

**PURWAISH**

AND

**PUBLIC PROSECUTOR**

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**(High Court of Brunei Darussalam)**  
**(Criminal Motion No. 17 of 2023)**  
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Muhammed Faisal bin PDJLD Kol (B) DSP Hj Kefli, JC  
**26<sup>th</sup> June, 2024.**

*Headnote: Criminal Law – Section 12(1)(c) Passport Act – sentencing – whether magistrate correctly applied the relevant case law*

Appellant is in person and represented by Mr. Daud Ismail (M/S Daud Ismail & Company).  
DPP Syazwani for Public Prosecutor.

**Cases cited:**

*PP V Huseyn Taherzadeh* (HCCA 11 of 2014)

*Shedali bin Mohd Ali v PP* [JCBD 2010] Vol.1 165

*Didiman Bin Jaya v Public Prosecutor* [Criminal Appeal No. 2 of 2014]

**Statutes:**

Section 12(1)(c) of the Passport Act, Chapter 146

Section 12(1)(a) of the Passport Act

**RULING**

**Muhammed Faisal, JC:**

**I. INTRODUCTION**

This is an appeal against sentence. On the 4<sup>th</sup> November 2023, the Appellant was brought before the Magistrate Court for committing an offence punishable under Section 12(1)(c) of the Passport Act, Chapter 146. She was sentenced to 2 years imprisonment.

**II. THE CHARGE**

The Charge is reproduced as below: -

*“Charge:*

*That you, on the 14h February 2022 at about 1031 hrs, at Syarikat Dayang Mariam & Anak – Anak, Bangunan Kiaw Lian, Bandar Seri Begawan in Brunei Darussalam, did personate or falsely represent yourself to be one Chotimah, to whom Indonesian Passport Number A4051037 has been duly issued an you have thereby committed an offence punishable under Section 12(1)(c) of the Passports Act, Chapter 146.”*

The penalty for the various offence under section 12(1) of the Passport Act is a fine of \$10,000 and to imprisonment for 5 years.

### **III. THE APPEAL**

The Appellant states 3 grounds for her appeal. Briefly, they are as follows: -

- That the sentence of two years was unjust and excessive having regard to the fact that it was the Appellant’s first offence and clean record.
- That the learned Presiding Magistrate erred in law on the decided cases on *Section 12(1)(a) of the Passport Act* in passing sentence whereas the offence was committed under *section 12(1)(c)* of the same.
- Being unrepresented, when before the Magistrate, the Appellant failed to address the Court on the special circumstances leading to the commission of the offence.

It is submitted that the appellant was unrepresented during the hearing and could not properly present a mitigation plea. The Magistrate acknowledged the appellant's clean record but still imposed a harsh sentence.

With respect to the cases referred to by the Learned Magistrate, involves Section 12(1)(a) offences, which the Appellant argues are not directly comparable to Section 12(1)(c). Cases cited by Appellants confirmed a sentence of two weeks for a Section 12(1)(c) offence (*see Didiman Bin Jaya v Public Prosecutor [Criminal Appeal No. 2 of 2014]*). The Appellant also cited a Magistrate case, which is not binding upon this court. It is argued that the Appellant’s sentence should be significantly aligned with these case precedents.

Hajah Hafizah, the daughter of the appellant's employer, played a significant role in the commission of the offense by abetting the appellant in changing her name to avoid immigration blacklisting. During submissions, details of the Appellant’s statements, recorded during the course of investigation show the extent of Hajah Hafizah's involvement. It was suggested that if these special circumstances were considered, it would have significantly impacted the sentencing decision. As a further point on this matter, it was submitted that Hjh Hafizah should have also been charged for her complicity in the offence.

#### **IV. RESPONDENT REPLY**

In response to the Appellants submission that the Magistrate wrongly applied sentencing principles for Section 12(1)(a) instead of 12(1)(c), the Respondent argues that all offences under Section 12(1) of the Passport Act involve misuse of travel documents and should have similar sentencing guidelines. The Respondent further argues that given the fact that the nature of offences under Section 12(1) of the Passport Act are similar, involving misuse of passports, therefore differences in sentencing should be based on the aggravating factors, rather than the subsection under which the offences are categorized.

The Appellant's long-term use of "forged" passports warrants a significant custodial sentence as a deterrent to others. Her use of multiple "forged" passports and misrepresentation of her identity, motivated by a mistaken belief of being blacklisted, shows a blatant disrespect for the law.

SECTION 12(1)(a) and SECTION 12(1)(c) PASSPORT ACT.

Section 12(1) of the Passport Act reads as follows: -

*"12. (1) Any person who —*

*(a) forges, alters or tampers with any passport or internal travel document, or any visa or endorsement thereon, or without lawful authority uses or attempts to use, or has in his possession, any passport or internal travel document which has been so forged, altered or tampered with;*

*(b) ...*

*(c) personates or falsely represents himself to be or not to be a person to whom a passport or internal travel document has been duly issued;*

*(d) ...*

*....*

*shall be guilty of an offence and shall, on conviction, be liable to a fine of \$10,000 and to imprisonment for 5 years."*

It is essential to clarify the legal distinctions between Section 12(1)(a) and Section 12(1)(c) of the Passport Act. The Respondent conflated the offences under these sections, leading to a misapplication of the law.

