

**SUPREME COURT OF INDIA**

**REPORTABLE**

**Bench: Justices Surya Kant and Dipankar Datta**

**Date of Decision: 22 January 2024**

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.335/ 2024

(Arising out of Special Leave to Appeal (Crl.) No. 2877/2021)

**Mariam Fasihuddin & Anr.**

**....Appellant(s)**

**Versus**

**State by Adugodi Police Station & Anr.**

**....Respondent(s)**

**Legislation:**

Sections 420, 468, 471, 34, 346, 498A, 506, 120B, 201 IPC of the Indian Penal Code, 1860 (IPC)

Section 12(b) of the Passports Act, 1967

Section 239, 482, 173(8) of the Code of Criminal Procedure, 1973 (CrPC)

**Subject:** Issue of alleged forgery in obtaining a minor's passport, set against the backdrop of marital discord and accusations of physical and mental abuse. The main question is whether the actions of the appellants constitute offenses under Sections 420, 468, 471, and 34 of IPC, and Section 12(b) of the Passports Act, 1967.

**Headnotes:**

**Criminal Appeal – Quashing of FIR and Proceedings – Dismissal of Criminal Revision Petition by High Court Challenged – Appellants seeking discharge**

from FIR No. 141/2010 under Sections 420, 468, 471 read with Section 34 IPC – Allegations of forging signatures on minor child’s passport application – FIR and proceedings against Appellants quashed. [Para 2, 39]

Marital Dispute and Criminal Proceedings – Interplay – Allegations rooted in marital discord – Assessment of circumstances indicating retaliatory nature of FIR against Appellants – Importance of distinguishing matrimonial disputes from criminal allegations. [Para 31, 32, 37]

Forgery and Cheating – Evaluation of Allegations – Analysis of offences under Sections 420, 468, 471 IPC in context of passport application – Absence of prima facie evidence of ‘deceit’ or ‘dishonest intent’ – No loss or damage to Respondent leading to conclusion that essential elements of ‘cheating’ and ‘forgery’ not established. [Para 16, 17, 22, 23, 24]

Passport Act, 1967 – Section 12(b) – Applicability in Context – Consideration of allegations of furnishing false information for obtaining passport – State FSL report inconclusive – No prima facie case under Section 12(b) established. [Para 35, 36]

Judicial Assessment and Discretion – Trial Magistrate and High Court’s Approach – Critique of procedural irregularities and failure to recognise underlying marital dispute – Need for judicial prudence in distinguishing between matrimonial issues and criminal conduct. [Para 28, 29, 33]

Fundamental Rights and Child’s Best Interest – Right to Travel Abroad – Consideration of minor child’s interests in backdrop of parental dispute – Respondent No. 2’s conduct affecting child’s fundamental rights highlighted. [Para 38]

Costs – Imposition on Respondent No. 2 – Respondent No. 2 directed to pay costs of Rs. 1,00,000 to Appellant No. 1 for causing undue hardship through initiation of criminal proceedings. [Para 40]

Decision – High Court and Trial Magistrate’s judgments set aside – FIR No. 141/2010 against Appellants quashed – Emphasis on preventing misuse of criminal proceedings in the context of personal disputes. [Para 39]

Referred Cases:

- Krishna Chawla v. State of UP (2021) 5 SCC 435
- Sushil Suri v. Central Bureau of Investigation, (2011) 5 SCC 708
- Vinay Tyagi v. Irshad Ali and others, (2013) 5 SCC 762
- Maneka Gandhi v. Union of India and another (1978) 1 SCC 248, paras 76, 80-85.
- K.S. Puttaswamy v. Union of India, (2019) 1 SCC 1, paras 376-379

## **JUDGEMENT**

### **SURYA KANT, J.**

Leave granted.

2. The Appellants assail the judgment dated 18.02.2021, passed by the High Court of Karnataka, at Bengaluru (**hereinafter, ‘High Court’**), whereby their Criminal Revision Petition challenging the order dated 15.03.2018 of the VI Additional Chief Metropolitan Magistrate, Bengaluru (**hereinafter, ‘Trial Magistrate’**) has been dismissed. Consequently, the Appellants’ prayer to discharge them in connection with FIR No. 141/2010 under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, 1860 (**hereinafter,**

‘IPC’) registered at P.S. Adugodi, Bengaluru has been concurrently turned down.

