977 SCR (3) 521, AIR 1977 SUPREME COURT 1174, (1977) 3 SCR 521, 1977 SC CRI R 189, (1977) 2 SCJ 6, 1978 (1) SCWR 75, 1978 (10) LAWYER 59, 1977 MADLJ(CRI) 327, 1977 CRI APP R (SC) 177, (1977) 3 SCC 7, 1977 ALLCRIC 309, 1977 ALLCRIR 299, 1977 SCC(CRI) 417

Author: P.N. Shingal

Bench: P.N. Shingal, Y.V. Chandrachud, P.K. Goswami

PETITIONER:

NRISINGHA MURARI CHAKRABORTY & ORS

Vs.

RESPONDENT:

STATE OF WEST BENGAL

DATE OF JUDGMENT 12/04/1977

BENCH:

SHINGAL, P.N.

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SHINGAL, P.N.

CHANDRACHUD, Y.V.

GOSWAMI, P.K.

CITATION:

1977 AIR 1174

1977 SCR (3) 521

1977 SCC (3) 7

ACT:

Indian Penal Code 1860--Sec. 415-420--whether Passport is a
Property-Meaning of property.

HEADNOTE:

The appellants were charged under section 420 read with section 120B of the Indian Penal Code on the ground that there was a conspiracy between them as a result of which hundreds of applications were filed for the issue of passports. The applications were made by suppressing the real facts about the nationality and addresses of the applicants

and by making false representations in several other respects. The prosecution alleged that hundreds of passports were issued and delivered to persons who were not entitled to have them under the law. Special Leave was granted limited to the question whether the passports were property within the meaning of section 420 of the Indian Penal code.

Dismissing the appeal,

HELD: 1. A passport is a document which by its nature and purpose is a political document for the benefit of its holder. It recognises him as a citizen of the country granting it and is in the nature of a request to the other country for his free passage there. [522-C]

Satwant Singh Sawhney v.D. Ramarathnam (1967) 3 SCR 525 referred to;

Ahayanand Mishra v. The State of Bihar (1962) 2 SCR 241 followed;

Queen Empress v. Appasami (1889) I.L.R. 12 Mad. 151 and Queen Empress v. Sashi Bhushan (1893) I.L.R. 15 All. 210 approved;

Ishwarlal Girdharilal Parekh v. State of Maharashtra and Other (1969) 1 SCR 13 followed.

In re Packianathan A.I.R. 1920 Mad. 131(1) and Local Government v. Ganga Ram A.I.R. 1922 Nagpur 229 approved.

2. The word 'property' is defined as the right to the use or enjoyment or the beneficial right of disposal of anything that can be the subject of ownership, specially ownership of tangible things. Passport is a tangible thing and is capable of ownership. It is the property of the State so long as it is with the passport issuing authority and has not been issued to the person concerned, and after issue it becomes the property of the person to whom it has been granted. Passport can be the subject of ownership or exclusive possession and is therefore property within the meaning of sections 415 and 420 I.P.C. [523 A-C, 524 G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 277 of 1971.

Appeal by Special Leave from the Judgment and Order dated the 23rd June, 1971 of the Calcutta High Court in Crl. A. No. 45 of 1964.

P.K. Chatterjee and Rathin Das for the Appellants. D.N. Mukherjee and G.S. Chatterjee for Respondents. The Judgment of the Court was delivered by SHINGHAL, J.--This appeal by special leave is directed against the judgment of the Calcutta High Court dated June 23, 1971, upholding the conviction of the appellants for offences under sections 420 and 420/120B of the Penal Code but reducing their sentences. The charge related to cheating the passport issuing authority of the Hooghly district by dishonestly inducing him to issue passports on the basis of false representations. This Court has limited the special leave to the question whether the passports were "property"

within the meaning of section 420 of the Penal Code ?

Speaking broadly, the allegation against the appellants was that there was a conspiracy between them as a result of which 1480 applications were filed for the issue of pass- ports from July, 1956 to April, 1957, by Muslims and Chinese nationals. These applications were alleged to have been made by suppressing the real facts about the nationality and addresses of the applicants, and by making false repre- sentations in several other respects. The prosecution alleged that hundreds of passports were thus issued and delivered to persons who were not entitled to them under the law. Some of the appellants were alleged to be directly concerned with those applications, and it was further alleged that the orders of the Passport Authority were obtained by dishonest inducement and false representation. A passport is a document which, by its nature and pur- pose, is a political document for the benefit of its holder. It recognises him as a citizen of the country granting it and is in the nature of a request to the other country for his free passage there. Its importance was examined by this Court in *Satwant Singh Sawhney v. D. Ramarathnam*(1) with reference to the provisions of the Indian Passport (Entry Into India) Act, 1920, (hereinafter referred to as the Act) and the Rules made thereunder which were in force at the time when the offences were said to have been committed in this case. After referring to sections 3 and 4 of the Act, and rules 4 and 5 of the Rules, this Court observed as follows,--

" possession of passport, whatever may be its meaning or legal effect, is a necessary requisite for leaving India for travelling abroad. The argument that the Act .does not impose the taking of a passport as a condition of exit from India, therefore it does not interfere with the right of a person to leave India, if we may say so, is rather hypertechnical and ignores the reali- ties of the situation. Apart from the fact that possession of passport is a necessary condition of travel in the international community, the prohibition against entry indirectly prevents the person from leaving India. The State in fact tells a person living in India 'you can leave India at your pleasure without a passport, but you would not be allowed by foreign countries to enter them without it and you cannot also come back to India without it.' No person in India can possibly travel on those conditions. Indeed it is impossible for him to do so. That apart, even that theoretical possibility of exit is expressly restricted by executive instructions and by refusal of foreign-ex- change." There can therefore be no doubt that a passport is a docu- ment of importance for travel abroad and is of considerable value to its holder.

