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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5151/2012

NAVEEN BADRI SRIRAM SATHYANARAYAN Petitioner

Through: Mr Sanjeev Mahajan, Mr Shraman Sinha &
Ms P. Kataki, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Neeraj Chaudhari, CGSC for R-1/UOI.

Mr Narender Mann & Mr Badar Mahmood, Advs. for
Resp./CBI with Inspector Salil Kapoor.

Mr Vikas Garg, Special Counsel for R-3 with Mr B.

Naveen Kumar, Asstt. Legal Advisor, and Sh.

Gayadharan, A.D., E.D., Bangalore.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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29.11.2012

WP(C) 5151/2012 & CM Nos. 10523/2012 & 17288/2012

1. The petitioner has approached this Court with a grievance that his passport, which was impounded way back in December, 2009, is not being made available to him, despite, the respondents failing to show any just cause. It is the petitioner's case that, the ostensible ground, for impounding the petitioner's passport is the pendency of the investigation launched by respondent no. 2; which admittedly commenced on 09.10.2009; if not earlier.

1.1 The challenge is, thus, laid to the order dated 04.06.2012, passed by respondent no. 1, which seeks to impound the petitioner's passport till conclusion of the investigations by respondent no.2 and 3; which is one of subject matter of the Criminal Case No. 176/2009.

2. It may be relevant, at this juncture, to sketch out the broad facts of the case in the background of which, the petitioner has approached this Court.

2.1 It appears that the petitioner is, inter alia, involved in the business of trading in mixed metals, and for this purpose, alongwith his brother, one,

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Sudheer Shriram, he promoted two companies, by the name of, Future Metals Private Limited (in short FMPL) and Future Exim (India) Private Limited (in short FEPL).

2.2 In 2005, STCL Ltd. (formally known as Spice Trading Corporation Limited); which is a subsidiary of State Trading Corporation of India Ltd., forged an agreement with the aforementioned two companies of the petitioner, referred to above, i.e., FMPL and FEPL. This agreement was executed on 07.05.2005. The agreement envisaged a tripartite arrangement whereby, the aforementioned two companies were required to act as business associates of STCL in trading in mixed metals.

2.3 Broadly, the agreement envisaged the following:

2.4 In their capacity as business associates the petitioner, through aegis of the two companies, referred to above, was required to: identify overseas sellers of scrap containing copper and nickel; the trade with overseas sellers was to be facilitated by STCL by opening requisite Letters of Credit (in short LCs). The said scrap was to be sold to buyers; to be identified by the business associates, i.e., the petitioner and /or his two companies, referred to above.

2.5 The understanding, as per the STCL, was that, in no circumstances were the LCs opened by the STCL, to be triggered, and that monies received from overseas buyers were required to be transmitted to STCL, for the onward transmission to the overseas seller. This obviously meant that the transactions with the overseas buyer had to be concluded and money received before the period prescribed for devolvement of LCs opened by STCL, was reached.

2.6 STCL, in the process, if all had gone on as agreed, earned its share of the commission. However, it so happened, the overseas buyers, rejected the scrap supplied by the sellers on the ground that it was of poor quality. Resultantly, the LCs opened by STCL, got triggered.

3. It is the say of the respondents that, STCL is out-of-pocket to the tune of Rs.1200 crores.

3.1 The allegation of the respondents is that, this eventuality was designed to occur; a fact which came to light, in the course of the investigation.

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Investigation, according to the respondents, have revealed that both the overseas sellers and the overseas buyers were controlled by the petitioners. This device, according to the respondents, was employed by the petitioner in conspiracy with the officers of the STCL including its Managing Director, Mr K.C. Ponnana, to defraud the STCL of its valuable funds.

4. Consequently, on 18.07.2009, based on a complaint of STCL, a FIR was registered being: FIR no. 176/2009 dated 18.07.2009, with the High Ground Police Station, at Bangalore, under Sections 406, 468, 420, 120B, 134 of the Indian Penal Code, 1860 (in short IPC).

4.1 With the consent of the State Government of Karnataka, which was accorded on 09.10.2009, respondent no. 2, i.e., the CBI, took over the investigation in the matter. Consequently, the case was accorded the following no. RC-ACU 1 2009-A0004, on re-registration.

5. It appears that, in the interregnum, the Directorate of Enforcement, i.e., respondent no. 3, initiated proceedings against the petitioner under the Foreign Exchange Management Act, 1999 (in short FEMA). The Directorate of Enforcement also conducted raids on various offices and / or premises of the petitioner and seized documents as also relevant material related to the proceedings.