#### **A. FACTS**

3. The brief facts that are relevant to the present proceedings are set out as follows:

**3.1.** The Appellant No. 1 – wife, and Respondent No. 2 – husband, got married in Bengaluru on 02.08.2007. At the time of their marriage, Respondent No. 2 was engaged in a software business, located in New Castle Upon Tyne, the United Kingdom. During this period, Respondent No. 2 statedly assured the Appellant – wife that post marriage they would reside together in London. It is the Appellants’ case that Respondent No. 2 initially refused to take the Appellant – wife with him, but after considerable persuasion, she managed to accompany Respondent No. 2 to London. However, soon after, Respondent No. 2 allegedly abandoned her and forcefully confined her to the residence of her sister-in-law. At the same time, Respondent No. 2 returned to India.

**3.2.** Appellant No. 2, who is the father of the Appellant – wife, had to intervene in the aforesaid circumstances and facilitate the latter’s return to India. Subsequently, on 02.06.2008, the Appellant – wife gave birth to a male child. The Appellants allege that Respondent No. 2 and his family members did not provide any financial assistance to the Appellant – wife and the minor child. In January, 2009, the Appellant – wife sought to obtain a passport for the minor child based allegedly upon Respondent No. 2’s instructions. Respondent No. 2 also assured them that he had arranged their stay in the United Kingdom. Shortly thereafter, the minor child’s passport was issued, and Respondent No. 2 obtained a sponsorship letter from his brother-inlaw, Dr. M.K. Shariff, which was duly forwarded to the United Kingdom High Commission. The sponsorship letter stated that Dr. M.K. Shariff would accommodate the Appellant – wife and the minor child during their visit to the

United Kingdom and specifically mentioned the minor child's passport number.

**3.3.** However, as per the allegations of the Appellants, the duration of marriage with Respondent No. 2 was fraught with physical and mental torture solely on account of Respondent No. 2's relentless financial demands. More pertinently, Respondent No. 2, during his visit to India towards the end of 2009, subjected the Appellant – wife to coercion and torture. These acts of intimidation prompted the Appellant – wife to file a complaint against Respondent No. 2 and his family members on 07.04.2010 before the Basavangudi Women Police Station, Bengaluru. The complaint was registered as Crime No. 68 / 2010, under Sections 346, 498A and 506, read with Section 34 IPC. Additionally, the complaint alleges that Respondent No. 2, on the pretext of arranging for their travel to the United Kingdom, took away the minor child's passport and jewellery items belonging to the Appellant – wife.

**3.4.** Having learnt of the complaint filed by his wife, Respondent No. 2 also lodged a complaint of his own on 13.05.2010 before the Adugodi Police Station, alleging that the Appellants had forged his signatures on the minor child's passport application and submitted the same to the Regional Passport Office, Bengaluru, at the time when Respondent No. 2 was in the United Kingdom. This complaint was registered as FIR No. 141/2010 under Sections 420, 468 and 471 read with Section 34 IPC (**hereinafter, 'Concerned FIR'**).

**3.5.** Following the investigation conducted in the Concerned FIR, the investigating agency proceeded to file a chargesheet, implicating the Appellants and one Mr. Aksar Ahmed Sheriff, who is a travel agent, for procuring the minor child's passport using forged documents. Notably, the charges for offences under Sections 468 and 471 IPC were dropped. Consequently, a case numbered CC No. 23545 / 2011 commenced before the Trial Magistrate only for the offences punishable under Section 420 read with Section 34 IPC.

**3.6.** The Appellants sought quashing of the aforementioned chargesheet *vide* Criminal Petition No. 3600 / 2012, invoking the powers of the High Court under Section 482 of the Code of Criminal Procedure, 1973 (**hereinafter, 'CrPC'**), but their petition was dismissed *vide* order dated 22.04.2014. However, liberty was granted to the Appellants to approach the Trial Magistrate and seek their discharge from the case CC No. 23545/2011.

**3.7.** The Appellants consequently moved an application under Section 239 CrPC, seeking discharge in CC No. 23545 / 2011. In the meantime, Respondent No. 2 also invoked Section 173(8) CrPC and sought further investigation of the offences under Sections 468 and 471 IPC in the Concerned FIR. The Trial Magistrate on 24.06.2015, *vide* separate orders, allowed Respondent No. 2's prayer for further investigation and directed him, being the *de facto* complainant, to furnish necessary evidence before the investigating officer, if so required. On the other hand, the Trial Magistrate dismissed the Appellants' discharge application on the ground that the question as to whether an offence under Section 420 IPC was made out or not would be decided during the course of trial.

