

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Petition No.1238 of 2014

E.D.Charles

.. Petitioner / Accused

Vs.

State, rep., by
Sub-Inspector of Police,
Crime Branch, EDF Team,
Egmore, Chennai-8.

.. Respondents / Complainant

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order passed by the learned Chief Metropolitan Magistrate, Chennai, made in C.M.P.No.5336 of 2014, in C.C.No.5418 of 2012, dated 18.11.2014.

For Petitioner : Mr.A.Kalaiazhagan

For Respondent : Mr.P.Govindarajan,
Addl. Public Prosecutor

ORDER

Material on record discloses that the Police has registered a case against the petitioner/accused and others, in which, on investigation, charge sheet has been filed. The case is pending trial in C.C.Nos.5418 to 5421 of 2012. CrI.O.P.Nos.10311 to 10314 of 2014, have been filed to quash the charge sheet. This Court has granted interim stay. The respondent-Police has seized the passport of the petitioner/accused, bearing No.K 2195854, from his house on 22.10.2012 and deposited the same in the lower Court.

2. According to the petitioner, he is holding the post of Secretary of Church Council, TELC, Trunqubar House, Trichy and that he has to participate in Gospel Meetings of Lutheran Churches in Germany and other countries. As the passport seized, is deposited in the Court, he is unable to attend the meetings and hence, he has filed CrI.M.P.No.5336 of 2014, for return of the passport.

3. The respondent-Police has opposed the relief sought for, on the grounds that if the passport is returned to the

petitioner/accused, he may abscond and consequently, there would be delay in the trial. Upon hearing the learned counsel for the parties, the Court below has found that when the petitioner/accused was enlarged on bail in Crl.M.P.Nos.622, 623, 581 and 584 of 2011, dated 21.02.2011, one of the conditions imposed was that he has to surrender his passport. Before the lower Court, the petitioner/accused has filed a Memo, dated 22.02.2011, stating that his passport was missing. Thereafter, on the petition, filed by the defacto complainant, under Section 93 of the Criminal Procedure Code, the learned Chief Judicial Magistrate, Chennai, vide order, in Crl.M.P.No.4668/2012, dated 21.09.2012, has ordered to conduct a search in the house of the petitioner/accused in Door No.19, Thai Nagar, Anbu Illam, Kodungaiyur, Chennai and if the passport of the petitioner is found, it has to be produced before the Court. Thereafter, the respondent-Police has conducted a search in the petitioner-house, seized the passport and produced the same before the lower Court. Having regard to the conduct of the petitioner, in filing a memo, stating that the passport was missing and the objection of the respondent-police that if the passport is returned, the accused may abscond and that there would be a delay in completing the trial, the learned Chief Judicial Magistrate, while dismissing Crl.M.P.No.5336 of 2014, held that at this stage, it is not safe to return the passport to the petitioner/accused.

4. Aggrieved by the order of the learned Chief Judicial Magistrate, Egmore, Chennai, dated 18.11.2014, the present Criminal Revision Case is filed.

5. Assailing the correctness of the abovesaid order, Mr.A.Kalaiazhagan, learned counsel for the petitioner submitted that the Court below has failed to consider that the petitioner had given an undertaking to abide by any condition and also to inform the Court, if he has to leave the country. He also submitted that the reasoning of the Court below that it would not be safe to return the passport, at this stage, is based on surmises and conjunctures.

6. Learned counsel for the petitioner further submitted that the Court, dealing with an offence, has no power to impound a passport and therefore, the passport has to be returned.

Heard the learned Additional Public Prosecutor, who reiterated the objections.

7. Material on record discloses that when the petitioner was enlarged on bail, on 21.02.2011, one of the conditions imposed was to surrender his passport and in that connection, he has filed a memo, dated 22.02.2011, stating that his passport was missing. Thereafter, on the basis of the order made in Crl.M.P.No.4668/2012, dated 21.09.2012, search has been conducted at the residence of the petitioner and that his passport, bearing No.K 2195854, has been seized and produced before the Court below. For more than two years, the passport is in the Court. Conduct of the

petitioner in furnishing a wrong statement to the lower Court, cannot be accepted.

8. However, Section 10(3)(e) of the Passports Act, empowers the passport authority to impound or cause to be impounded or revoke the passport or travel document, if the proceedings in respect of an offence is alleged to have been committed by the holder of the passport or travel document are pending before a criminal Court in India. The contention of the respondent that once the passports are given to the accused, there is no guarantee that he would subject himself for the trial before the Chief Judicial Magistrate, Chennai, deserves consideration. It cannot be contended that the Court has no power to impose any condition for return of the passports. Conditions imposed can be reasonable, so as to enable the presence of the accused, before the Criminal Court.

9. In view of the settled proposition of law that the Customs Authority has no power to impound a passport of a Citizen and further that impounding of a Passport cannot be done by a Court of Law, except in the manner provided for, this Court is inclined to set aside the impugned order. The Customs Authority is directed to return the Passport of the petitioners within ten days from the date of receipt of the communication of this order, on conditions, that

(i) the petitioner shall deposit a cash security of Rs.25,000/- to the credit of C.M.P.No.410 of 2014, dated 18.11.2014, on the file of the Chief Judicial Magistrate, ***Chennai-8**.

(ii) Before returning the Passport, the respondent/Customs Authority is directed to retain a duly attested photo copy of the Passport for producing the same, as secondary evidence in the trial.

(iii) The passport shall be produced before the Learned Magistrate as and when required.

In addition to the above, this Court imposes a condition that the petitioners shall not leave the Country, without the express permission of the Learned Magistrate and such permission shall be granted only after providing adequate opportunity of hearing to the Respondent, as the case may be. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS III)

Dated: 23.2.2015

*Corrected as per direction
of his Lordship's SMKJ

Sd/-

Asst.Registrar (CS III)

Dated: 13.4.2015

/true copy/

Sub Asst. Registrar

skm

To

1. The Chief Judicial Magistrate,
Chennai.

2. The Sub-Inspector of Police,
Crime Branch, EDF Team,
Egmore, Chennai-8

3. The Public Prosecutor
High Court, Madras

1 cc to Mr.J.C. Durairaj, Advocate, sr. 6575

To be substituted
to the order
already despatched
on 13.3.2015

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SAI (CO)
kk 26/2

kk 15/4



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