6. It also appears that STCL has taken recourse to arbitration proceedings qua the FMPL. In those proceedings a petition under Section 9 of the Arbitration & Conciliation Act, 1996 was filed before the Principal City Civil and Session Judge, Bangalore. It appears that, the said court vide order dated 09.01.2009, has restrained FMPL, from alienating its properties.

7. It is the case of the petitioner that, on 18.11.2008, FMPL has already handed over title deeds of their immovable property admeasuring 154.67 acres. A perusal of the communication, issued in that regard dated 18.11.2008, (appended as annexure P-16), though would show that, the title deeds were deposited, for creation of a mortgage to secure liabilities of STCL qua State Bank of India (in short SBI) and other banks, arising out of the merchandizing transactions, referred to above.

7.1 It is stated before me that, the said original title deeds continue to be in the physical possession of the SBI Overseas branch, Bangalore.

8. It appears that by a communication dated 01.09.2009, the Regional Passport Officer (in short RPO), directed the petitioner to verify his stand qua the information received by him regarding the pendency of criminal case no. 176/2009, and whether, the same had been disposed of. Thus information was sought within a period of 15 days, failing which, it was conveyed, action would be initiated against the petitioner under the Passport Act, 1967 (in short the Passport Act).

8.1 The petitioner, apparently, furnished a reply, as directed, vide communication dated 16.11.2009, wherein the fact that the case had been transferred to CBI and, the fact that, a representation was made to the said agency was brought to the notice of the RPO. A request was also made by the petitioner for release of his passport, as he was required to take care of his business, outside the country.

8.2 It may be pertinent to note that, apparently, the Directorate of Enforcement, to which, the petitioner had surrendered his passport in June, 2009, pursuant to initiation of proceedings under FEMA, had deposited the petitioner's passport with the RPO, and thus, the reason for the petitioner's request for release of his passport in his communication dated 16.11.2009.

8.3 The respondent no. 1, however, on its part, issued a notice dated 26.11.2009, calling upon the petitioner to show cause why action ought not to be initiated against him, under Section 10(3)(c) of the Passport Act. The petitioner was given fifteen (15) days to reply to the said show cause notice.

8.4 As indicated above, the Directorate of Enforcement vide letter dated 01.12.2009, finally communicated to the petitioner with regard to the fact that, his passport had been deposited with the RPO and hence, the requirement contained in item no. I of the schedule attached to its summons issued under FEMA, was dispensed with which; the said letter claimed had in fact been mentioned inadvertently. The letter further required compliance with summons dated 26.11.2009, issued by the Directorate of Enforcement; which

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required the petitioner's appearance on 08.12.2009 alongwith other documents referred to at serial no. 2 to 4 of the schedule appended to the said summons.

8.5 The RPO vide order dated 29.12.2009, without according any hearing to the petitioner, conveyed his decision to impound the passport of the petitioner, under Section 10(3)(c) of the Passport Act. In his order, the RPO made a reference to the registration of criminal case no. 176/2009 and the issuance of summons under FEMA by the Directorate of Enforcement, and the factum of pendency of investigation, by the two departments. It was stated that since petitioner's presence was required in India till the said cases are disposed of, a decision had been taken to impound the passport, as indicated above.

9. Aggrieved by the said decision of the RPO, the petitioner preferred an appeal with respondent no. 1.

10. During the pendency of the aforementioned appeal with respondent no.1; pursuant to an order of detention dated 26.04.2010, passed against the petitioner under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short COFEPOSA Act), the petitioner was detained.

10.1 The petitioner challenged his detention by filing a WP(Crl.) No. 917/2010. The petitioner's case was referred to the Advisory Board, which opined that sufficient grounds did not exist to justify the detention of the petitioner. Consequently, the Government of India, by an order dated 03.08.2010, revoked the detention order dated 26.04.2010.

10.2 In view of the above, the petitioner's WP(Crl.) 917/2010 was disposed of by order dated 05.08.2010.

10.3 In the meanwhile, the petitioner's appeal under the Passport Act came up for disposal before respondent no. 1. By an order dated 17.01.2011, the appeal was disposed of. The said order, while sustaining the order of the RPO dated 29.12.2009, passed the following operative directions:

“.....5. In my considered opinion, the allegation leveled against appellant is grave and of serious nature. After considering the records before me and considering the matter in its totality, being satisfied that it will be in larger public interest to impound the passport of Sh. Naveen Bhadri Sriram

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Sathyanarayanan, I, Mukesh K. Pardeshi, Joint Secretary (PSP) and CPO, in exercise of the powers conferred upon me under Section 10(3)© of the Passport Act, 1967 hereby uphold the decision of PO to impound passport no. Z 1732597 dated 03.04.2008, and order that the impounding of the passport may continue, until 31.03.2012."