**3.8.** Pursuant to the abovementioned order of the Trial Magistrate, the investigating agency filed a supplementary chargesheet against the Appellants on 25.07.2017, adding offences under Sections 468, 471, 420, 120-B and 201 read with Section 34 IPC and Section 12(b) of the Passports Act, 1967. At this juncture, it is imperative to highlight that the concerned Passport Officer was also implicated as Accused No. 4, for allegedly providing false information regarding the availability of the original passport of the minor child and being complicit with the Appellants in its destruction. The supplementary chargesheet also referred to a report provided by the State Forensic Laboratory, Madiwala, Bengaluru, dated 27.02.2016 (**hereinafter, 'State FSL'**), which categorically states as follows:

*“Opinion on questioned photocopied signatures marked as Q1 to Q4 is not expressed since, the questioned photocopied signatures are showing bad line quality of strokes.”*

**3.9.** In addition to the State FSL Report, the supplementary chargesheet also mentioned a report dated 15.07.2013 purportedly obtained by Respondent No. 2 from a private agency, known as, ‘Truth Lab’. This report opined that the signatures on the passport application did not signify a close resemblance with the specimens of Respondent No. 2’s signatures.

**3.10.** Subsequent to these developments, when the case CC No. 23545 / 2011 was taken up for hearing before charge, it was urged on behalf of the Appellants that there were no grounds to frame charges. However, the Trial Magistrate repelled this contention by order dated 15.03.2018 and declined to discharge them.

**3.11.** The Appellants preferred to challenge the Trial Magistrate’s order *vide* Criminal Revision Petition No. 692 / 2018, but as noticed at the outset, the High Court dismissed the same via the impugned order dated 18.02.2021, primarily on the ground that there were specific allegations against the Appellants which required a full-fledged trial.

**3.12.** The aggrieved Appellants are now before this Court.

## **B. CONTENTIONS OF THE PARTIES**

**4.** Mr. Ranbir Singh Yadav, Learned Counsel appearing for the Appellants, argued that Respondent No. 2’s complaint pertaining to the forgery of the passport application was merely a counterblast to the Appellant – wife’s complaint alleging cruelty against him. He contended that Respondent No. 2 had expressly consented to obtaining the minor child’s passport and after the issuance of passport, had even sent the sponsorship letter authored by his brother-in-law, Dr. M.K. Shariff, for the relocation of the Appellant – wife and the minor child to London. It was argued that this sponsorship letter is vital since it had been obtained at the instance of

Respondent No. 2 and it specifically mentioned the passport number of the minor child, thereby implying consent of Respondent No. 2.

5. Mr. Yadav further contended that the opinion rendered by the State FSL was inconclusive as to the alleged forgery, and no additional material whatsoever had been recovered by the investigating agency between filing the original chargesheet and the supplementary chargesheet. Mr. Yadav also highlighted the reliance placed by both the High Court and the Trial Magistrate on the opinion of a handwriting expert obtained by Respondent No. 2 through a private agency – known as the Truth Lab. He vehemently urged that the State FSL Report should have been given utmost weightage in comparison to a paid opinion so as to uphold the fairness and impartiality of the investigation. Mr. Yadav contended that no *prima facie* case had been made out against the Appellants. Citing the decision of this Court in ***Krishna Chawla v. State of UP***,<sup>1</sup> he emphasised upon the duty of the Trial Magistrate to nip frivolous prosecution in the bud before it reaches the trial stage by discharging the accused in fit cases.

6. Contrarily, Mr. Narender Hooda, Learned Senior Counsel representing Respondent No. 2, strongly refuted the allegations levelled by the Appellants. He strenuously urged that Respondent No. 2 was not present in India during the period from 13.07.2008 to 17.11.2009, when the alleged passport application with his forged signatures was submitted, to procure the minor child's passport. He further argued that the Trial Magistrate has unequivocally observed that the Passport Officer (Accused No. 4), who deliberately withheld the original passport application, was an accomplice in the offence of the destruction of evidence. Additionally, Mr. Hooda objected to discarding the Truth Lab report at the stage of deciding the discharge application on the premise that the report of the State FSL was ambiguous

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<sup>1</sup> (2021) 5 SCC 435, para 23.



and that the veracity of the private lab report could be ascertained only at the time of trial.

