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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 24TH DAY OF MARCH 2025 / 3RD CHAITHRA, 1947

CRL.MC NO. 694 OF 2025

CRIME NO.1388/2024 OF NEDUMBASSERY POLICE STATION, Ernakulam

AGAINST THE ORDER/JUDGMENT DATED 30.12.2024 IN CMP NO.2308 OF 2024 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ANGAMALY

PETITIONER:

ARJUN MADOU DUGI,
AGED 44 YEARS
S/O MADOU DUGI, 65-ALLON STREET, DL 012NR,
DARLINGTON, UNITED KINGDOM, PIN - 2008

BY ADVS.
K.RAJESWARY
ANIL PRABHA.K
ALEENA ANABELLY A.

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RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY THE SUB-INSPECTOR OF POLICE,
NEDUMBASSERY POLICE STATION,
ERNAKULAM, KERALA, PIN - 683585

2 DEPUTY SUPERINTEND OF POLICE,
C BRANCH, ERNAKULAM RURAL ALUVA, ERNAKULAM
DISTRICT, PIN - 683101

3 FOREIGNERS REGIONAL REGISTRATION OFFICER,
KOCHI

BY ADV MINI GOPINATH

OTHER PRESENT:

DSGI IN CHARGE T.C. KRISHNA.
SRI. VIPIN NARAYANAN, SR.PP.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13.03.2025, THE COURT ON 24.03.2025 PASSED THE FOLLOWING:

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"CR"

V.G.ARUN, J

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Crl.M.C.No.694 of 2025

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Dated this the 24th day of March, 2025

ORDER

The petitioner, a British citizen of Indian origin, is the accused in Crime No.1388 of 2024 registered at the Nedumbassery Police Station for offences punishable under Sections 465 and 471 of the Indian Penal Code, Sections 12(1)(b) and 12(1A) of the Passports Act, 1967 and Sections 14A(a) and (b) of the Foreigners Act, 1946. The crime is registered on the allegation that the petitioner, a citizen of India and holder of an Indian passport, had surrendered his passport and procured a Portuguese Passport by submitting a forged Aadhar card and thereafter, obtained a British passport. The petitioner travelled to India with the Portuguese passport and attempted to return to the United Kingdom using his British passport on



24.12.2024. The Officers at the International Emigration Centre in the Cochin International Airport at Nedumbassery, found pages 17, 18, 19 and 20 missing from the petitioner's passport and informed the police. Thereupon, the petitioner was arrested and later granted bail as per Annexure-2 order dated 30.12.2024, subject to the petitioner remaining in Kerala under the strict supervision of the Civil Authority within the meaning of Paragraph 11 of the Foreigners Order, 1948 till the disposal of the case against him. The court also directed the Civil Authority to specify the place of residence of the petitioner. Accordingly, the petitioner was shifted from the Sub Jail to the Transit Home at Kottiyam and has been residing there since 01.01.2025.

2. Heard, Adv.K.Rajeswary for the petitioner, Senior Public Prosecutor, Vipin Narayanan for respondents 1 and 2, and Senior Panel Counsel Mini Gopinath for the 3rd respondent.

3. Learned counsel for the petitioner submitted that her client is a person of Indian origin and had acquired Portuguese



citizenship. Thereupon, he surrendered his Indian Passport and got it cancelled as evidenced by Annexure-4 communication dated 22.09.2016. Later, the petitioner acquired citizenship of the United Kingdom also. The petitioner was issued with Annexure-7 Visa by the Indian Government, valid for the period 24.06.2023 to 23.06.2024. He landed in India on 24.02.2024 and after spending time with friends and relatives, reached Nedumbassery Airport on 22.12.2024 for his travel back to London. Unfortunately, the center pages of petitioner's British passport were found missing. The petitioner had no idea about the missing pages, since the passport was used by him for the first time after its renewal on 29.01.2024. In all probability, the pages were either omitted to be stapled or lost at the time of delivery. According to the counsel, since the petitioner is not an Indian citizen and the pages are missing from his British passport, he cannot be prosecuted for offences under the Passports Act. The prosecution of the petitioner alleging violation of Indian laws,