Section 12(1)(a) specifically addresses the offence of forgery or tampering with a passport or internal travel document. It applies to individuals who forge, alter, or tamper with any passport or internal travel document, or any visa or endorsement thereon. It also covers those who, without lawful authority, use or attempt to use, or possess any passport or internal travel document that has been forged, altered, or tampered with. This section clearly targets the act of creating or using a falsified document.

In contrast, Section 12(1)(c) pertains to the offence of impersonation or false representation. This section applies to individuals who personate or falsely represent themselves to be, or not to be, a person to whom a passport or internal travel document

has been duly issued. The critical distinction here is that under Section 12(1)(c), the passport in question is not a forgery. Instead, the offence lies in the individual falsely claiming an identity that is associated with a legitimately issued passport.

By misconstruing Section 12(1)(c) as dealing with forged passports, the Respondent have overlooked the clear legal distinction intended by the Passport Act. The actions under Section 12(1)(c) involve the misuse of a genuine passport through false representation, rather than the creation or use of a forged document as specified in Section 12(1)(a). Therefore, it is incorrect to refer to the Appellant's documents as "forged passport" as clearly, they are not. The Appellant's documents were issued by the proper competent authorities.

The Magistrate understood this. In her sentencing, she stated: -

*"However, although the passport is not forged, the defendant had attained a passport with a different name with the sole purpose of deceiving its and misleading the authorities when entering this country. In other words, the defendant had forged her identity."*

## **V. CASE LAW**

The Learned Magistrate referred to several cases in her sentencing, namely *PP V Huseyn Taherzadeh* (HCCA 11 of 2014), *Shedali bin Mohd Ali v PP* [JCBD 2010] Vol.1 165 and *Didiman Bin Jaya v Public Prosecutor* (Criminal Appeal No. 2 of 2014). The latter case has been covered, above.

*PP V Huseyn Taherzadeh* and *Shedali bin Mohd Ali v PP* are cases involving forged passports, offences contrary to Section 12(1)(a) Passport Act. The defendants were sentenced to 1 year's imprisonment, and to 2 years imprisonment and a fine of \$1,000, respectively at the first instance. Their sentences were upheld, on appeal, before the High Court and Court of Appeal, respectively.

It is evident that the courts upheld significant custodial sentences for offences involving forged passports. These cases highlight the courts' approach towards deterring the misuse of travel documents through stringent sentencing

In her Sentencing, the Magistrate remarked, *"In considering the appropriate sentence I refer to the case of PP V Huseyn Taherzadeh (HCCA 11 of 2014), where learned judge remarked a sentence of 12 months' imprisonment for an offence under section 12(1)(a) Passport Act for attaining a forged passport was somewhat lenient. To learn it judge referred to the case of Shedali bin Mohd Ali v PP [JCBD 2012] Vol 1 165, when the Court of Appeal endorsed the lower court custodial sentence of two years after pleading guilty for the same offence under section 12(1)(a) of the Passport Act.*

*I note and distinguish the both cases with the present case as the present charges under section 12(1)(c) for personating or false represented one's self as another person to whom a passport has been issued to."*

The Magistrate has made it clear that not only was she aware that the aforementioned cases were with respect to Section 12(1)(a), but distinguished them from the current case.

## **VI. COURT FINDINGS**

The offences under Section 12(1) of the Passport Act, whether under subsection (a) or (c), involve the misuse of travel documentation. The core issue in these offences is the fraudulent manipulation of identity and travel documents, which undermines national security and immigration controls. The Respondent correctly argued that sentencing should focus on the aggravating factors and the severity of the misuse, rather than the specific subsection of the offense.

Thus, the precedents cited in *PP V Huseyn Taherzadeh* and *Shedali bin Mohd Ali v PP* are directly relevant to the nature of the appellant's offences. Both cases involved significant custodial sentences for possession and use of forged passports, reflecting the courts' stance on deterring such prevalent and serious offences. The application of these precedents by the learned Magistrate was appropriate and justified given the similarities in the nature of the offences.

The role of Hajah Hafizah is irrelevant in this matter; whether or not she is charged will not have a bearing on the sentencing of the Appellants. The Appellant's actions would be the sole determining factor in her sentencing. It is also important to remember, that, any criminal action upon Hajah Hafizah will fall under the prerogative of the Public Prosecutor.

As it transpires during the appeal, the appellant's long-term use of multiple forged identities, her interactions with various government agencies under false pretenses, and her continued deception even when confronted, demonstrate a high degree of premeditation and disregard for the law. These factors, as highlighted by the respondent, warrant a significant custodial sentence to serve both as a punishment and a deterrent to others.

## **VII. CONCLUSION**

In conclusion, this court finds that the sentence of 2 years imprisonment imposed by the Magistrate is justified and appropriate, given the seriousness of the appellant's offences and the need for deterrence. The learned Magistrate did not err in applying the precedents related to Section 12(1)(a) of the Passport Act, as the essence of the offences under Section 12(1) remains the same, involving the misuse of travel documentation. Therefore, the appellant's grounds for appeal are dismissed.

The appeal is hereby dismissed, and the sentence of 2 years' imprisonment is upheld.

**MUHAMMED FAISAL BIN PDJLD KOL (B) DSP HJ KEFLI**  
Judicial Commissioner