7. In addition to the full insight of the controversy, as highlighted by the learned counsel for the parties, we have also meticulously perused the chargesheets and other documents brought on record by them.

### **C. ISSUES FOR CONSIDERATION**

8. The foremost question that falls for consideration before us is whether a *prima facie* case, to subject the Appellants to the agony of trial, has been made out. In furtherance of this question, the following issues emerge for our further consideration:

- (i) Whether the actions of the Appellants *prima facie* constitute the offence of cheating under Section 420 IPC?
- (ii) Whether there has been a *prima facie* case made out for forgery under Sections 468 and 471 IPC?
- (iii) Whether there has been a violation of Section 12(b) of the Passports Act, 1967?

### **D. ANALYSIS**

9. In the present case, charges have been brought against the Appellants for offences punishable under Sections 420, 468, 471, 120B, 201, read with Section 34 IPC, and Section 12(b) of the Passports Act, 1967. In this context, it is paramount to delve into the ingredients of 'forgery' and 'cheating' required to be *prima facie* established against the Appellants, at the very threshold. We are conscious of the fact that such an evaluation would have to proceed on the premise that the material gathered by the investigating agency is not to be discarded or disbelieved at this stage.

#### **The offence of cheating under Section 420 IPC:**

10. Section 420 IPC provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being

converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415 IPC distinctly defines the term 'cheating'. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as 'cheating' if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.

11. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property.

There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

12. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss.<sup>2</sup> 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.

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<sup>2</sup> P. Ramanatha Aiyar, *Advanced Law Lexicon*, 6<sup>th</sup> Edition, Vol. 1, pg. 903.

13. The term 'property' employed in Section 420 IPC has a welldefined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value – is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The IPC itself defines the term 'moveable property' as, "***intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.***" Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth.

14. Having fully addressed the contours of the offence of 'cheating', let us now advert to the facts of the instant case to appreciate whether the allegations made by Respondent No. 2, are sufficient to *prima facie* establish that: (i) the Appellants have deceived Respondent No. 2; (ii) Respondent No. 2 was induced with dishonest intentions; (iii) such inducement was for the delivery of any property or valuable security; and (iv) as a result of such an act, Respondent No. 2 has suffered some damage or injury.

15. Each of these ingredients need to be analysed to ascertain whether Respondent No. 2 has made allegations in his complaint to substantiate points (i) to (iv) above. Additionally, it would also aid in determining whether the original or supplementary chargesheet addresses any of these ingredients.

16. The crux of Respondent No. 2's allegations is that the Appellants purportedly forged his signature on the passport application submitted to obtain the minor child's passport. Assuming the allegation to be accurate, it would undoubtedly constitute an unlawful act. However, as set out earlier, it is crucial to underscore that not every unlawful act automatically qualifies as 'deceitful'. In the peculiar facts and circumstances of this case, the Appellant – wife seems to have breached the notion of mutual marital trust and

unauthorizedly projected Respondent No. 2's consent in obtaining the passport for their minor child. It, however, remains a question as to how such an act can be labelled as 'deceitful'. The motivations prompting either of the Appellants to procure a passport for the minor child were not rooted in deceit. Furthermore, the grant of passport to the minor child did not confer any benefit upon the Appellant-wife, nor did it result in any loss or damage to Respondent No. 2. In the same vein, Appellant No. 2, being the father of the Appellant – wife and assisting in securing the passport for the child, derived no direct or indirect benefit from this action.

**17.** In this context, the critical inquiry arises: how does the act of forging signatures on the passport application, aimed at obtaining the minor child's passport, amount to inducing Respondent No. 2 to relinquish any property or valuable security? Examining the situation, it becomes apparent that the aforementioned act does not entail inducement leading to the parting of any property by Respondent No.

2. The nature of the property which can be claimed to have been relinquished or the tangible loss, damage, or injury, if any, suffered by Respondent No. 2 are not visible at all. The unequivocal response to these queries is clearly in the negative.