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militates against the concept of sovereignty, passport being a political document issued by a sovereign state in favour of its citizen or subject. It is contended that a conjoint reading of Sections 1(2) and 2(b) of the Passports Act would make it clear that the Act applies only to the citizens of India and is in relation to passports issued by the Government of India. Even though sub-section (1A) of Section 12 deals with persons who are not citizens of India also, accidental missing of pages from a British passport will not attract any of the offences under the Act. Referring to the decision in **Balwinder Singh v. State** [(2006) 134 DLT 700], it is submitted that the Delhi High Court has held that, attaching a plain sheet of paper to a blank page of the passport cannot be termed as alteration or attempt to alter the passport entries. It is argued that for Sections 465 and 471 of IPC to be attracted, *mens rea* is essential, which is absent as far as the petitioner's case is concerned. Support for this proposition is sought to be drawn from the decision of the Andhra Pradesh High Court in **Raghuram Kamisetty v.**

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Regional Passport Officer, Secunderabad, A.P. and Another [2007 SCC OnLine AP 613]. It is then submitted that the petitioner had stayed in India up to 24.12.2024 without noticing that the validity period of his visa had expired. The petitioner cannot be prosecuted for the offence under Section 14A of the Foreigners Act for overstaying, as his entry into India was legal. To buttress this argument, reliance is placed on the Apex Court's decision in **Akmal Ahmad v State of Delhi** [(1999) 3 SCC 337] and that of this Court in **Egadwa Mercy Adamba v. State of Kerala** [2024 (6) KHC 108]. While concluding her arguments, learned Counsel submitted that the petitioner's family is in the United Kingdom and his business is suffering huge setbacks due to the petitioner's absence. Therefore, on sympathetic considerations also, the petitioner should be permitted to travel back to the United Kingdom.

4. Learned Senior Panel Counsel submitted that on 22.12.2024, officials of Indigo Airlines handed over the



petitioner to the immigration officials at the CIAL Airport when he attempted to travel to the United Kingdom on a tampered British Passport and without a valid Indian visa. The petitioner was then handed over to the police and Annexure-1 FIR was registered. On verification of the petitioner's records, it came to light that he had arrived in India on 24.02.2024 on a Portuguese Passport and further scrutiny revealed that in Annexure-R3(b), the Indian Passport issued to him earlier, the petitioner's name was entered as Arjan Muru Chhelar, his parent's name as Chhelar Muru Ranmal and Chhelar Dheliben Muru, and place of birth as Vinzarana District, Porbandar. In order to procure a Portuguese Passport, the petitioner fabricated Annexure R3(c) Indian Aadhar Card showing his name as 'Arjun Madou' with a Daman and Diu address. In the Aadhar Card, his father's name was changed from Chhelar Muru Ranmal to Madou Deugi and his date of birth from 09.06.1980 to 17.03.1980. The petitioner also secured Annexure-R3(d), a second Indian Passport, with the changed



name and address on 27.02.2015 and got the passport renewed on 18.02.2016 [Annexure-R3(e)]. By obtaining a second Indian passport based on false information furnished by him, petitioner had committed the offences punishable under Sections 465 and 471 of IPC as well as Section 12(1)(b) of the Passports Act. The prosecution under Section 14A(b) of the Foreigners Act is also valid since the petitioner had overstayed in India for 303 days. According to the Senior Panel Counsel, a conjoint reading of Sections 14A of the Foreigners Act, Paragraph 7 of the Foreigners Order and Rules 6 and 7 of the Registration of Foreigners Rules, 1992 makes it clear that Section 14A not only regulates the entry of foreigners into India, but also deals with their stay in India.

5. Learned Public Prosecutor endorsed the arguments of the Senior Panel Counsel and submitted that, no intervention is warranted since the crime is still under investigation.

