

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.R.C.No.136 of 2015

V.Devarajan

... Petitioner

vs.

1.State rep by the Inspector of Police
Kelambakkam Police Station
Kancheepuram District.

2.J.Vijayakumari

... Respondents

Petition filed under Section 397 r/w 401 of Cr.P.C. to call for the records pertaining to CMP No.3647 of 2014 order passed by the learned Judicial Magistrate No.1, Chengalpattu and set aside the same.

For Petitioner : Mr.V.Pavel

For Respondent : Mr.P.Govindarajan

Addl.Public Prosecutor for R1

O R D E R

Being aggrieved by the order made in Cr1.M.P.No.3647 of 2014 dated 29th October 2014, on the file of the learned Judicial Magistrate No.II, Chengalpattu [FAC], directing return of passport to J.Vijayakumari/respondent no.2, claiming himself to be the Power Agent of one of the victims, in Crime No.441 of 2014, registered under Sections 120(b), 420, 465, 468 and 471 IPC, on the file of E8 Kelambakkam Police Station, a third party has filed the present revision case, assailing the correctness of the above said order.

2. Material on record discloses that on the complaint of Mr.T.Ramesh, a case in Cr.No.441 of 2014, has been registered on the file of E8 Kelambakkam Police Station, for the offences under Sections stated supra.

3. Respondent no.2 has been arrested and remanded to judicial custody. She had filed CMP No.2379 of 2014 on the file of the Judicial Magistrate No.I, Chengalpattu for bail. Prosecution has opposed the same. After considering the facts and circumstances, and the rival submissions, vide the order dated 24.06.2014, the learned Judicial Magistrate No.I, Chengalpattu, has enlarged respondent no.2 on bail, on her executing a bond for Rs.10,000/- with two sureties each, for a like sum, out of which one surety should be document

surety and another normal surety. Respondent no.2 also has been directed to produce the Passport. Further directions have been issued to respondent no.2 to appear before the Police Station daily at 10.00 a.m, for a period of one month thereafter, as and when required.

4. After depositing the passport and compliance of the conditions imposed in CMP No.2379 of 2014, respondent no.2 has filed CMP No.3647 of 2014 under Sections 451 and 457 Cr.P.C., for return of the original passport. Prosecution has opposed. After considering the facts, the learned Judicial Magistrate II, Chengalpattu [FAC], by order dated 29th October 2014, directed return of the passport to respondent no.2, with the following conditions:

"The petitioner shall execute a bond for Rs.10,00,000/- with two sureties each for a like similar sum.

Moreover the petitioner get a passport whenever she know her passport for statutory purpose and the same may be returned to this court early as possible. Furthermore the petitioner taken over a passport from this court whenever she going to abroad countries for her business or personal she will direct to intimate the same which country she will go and how many days she stay and the purpose of travel during the individual about the reasons are prepared via affidavit and informed to the investigation officer. The statutory purposed of the passport is not solved she will directed to inform the same to the investigation officer. If any circumstances the petitioner was failing which above conditions the individual is answer to this court and the severe action take against the petitioner and the same was stayed by the concern officer."

[Extracted verbatim]

5. First of all, this Court is of the view that the petitioner has no locus, to question the correctness of the impugned order, for the reason that he is not even the de facto complainant. Though Mr.V.Pavel, learned counsel for the petitioner, assailed the correctness of the order returning the passport to respondent no.2 on the ground that exercise of jurisdiction under Sections 451 and 457 Cr.P.C. can be made only in relation to a property, which is subject to speedy and natural decay and not a passport, directed to be surrendered earlier, and if respondent no.2, is entrusted with interim custody of the passport, she would quad justice, this Court is not inclined to accept his contentions, for the reason, that as per explanation to Section 451 Cr.P.C., "property" includes (a) property of any kind or document which is produced before the Court or which is in its custody (b) any property regarding which an

offence appears to have been committed or which appears to have been used for the commission of any offence. The word 'property' used in Sections 451 and 457 Cr.P.C., is not restricted only to property, which is subject to speedy and natural decay. The explanation is clear that, it includes any document, which is produced before the Court or which is in its custody.

6. In the case on hand, in CMP No.2379 of 2014, while granting bail, by order dated 24.06.2014, the learned Judicial Magistrate No.I, Chengalpattu, has imposed a condition, that respondent no.2 should produce the passport. Subsequently, while exercising the jurisdiction under Sections 451 and 457 Cr.P.C., the Court below has imposed conditions, that respondent no.2 should execute a bond and that she should file an affidavit, before the Investigating Officer about any proposed travel. Passport cannot be permanently kept in the custody of the Court. Sufficient conditions have been imposed by the learned Judicial Magistrate No.II, Chengalpattu [FAC], to ensure the presence of the accused. Directions issued to return the passport, to the owner of the property, cannot at any stretch of imagination, be served as illegal. The Criminal Revision Case deserves to be dismissed both on the grounds of locus as well as on merits. Accordingly, this Criminal Revision Case stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Gms

To

1.State rep by the Inspector of Police
Kelambakkam Police Station
Kancheepuram District.

2. The Judicial Magistrate No.1,
Chengalpattu.

3.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.V.Pavel, N,Kamaraj & S.M.Stalin ,Advocate, SR.No.10283

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scd(co)

pnk 27.2.2015

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