**18.** Respondent No. 2, the biological father and natural guardian of the minor child, is positioned as such in relation to the grant of a passport to his son. This grant can be best characterised as the minor child's acquisition of property. Since the gain by the minor child is not at the cost of any loss, damage or injury to Respondent No. 2, both the fundamental elements of 'deceit' and 'damage or injury', requisite for constituting the offence of cheating are conspicuously absent in this factual scenario.

**19.** Conversely, can the Appellant – wife, being the natural mother of the child and a natural guardian, be accused of acting 'dishonestly' when applying for the passport of her minor child? A passport, is an authorised

instrument which enables a person to travel outside the country of his origin. In this case, the passport was admittedly issued in favour of the minor child. Whether it was stolen by Respondent No. 2 or misplaced, is wholly immaterial to the present discussion. The grant of passport to the minor child is nothing but a right conferred upon him by statute. The passport is meant to facilitate him to accompany his mother to London and stay with his father. However, there is not even a whisper of allegation or suggestion that the passport was obtained to the detriment of the child's wellbeing. The underlying intent of obtaining the passport was, ironically, essential for the Appellant – wife and minor child to live together with Respondent No. 2, on whose instructions the passport was statedly obtained. Conversely, it is the actions of Respondent No. 2 that have seemingly deprived the minor child of his right to seek the care and company of his father, as the passport was allegedly taken away by Respondent No. 2 in a clandestine manner.

**20.** The background of this case and the chronology of events squarely indicate that it is the touchstone of a marital dispute. The insinuations made by Respondent No. 2, even if they possess an iota of truth, have miserably failed to *prima facie* establish the elements of 'cheating' and thus, the accusation made against the Appellants under Section 420 IPC must fall flat.

**The offence of forgery under Sections 468 and 471 IPC:**

**21.** The offence of 'forgery' under Section 468 IPC postulates that whoever commits forgery, intending that the document or electronic document forged, shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Whereas Section 471 IPC states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be a forged document, shall be punished in the same manner as if he had forged such document.

**22.** There are two primary components that need to be fulfilled in order to establish the offence of 'forgery', namely: (i) that the accused has fabricated an instrument; and (ii) it was done with the intention that the forged document

would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.<sup>3</sup>

**23.** The offences of ‘forgery’ and ‘cheating’ intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual. Having extensively addressed the aspect of dishonest intent in the context of ‘cheating’ under Section 420 IPC, it stands established that no dishonest intent can be made out against the Appellants. Our focus therefore will now be confined, for the sake of brevity, to the first element, i.e., the preparation of a false document. The determination of whether the Appellants prepared a false document, by forging Respondent No. 2’s signature, however, cannot be even *prima facie* ascertained at this juncture. Considering the primary ingredient of dishonest intention itself could not be established against the Appellants, the offence of forgery too, has no legs to stand. It is also significant to highlight that the proceedings as against the concerned Passport Officer, who was implicated as Accused No. 4, already stand quashed. In such like situation and coupled with the nature of allegations, we are unable to appreciate as to why the Appellants be subjected to the ordeal of trial.

**24.** That apart, there are glaring procedural irregularities that have been overlooked by the Trial Magistrate, which warrants examination. It is extremely important to delve into these improprieties since the supplementary chargesheet filed by the investigating authority included the offence of ‘forgery’ under Sections 468 and 471 IPC.

**Questions overlooked by the lower courts:**

**25.** As previously noted, the Appellants stand accused of forging the signatures of Respondent No. 2 on the passport application of the minor child.

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<sup>3</sup> Sushil Suri v. Central Bureau of Investigation, (2011) 5 SCC 708, para 26.

The investigating agency initially found insufficient evidence to support charges under Sections 468 and 471 IPC. Accordingly, no chargesheet was filed under these provisions. However, in compliance with the Trial Magistrate's order dated 24.06.2015, a supplementary chargesheet was submitted under Sections 468, 471 and 201 IPC and Section 12(b) of the Passports Act, 1967.

**26.** It is a matter of record that in the course of 'further investigation', no new material was unearthed by the investigating agency. Instead, the supplementary chargesheet relies upon the Truth Lab report dated 15.07.2013, obtained by Respondent No. 2, which was already available when the original chargesheet was filed. The term 'further investigation' stipulated in Section 173(8) CrPC obligates the officer-in-charge of the concerned police station to 'obtain further evidence, oral or documentary', and only then forward a supplementary report regarding such evidence, in the prescribed form.