6. The documents on record reveal that the petitioner had been issued with an Indian Passport on 22.06.2002, which he



surrendered and got cancelled in the year 2016. Thereafter, petitioner obtained Annexure-R3(d) passport under a different name and address on 27.02.2015 which had validity up to 26.02.2025. For reasons known only to the petitioner, he got the passport renewed for the period 18.02.2016 to 17.02.2026, evidenced by Annexure-R3(e). While Annexure R3(d) passport was obtained by showing a Mumbai address, he has given a Daman and Diu address in Annexure-R3(e). It is intriguing to note that a foreign citizen could manage to obtain an Indian Passport and get it renewed within one year. Be that as it may, in so far as the petitioner is having an Indian Passport valid up to 17.02.2026, he cannot contend that the provisions of the Passports Act will not apply. Moreover, Section 12(1)(b) of the Act would apply even to foreign citizens if the provisions of Section 3 are contravened. Being contextually relevant Section 3 is extracted hereunder;

> "**Section 3: Passport or travel document for departure from India.**
>
> No person shall depart from, or attempt to depart from India unless he holds in this behalf a valid passport or travel document.



Explanation.—For the purposes of this section,—

(*a*) "passport" includes a passport which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed under the Passport (Entry into India) Act, 1920 (34 of 1920), in respect of the class of passports to which it belongs;

(*b*) "travel document" includes a travel document which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed.

The above provision makes it abundantly clear that, for the purpose of the section, the term 'passport' includes the passport issued by the Government of a foreign country also. Being so, petitioner's attempt to depart from India without a valid passport or travel document, even if it is issued by a foreign Government is in contravention of Section 3 and would therefore attract Section 12(1)(b) of the Passports Act.

7. Among the decisions cited, in ***Akmal Ahmad*** (*supra*), the accused, a Pakistani National, was caught with a loaded revolver and two passports, one Indian and the other Pakistani, at the New Delhi Railway Station. The Supreme Court held

Section 12(1) of the Passports Act to be inapplicable since the accused was not caught while attempting to depart from India, which is the prerequisite for attracting the offence under Section 12(1). The facts and question of law involved in **Raghuram Kamisetty** (*supra*) are entirely different. Therein the issue was with regard to the non-issuance of a passport alleging suppression of material facts. After taking note of the petitioner's submission that the mistake in his application was not willful and the police, favourable report submitted by the Andhra Pradesh High Court observed that, while deciding whether Section 12(1)(b) is attracted, ingredients like 'knowingly furnishes false information', 'suppresses any material information with a view to obtaining a passport or travel document' or 'without lawful authority alters or attempted to alter the entries made in passport or travel document', ought to be considered. In **Balwinder Singh**, addition of a blank paper to the passport was treated as tampering and the petitioner was charged with Section 12(1)(b)

of the Passports Act. The court verified the original passport and found that none of the entries were tampered and therefore held that the addition of a paper does not amount to tampering. The allegation against the petitioner is of having obtained an Indian passport by furnishing false details and attempting to depart by producing a truncated British passport. The allegations are sufficient to attract Section 12(1)(b) and their correctness cannot be decided in a case filed under Section 528 of BNSS.

8. The next contention is that the offence under Section 14-A(b) of the Foreigners Act is not attracted, the petitioner having entered India lawfully. While addressing the contention, it has to be borne in mind that the Foreigners Act, 1946 was introduced with the objective of conferring the Central Government with powers to regulate and control the entry of foreigners to India, their presence therein and departure therefrom. Section 14 of the Foreigners Act provides penalty for contravention of provisions of the Act, while Section



14-A deals with penalty for entry in restricted areas etc. For ease of understanding, Section 14 of the Foreigners Act is extracted below;

> "**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 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. "

The expression etc. used at the end of the heading shows that the enumeration is not exhaustive and there are other items that could be included. Therefore, the provision is not

intended to deal with entry in restricted areas alone. Bifurcation of Section 14A into sub-sections (a) and (b) makes the position explicit. While sub-section (a) deals with entry into any 'restricted area' without permit from the authority and remaining in such area beyond the period for stay specified in such permit, sub-section (b) pertains to entry or stay in 'any area' in India without the valid documents required for such entry under the provisions of any order made under the Act. The power to issue the 'Order' prohibiting, regulating or restricting the entry of Foreigners into India or their departure presence or continued presence is conferred by Section 3 of the Act. The Foreigners Order, 1948 is issued in exercise of that power.