(emphasis supplied)

12. Being aggrieved by the order dated 17.01.2011, passed by respondent no.1; the petitioner approached the Karnataka High court, by way of WP(C) No. 19370/2011. Since, the period for which the passport could remain impounded expired during the pendency of the writ petition, filed in the Karnataka High Court, the petitioner made a representation on 13.04.2012, for release of his passport.

12.1 Respondent no. 1, instead of releasing the petitioner's passport, passed the impugned order, whereby respondent no.1 now took the view that, since the investigations were pending, the petitioner's passport would remain impounded till investigations in the case are completed. This view was taken based on the latest status report received from respondent no. 2.

13. To complete the narrative, on 31.07.2012, the petitioner withdrew his writ petition pending in the Karnataka High Court with liberty to challenge the action of respondent no. 1, before a court of competent jurisdiction. The petitioner has thus, filed the captioned writ petition, to assail the order dated 04.06.2012, in the aforesaid circumstances set out above.

14. Mr. Mahajan, learned counsel, who appears for the petitioner has argued before me that, the impugned order, deserves to be set aside and quashed for more than one reason. The grounds articulated are as under:

- (i) The impugned order has been passed by respondent no. 1 after he became functus officio. It was submitted by the learned counsel that, by an earlier order dated 17.01.2011, the appeal had been disposed of and the directions for impounding the passport were limited in point of time, which expired on 31.03.2012. There was no ground for re-activating the appeal, much less, on the basis of the petitioner's communication dated 13.04.2012, which only sought return of his passport in

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consonance with operative directions contained in the order of respondent no. 1 dated 17.01.2011.

- (ii) The impugned order is bad in law, as it is not limited to a definitive time frame. It is submitted that, the order states that, the passport of the petitioner will remain impounded till such time investigations are complete. It was submitted that already three (3) years had elapsed and no chargesheet, as yet, had been filed against the petitioner by respondent no. 2. Therefore, such directions are draconian and thus violative of the fundamental rights of the petitioner under the Constitution.

15. On the other hand, learned counsel for respondent no. 2 submitted that this was a case in which the respondents had taken several steps to conclude the investigation. It was submitted that, since the transactions involved overseas buyers and sellers spread over many countries, material evidence had to be collected from those countries, in furtherance of which letters rogatories had been sent to their counter-parts in the said countries. The countries to which letters rogatories had been sent are: South Korea, Singapore, UAE, USA and Hong Kong. It was stated that, while South Korea had executed the letter rogatory; request qua other countries was pending action.

16. It was submitted that, the petitioner joined the investigation only because he was not allowed to leave the country. It was further submitted that, petitioner's brother, i.e., one, Sudheer Shriram, who is a co-accused in the case, has not joined the investigation. It is also contended that petitioner is not co-operating during investigation. It was thus, contended that, the investigation against the petitioner will get hampered if, the court were to direct release of the petitioner's passport.

17. Learned counsel for respondent nos. 1 and 3 made the similar submissions.

18. I have heard the learned counsels for the parties and perused the record. What emerges from the record, and a fact which is not disputed, is that investigation in the case have now continued for over three (3) years, i.e., from

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September 2009 to November 2012, though the transactions in issue had been, according to the respondents, carried out in the year 2008. Keeping in mind the pendency of the investigation, respondent no. 1, on 17.01.2011, had passed an order that the passport of the petitioner would remain impounded for a limited period of time; which was expired on 31.03.2012. To that extent, the order of the RPO dated 29.12.2009, was modified, which directed that the passport of the petitioner will remain impounded till investigations by the two departments are disposed of, as the petitioner's presence was required in India. The orders passed by respondent no. 1 were in exercise of his appellate jurisdiction, which ceased with the order being passed.

18.1 It may be pertinent to note that, in an earlier hearing before me, it was sought to be contended that the proceedings before respondent no. 1 had not attained finality, and therefore, he had the jurisdiction to pass the impugned order, i.e., order dated 04.06.2012. To get this issue out of the way, on 12.10.2012, a direction was issued to bring the record to court. The matter was made returnable on 01.11.2012; whereafter, on perusing the record I observed that the proceedings had closed before respondent no. 1 on 17.01.2011. The respondents neither contended to the contrary thereafter nor, did they show from the record anything which would have me come to a different conclusion.