**27.** The provision for submitting a supplementary report infers that fresh oral or documentary evidence should be obtained rather than reevaluating or reassessing the material already collected and considered by the investigating agency while submitting the initial police report, known as the chargesheet under Section 173(2) CrPC.<sup>4</sup>In the absence of any new evidence found to substantiate the conclusions drawn by the investigating officer in the supplementary report, a Judicial Magistrate is not compelled to take cognizance, as such a report lacks investigative rigour and fails to satisfy the requisites of Section 173(8) CrPC. What becomes apparent from the facts on record of this case is that the investigating agency acted mechanically, in purported compliance with the Trial Magistrate's order dated 24.06.2015.

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<sup>4</sup> Vinay Tyagi v. Irshad Ali and others, (2013) 5 SCC 762, para 22.

28. Regrettably, the Trial Magistrate, while directing further investigation, overlooked the significant aspect that the offences imputed upon the Appellants fall within the ambit of **Chapter XVII, 'Of Offences Against Property'**, and **Chapter XVIII, 'Of Offences Relating to Documents and to Property Marks'** of the IPC. All the offences delineated or illustrated under these two chapters predominantly pertain to commercial or property disputes arising from dishonest, deceitful and fraudulent transactions, wherein an individual is induced to part with their property or valuable security, leading to subsequent injury or damage. These offences typically diverge from the customary realm of matrimonial disputes, which constitute the underlying cause in this instance.

29. The Trial Magistrate, prior to entertaining the application filed by Respondent No. 2, should have applied his mind and posed certain queries in order to find out as to: (i) Why does Respondent No. 2 want to deprive his minor child of a passport?; (ii) Is it the case that he did not want his minor child to join his company in London?; (iii) How has Respondent No. 2 secured the maintenance, education and future prospects of the minor child?; (iv) Does the minor child have a civil right to hold a passport even if one of his parents does not accord consent?; (v) Can the minor child be granted a passport with the consent of one parent under whose care and custody he is?; (vi) What is the tangible loss, injury or damage suffered by Respondent No. 2 due to procurement of a passport by his minor son? Had the Trial Magistrate taken the pains to confront Respondent No. 2 with these questions, we have no reason to doubt that the vexatious persecution faced by the Appellants, could not at least be attributed to a judicial order.

30. We also fail to understand the reliability of the material based on which the investigating agency or the Trial Magistrate could form a *prima facie* opinion concerning the allegation of forgery of signatures of Respondent No. 2. As observed earlier, the State FSL report does not substantiate these



allegations. In our opinion, a paid report obtained from a private laboratory seems to be a frail, unreliable, unsafe, untrustworthy and imprudent form of evidence, unless supported by some other corroborative proof. It is painful to mention that Respondent No. 2 has not produced any other substantive proof, nor has the investigating agency obtained any such material in compliance with the Trial Magistrate's order for further investigation. The basis on which the Trial Magistrate formed a *prima facie* opinion, in the absence of such supporting evidence is, therefore, beyond our comprehension.

**31.** The Trial Magistrate and the High Court unfortunately failed to appreciate that the genesis of the present controversy lies in a marital dispute. Respondent No. 2 is alleged to have abandoned the Appellant – wife and the minor child, even during the period when the Appellant – wife was temporarily residing with him in London. The timeline in this case is noteworthy: immediately after the Appellant – wife filed Crime No. 68 / 2010 against Respondent No. 2 on 08.04.2010, invoking Sections 346, 498A, 506, and 34 IPC, the counter-complaint by Respondent No. 2 followed on 13.05.2010. Further, the passport for the minor child was issued sometime in 2009. The question that naturally arises is whether it is a mere coincidence that Respondent No. 2 chose to make his complaint only after an FIR had been lodged against him.

**32.** On the one hand, there is no indication whatsoever that Appellant No. 1 ever endeavoured to deceive or induce Respondent No. 2 into parting with his movable or immovable property or valuable security, either for her benefit or that of the minor child. While on the other hand, the law imposes an obligation upon Respondent No. 2 to provide adequate maintenance to his wife and the minor child. The complaint lodged by Respondent No. 2 on 13.05.2010, while unleashing accusations of forgery and fabrication, is conveniently silent on what measures he has undertaken for his minor child's welfare.