9. As per Paragraph 7 of the Foreigners Order, every foreigner who enters India on the authority of a visa has to obtain a permit indicating the period during which he is authorised to remain in India and the place or places for stay in India, if any specified in the visa, from the Registration Officer.

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Rule 6 of the Registration of Foreigners Rules, 1992 stipulates that every foreigner entering India with a visa valid for more than one hundred and eighty days should submit the report under Rule 7 to the Registration Officer, within two weeks of expiry of the one hundred and eighty days. Once the registration report is submitted by the foreigner following the prescribed procedure, the Registration Officer will issue the certificate of registration in Part III of Form A, which shall be valid so long as the foreigner does not depart from India.

10. The permit under Paragraph 7 of the Foreigners Order and the certificate of registration under Rule 7 of the Registration of Foreigners Rules are the valid documents mentioned in Section 14-A(b) of the Act. Admittedly, the petitioner overstayed in India for 303 days. If during such stay, he did not possess the aforementioned documents, petitioner can be prosecuted under Section 14-A(b) also. In **Egadwa Mercy Adamba** (supra), the petitioner had entered India with valid documents. It was therefore held that Section 14(a) of the

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Act alone would apply and Section 14-A would come into play only if the initial entry into the country is without any valid document.

11. Going by the plain wordings of Section 14-A, not only entry without permit, but remaining in an area after expiry of the permit and staying in an area without the valid documents required for such stay, are made punishable. To sum up, even if the entry of a foreigner to India is lawful, his stay without the valid documents required for such stay will attract Section 14-A(b). As the judgment in **Egadwa Mercy Adamba** (supra) is seen rendered without considering the impact of Paragraph 7 of the Foreigners Order and Rules 6 and 7 of the Registration of Foreigners Rules, the decision is *per incuriam* to that extent.

12. Learned counsel then made an ardent plea for sympathetic consideration on the ground that the petitioner's wife and daughters are in the United Kingdom and the petitioner's presence, even if it is only for a short period, will bring reprieve to the family. The suspicious conduct of the



petitioner deters this Court from granting even the said temporary relief.

For the aforementioned reasons, this Crl.M.C is dismissed.

sd/-

V.G.ARUN, JUDGE

sj

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APPENDIX OF CRL.MC 694/2025

PETITIONER ANNEXURES

Annexure-1	**A TRUE COPY OF THE FIRST INFORMATION REPORT PERTAINING TO CRIME NO. 1388 OF 2024 DATED 23/12/2024**
Annexure-2	**A TRUE COPY OF THE ORDER OF THE HONOURABLE JUDICIAL FIRST-CLASS MAGISTRATE, ANGAMALY, DATED 30.12.2024,**
Annexure-3	**A TRUE COPY OF THE ORDER DATED 01.01.2025 OF THE FOREIGNERS REGIONAL REGISTRATION OFFICER**
Annexure-4	**THE TRUE COPY OF THE LETTER OF CANCELLATION OF THE INDIAN PASSPORT, DATED 22.09.2016**
Annexure-5	**THE TRUE COPY OF THE RENEWED PORTUGUESE PASSPORT DATED 24.09.2021**
Annexure-6	**A TRUE COPY OF THE RENEWED UK PASSPORT DATED 29.01.2024**
Annexure-7	**A TRUE COPY OF THE VISA FROM 24.09.2023 TO 23.09.2024**
Annexure-8	**THE PETITIONER'S ROUND TRIP TRAVEL TICKETS**
Annexure-9	**TRUE COPY OF THE PASSPORTS OF PETITIONER'S WIFE AND FOUR DAUGHTERS**

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Annexure-10	**TRUE COPY OF THE DETAILS OF PETITIONER'S BUSINESS CONCERN IN UK**

RESPONDENT ANNEXURES

Annexure R3(a)	**A true copy of letter received from Indigo Airlines**
Annexure R3(b)	**A true copy of Indian passport No. E2362539 issued to the petitioner**
Annexure R3(d)	**A true copy of Indian passport No. M6731188 issued to the petitioner**
Annexure R3(e)	**A true copy of Indian passport No N7121073 issued to the petitioner**
Annexure R3(c)	**A true copy of Aadhar Card No. 836969588697**