18.2 Therefore, respondent no. 1, acting in its capacity as a quasi-judicial authority, could not have passed a subsequent order dated 04.06.2012, whereby it reversed, in effect, its operative direction contained in order dated 17.01.2011, when he had already become functus officio. [See observations of the Supreme Court in *State Bank of India & Ors. vs S.N. Goyal (2008) 8 SCC 92 paragraphs 26 to 28 at pages 108 and 109*]. Even if, I were to assume for the sake of argument (which has nebulous tenability), that such a power vested in respondent no. 1, the exercise of the power appears to be draconian, as there is no time frame fixed, by which the petitioner can hope to get back, if at all, the passport impounded by the said authorities. On either ground, the order deserves to be set aside.

19. It is in the context of what I have recorded above, as regards the

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allegations against the petitioner, that I had asked Mr Mann to take instructions as to the conditions, which could be incorporated to safeguard the interest of the respondents. Today, Mr Mann has come back with instructions to say that, the passport cannot be released with or without conditions. Mr. Mann, however, informs me that in so far as the brother of the petitioner is concerned i.e., Sudhir Shriram, his passport has been revoked by the concerned authority. He further informs me that Sudhir Shriram presently is located in UAE, with which the Government of India, has an extradition treaty.

20. Keeping in mind the allegations made against the petitioner, and having regard to the interest of both parties, I propose to issue the following directions:

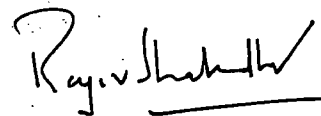
- (i) The respondents shall hasten the process of investigation and conclude the same on or before 31.01.2013, failing which, the passport will be released to the petitioner.
- (ii) In the event investigations are not complete before 31.03.2013 then, the petitioner, if he intends to travel abroad, shall inform the investigating officer of his itinerary, at least seven (7) days before the date of the travel.
- (iii) The petitioner shall report to the Indian Embassy/ High Commission or the Consulate, as the case may be, if it is so located in the city, to which he intends to travel.
- (iv) The petitioner shall not travel, pending the investigations, to the countries, with which the India does not have an extradition treaty.
- (v) In addition to above, the petitioner shall not travel the following countries to which letter rogatories have been issued: i.e., South Korea, Singapore, UAE, USA and Hong Kong.
- (vi) In case investigations are not complete even by 30.04.2013, then conditions set out in clause (ii) to (v) above shall stand dissolved.
- (vii) The petitioner shall not secure the possession of the title deeds which have been handed over to SBI Overseas branch, Bangalore, without the permission of the competent court. The respondent no. 2/CBI shall bring this order to the notice of the concerned officer(s) in the SBI Overseas

branch, Bangalore.

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(viii) It is, however, made clear that in case the investigations are completed before 31.01.2013 or thereafter, and a chargesheet is filed in the competent court, the said court will be at liberty to impose whatever conditions it deems fit which require to be put in place qua the issue of petitioner's passport, in accordance with the provisions of law.

21. With the aforesaid directions, the writ petition and the applications are disposed of.



RAJIV SHAKDHER, J

NOVEMBER 29, 2012

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5151/2012

NAVEEN BADRISRIRAM SATHYANARAYAN Petitioner
Through: Mr. Sanjeev Mahajan, Advocate

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Neeraj Chaudhari, CGSC with Mr.
Ravjyot Singh, Advocates for the respondent/UOI
Mr. Vikas Garg, Special Counsel for ED/R-3 with
Mr. B. Naveen Kumar, ADVocate/ALA, ED.
Mr. Anil Kr. Singh, proxy counsel for Mr. P.K.
Sharma, Advocate for the respondent/CBI

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
21.12.2012

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CM No.20087/2012 (for correction)

This application has been filed to correct an inadvertent typographical error which has crept in paragraph 20(ii) of the order dated 29.11.2012. The error which is crept in is qua the date, which is, mentioned as : "31.03.2013" as against 31.01.2013. The error is corrected. Paragraph 20(ii) after correction will read as follows :-

"20(ii). In the event investigations are not complete before

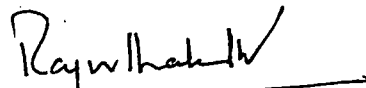
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31.01.2013 then, the petitioner, if he intends to travel abroad, shall inform the investigating officer of his itinerary, at least seven (7) days before the date of the travel.”

The other directions contained in order dated 29.11.2012 shall remain unaltered.

The application is accordingly disposed of.


RAJIV SHAKDHER, J

DECEMBER 21, 2012

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