33. In light of these circumstances, the Trial Magistrate should have approached the complaint with due care and circumspection, recognising that the allegations do not pertain to offences against property or documents related to property marks. Instead of wielding judicial authority against the Appellants, the Trial Magistrate should have exercised prudence, making at least a cursory effort to discern the actual 'victim' or 'victimiser'. The failure to do so is both fallible and atrocious.

34. The sum and substance of the above discussion is that the elementary ingredients of 'cheating' and 'forgery' are conspicuously missing. Thus, the continuation of the criminal proceedings against the Appellants is nothing but an abuse of the process of law.

**In the context of Section 12(b) of the Passports Act, 1967:**

35. In addition to the abovementioned provisions of the IPC, the Appellants have also been accused of committing an offence under Section 12(b) of the Passports Act, 1967. Section 12(b) categorically states that, whoever knowingly furnishes any false information or suppresses any material information, with a view to obtaining a passport or travel document under this Act or without lawful authority, alters or attempts to alter or causes to alter the entries made in a passport or travel document, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

36. As discernible from the language of the provision, what must be established is that the accused knowingly furnished false information or suppressed material information with the intent of obtaining a passport or travel document. In the present case, it is crucial to consider that the State FSL report explicitly stated that the alleged forgery of Respondent No. 2's signatures on the passport application was inconclusive. Moreover, the cognizance of such like offence can be taken only at the instance of the

Prescribed Authority. No complaint to that effect has been disclosed against the Appellants. This Court, therefore, will exercise caution before invoking such severe offences and penalties solely on the basis of conjectures and surmises.

**The conduct exhibited by Respondent No. 2:**

37. Having scrutinised the elements of cheating and forgery, it is also imperative to consider the conduct of Respondent No. 2 since the inception. *Firstly*, following the solemnisation of the marriage between the concerned parties, the Appellant – wife purportedly endured both physical and mental torture and was further not extended any support by Respondent No. 2 and his family members even after the birth of the minor child. *Secondly*, the original passport of the minor child was presumed to have been issued with the consent and support of Respondent No. 2. He allegedly even sponsored the travel of his wife and minor son through his brother-in-law for visa purposes, who in his sponsorship letter explicitly cited the passport number of the minor child. *Thirdly*, Respondent No. 2 chose to lodge the Concerned FIR as a counterblast to the complaint filed by the Appellant – wife in Crime No. 68/2010 in spite of being fully aware of the issuance of the minor child's passport. Thus, the Appellants were unnecessarily implicated and dragged into criminal proceedings, thereby causing undue hardship to them. These instances shed light on Respondent No. 2's conduct preceding the initiation of the present proceedings and provide insight into his motivations for instigating the same.

38. It is undeniable that despite the evident discord between the Appellants and Respondent No. 2, resulting in numerous complaints and legal proceedings, the issue at hand has adversely impacted the rights and interests of the minor child. The right to travel abroad is a fundamental right of an individual, albeit not absolute, and subject to established legal

procedures.<sup>5</sup> The conduct exhibited by Respondent No. 2 infringes upon the best interests of the minor child, which necessitates the child's travel abroad for the realisation of opportunities and intrinsic value, aligning with the child's dignity, as enshrined by the Constitution.<sup>6</sup>

#### **E. CONCLUSION AND DIRECTIONS**

**39.** Consequently, the appeal is allowed; the impugned judgment of the High Court dated 18.02.2021, and that of the Trial Magistrate dated 15.03.2018, are hereby set aside. As a sequel thereto, the FIR No. 141 / 2010 registered at Police Station Adugodi, Bengaluru under Sections 420, 468, 471 read with Section 34 IPC, lodged by Respondent No. 2 against the Appellants and all the proceedings arising therefrom are hereby quashed.

**40.** Respondent No. 2 is liable to pay the cost of Rs. 1,00,000/- to Appellant No. 1. Ordered accordingly, Respondent No. 2 shall pay the costs within six weeks, failing which the Trial Magistrate is directed to initiate coercive measures for recovery thereof.

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\*Disclaimer: Always compare with the original copy of judgment from the official website.

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<sup>5</sup> Maneka Gandhi v. Union of India and another (1978) 1 SCC 248, paras 76, 80-85.

<sup>6</sup> K.S. Puttaswamy v. Union of India, (2019) 1 SCC 1, paras 376-379.