(1) [1967] 3 S.C.R. 525.

The word "property" has been defined in the Century, Dictionary, which is an encyclopedic lexicon of the English language, as follows,--

"the right to the use or enjoyment or the beneficial right of disposal of anything that can be the subject of ownership; owner- ship; estate; especially, ownership of tangi- ble things: anything that may be exclusively possessed and enjoyed; possessions."

As has been stated, a passport provides the several benefits mentioned above. It is a tangible thing and is capable of ownership. There can therefore be no doubt that it is "property". It is property of the State so long as it is with the passport issuing authority and has not been issued to the person concerned and, after issue, it becomes the property of the person to whom it has been granted. Our attention has not been invited to any case where the question now before us arose for consideration on an earlier occasion. But a somewhat similar question was considered by this Court in *Abhaynand Mishra v. The State of Bihar* (1). The appellant there applied to the Patna University for permission to appear at the M.A. examination as a private candidate, representing that he was a graduate having obtained the B.A. degree in 1951 and had been teaching in a school. On that basis, an admission card was despatched for him to the Headmaster of the school. It was however found that he was neither a graduate nor a teacher. He was prosecuted for the offence 'under section 420 read with section 511 of the Penal Code. He contended that his conviction was unsustainable because the admission card had no pecuniary value and was not property. This Court repelled the contention and held that although the admission card as such had no pecuniary value, it had immense value to the candidate appearing in the examination for he could not have appeared at the examination without it, and that it was therefore property within the meaning of section 415 of the Penal Code. While reaching that conclusion, this Court relied on *Queen Empress v. Appasami* (2) and *Queen Empress v. Sashi Bhushan*. (3) In *Appasami's* case it was held that the ticket entitling the accused to enter the examination room was "property", and in *Sashi Bhushan's* case it was held that the term "property" included a written certificate to the effect that the accused had attended a course of lectures and had paid up his fees. On a parity of reasoning, we have no doubt that looking to the importance and characteristics of a passport, the High Court rightly held that it was property within the meaning of sections 415 and 420 of the Penal Code.

We may make a reference to *Ishwarlal Girdharlal Parekh v. State of Maharashtra and others* (4) also. There the question for consideration was whether an order of assessment was "property" within the (1) [1962] 2 S.C.R. 241. (2) [1889] I.L.R. 12 Mad. 151. (3) [1893] I.L.R. 15 All. 210. (4) [1969] 1 S.C.R. 193.

meaning of section 420 I.P.C. The charge in that case was that the appellant dishonestly or fraudulently induced the income-tax authorities and obtained an assessment order for less income-tax than due. It was held that the order of assessment received by an assessee was "property", since it was of great importance to the assessee, as containing a computation, of his total assessable income and, as containing or his tax liability. This Court also expressed the view that the word "property" did not necessarily expressed that the thing, of which delivery was dishonestly desired by the person who cheats, "must have a money value or a market value, in the hand of the person cheated". It was held that "even if the thing has no money value, in the hand of the person cheated, but becomes a thing of value, in the hand of the person, who may get possession of it as a result of the cheating practised by him, it would still fall within the connotation of the term 'property' in section 420 I.P.C." This decision also lends support to the view we have taken for, as has been stated, a passport is a valuable document.

Our attention has also been invited to *In re Packianathan* (1) and *Local Government v. Gangaram*. (2) The accused in *Packianathan's* case was prosecuted for an offence under section 419

read with section 511 of the Penal Code. He was going to Ceylon, and he used the permit which stood in the name of one Kumarswami, while his own name was J. Packiana- than. On seeing the permit the Health Officer issued a health certificate. It was held that the health certificate was "property" within the meaning of section 415 of the Penal Code and that if a person dishonestly and fraudulently induced the Health Officer to deliver it to him, he was guilty of an offence under section 419 I.P.C. Local Govern- ment v. Gangaram was a case where the accused obtained a certificate from the Deputy Inspector of Schools by stating untruly that he had passed the examination. It was held that the certificate was 'property' within the meaning of sections 415 and 420 I.P.C. and that the accused was guilty of an offence punishable under section 420 I.P.C. In taking that view the Nagpur High Court relied on Queen Empress v. Appasami (supra) and Queen Empress v. Sashi Bhushan (supra) on which reliance was placed by this Court in Abhayanand Mishra v. The State of Bihar (Supra) referred to above.

So as passport was a tangible thing, and was a useful document, and could be the subject of ownership or exclusive possession, it was "property" within the meaning of sections 415 and 420 I.P.C. There is therefore nothing wrong with the view which has been taken by the High Court and the appeal is hereby dismissed. The appellants who are on bail shall surrender to serve out the remaining sentence.

P.H.P.

(1) A.I.R. 3920 Mad. 131 (1)

(2) A.I.R. 1922 Nagpur 229.

Appeal dismissed.