



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2015

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THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

Crl.O.P(MD)No.12840 of 2015

P.Vignesh @ Pon Parivallal

...Petitioner/Petitioner

vs.

The Inspector of Police,
All Women Police Station,
Samayanallur, Madurai.

.. Respondent

PRAYER:Criminal Original Petition filed under Section 439(1)(b) Cr.P.C. praying to set aside the condition imposed in the order dated 12.06.2015, in Crl.M.P.No.1973/2015, on the file of the Judicial Magistrate Court/Additional Mahila Court, Madurai.

For Petitioner :Mr.J.Anandkumar

For Respondent :Mr.K.V.Raja Rajan

Government Advocate(Crl.side)

O R D E R

This petition has been filed seeking to set aside the condition imposed in the order, dated 12.06.2015 in Crl.M.P.No.1973/2015, on the file of the Judicial Magistrate Court/Additional Mahila Court, Madurai.

2.Heard the learned counsel appearing for petitioner and the learned Government Advocate(Crl.side) appearing for the respondents.

3.While granting bail to the petitioner, the learned Judicial Magistrate directed him to surrender his existing passport to the Court. Challenging the said condition, the present petition is filed.

4.The learned Counsel for the petitioner submitted that due to matrimonial dispute between the petitioner and the defacto complainant, they are living apart; that the wife/defacto complainant has filed H.M.O.P.No.450 of 2013, before the Subordinate Court, Thirumangalam, seeking restitution of conjugal rights, in which, the petitioner entered his appearance contesting the case by filing counter; that the defacto complainant has filed a petition under Section 125 Cr.P.C., before the Chief Judicial Magistrate, Madurai in M.C.No.52 of 2013 seeking maintenance and the petitioner has been paying totally a sum of Rs.7,500/- as per the order of the



court and that the petitioner has filed another original petition before the Family Court, Madurai against the defacto complainant for divorce and the said petition is pending.

5. It is further contended that the defacto complainant has preferred a similar complaint against the petitioner before the Chinnamanur Police Station on 04.06.2014 and the petitioner and the defacto complainant has appeared before the police and returned the entire articles of the defacto complainant and it was also agreed that the petitioner has to take her after returning to India.

6. The learned Counsel for the petitioner further submitted that the petitioner was working in abroad and when the matrimonial proceedings are pending, the present complaint was given on 04.06.2015 and in pursuance of the complaint, the petitioner was arrested on 09.06.2015, however, granted bail by the learned Judicial Magistrate on the condition to surrender his passport and such direction is contrary to law and it affects the personal liberty guaranteed under the Constitution of India. The learned Counsel relied upon the decision reported in (2008)3 SCC 674 in the case of *Suresh Nanda vs. Central Bureau of Investigation*, contending that the court cannot impound the passport and it has to be done by the competent authorities under the Passport Act.

7. Per contra, the learned Government Advocate (Crl.Side) submitted that the case was registered only on 04.06.2015 and once the passport is returned, the petitioner will not be available for trial.

8. In the decision reported in (2008) 3 SCC 674 in the case of *Suresh Nanda v. Central Bureau of Investigation*, the Hon'ble Supreme Court has held as follows:-

"..5. A similar view is reiterated in the decision rendered by a seven-Judge Bench of this Court in *Maneka Gandhi v. Union of India* (1978)1 SCC 248 wherein at SCC pp. 280-81, para 5, it was held as under:

"5. ... Now, it has been held by this Court in *Satwant Singh* case AIR 1967 SC 1836: (1967)3 SCR 525 that 'personal liberty' within the meaning of Article 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior to the enactment of the Passports Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in *Satwant Singh* case [AIR 1967 SC 1836: (1967)3 SCR 525] was struck down as invalid. It will be seen at once from the language of Article 21 that the protection it



secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means 'enacted law' or 'State law' (vide A.K. Gopalan case. Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure."

6. On the other hand, the learned Additional Solicitor General appearing for the respondent submitted that the passport was seized and impounded by exercising the powers under Section 102 read with Sections 165 and 104 of the Code of Criminal Procedure (hereinafter referred to as "CrPC"). He further contended that the power to retain and impound the passport has been rightly exercised by the respondent as there is an order dated 3-11-2006 passed by the learned Special Judge for CBI exercising the power under Section 104 CrPC.....

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10. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 CrPC authorises the court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special Act, the rule that "general provision should yield to the specific provision" is to be applied. See *Damji Valji Shah v. LIC of India* [AIR 1966 SC 135] *Gobind Sugar Mills Ltd. v. State of Bihar* [(1999) 7 SCC 76] and *Belsund Sugar Co. Ltd. v. State of Bihar*. [(1999) 9 SCC 620: AIR 1999 SC 3125].

11. The Act being a specific Act whereas Section 104 CrPC is a general provision for impounding any document or thing, it shall prevail over that section in CrPC as regards the passport. Thus, by necessary implication, the power of court to impound any document or thing produced before it would exclude passport.

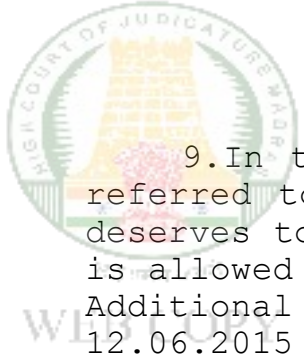
16. Hence, while the police may have power to seize a passport under Section 102 CrPC if it is permissible within the authority given under Section 102 CrPC, it does not have power to retain or



impound the same, because that can only be done by the Passport Authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 CrPC), thereafter the police must send it along with a letter to the Passport Authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter for the Passport Authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the Passport Authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party (vide *State of Orissa v. Binapani Dei* [AIR 1967 SC 1269]).

17. In the present case, neither the Passport Authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the Passport Authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October 2006. In our opinion, this was clearly illegal. Under Section 10-A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport Authority under Section 10(3).

18. In our opinion, even the court cannot impound a passport. Though, no doubt, Section 104 CrPC states that the court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the court to impound any document or thing other than a passport. This is because impounding of a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while CrPC is a general law. It is well settled that the special law prevails over the general law vide *G.P. Singh's Principles of Statutory Interpretation* (9th Edn., p. 133). This principle is expressed in the maxim *generalia specialibus non derogant*. Hence, impounding of a passport cannot be done by the court under Section 104 CrPC though it can impound any other document or thing."



9. In the light of the law laid down by the Hon'ble Apex Court referred to supra, this court is of the view that the petition is deserves to be allowed. Accordingly, this Criminal Original Petition is allowed and the 2nd condition imposed by the Judicial Magistrate, Additional Mahila Court, Madurai in Crl.M.P.No.1973 of 2015, dated 12.06.2015 is set aside and the learned Judge is directed to return the passport of this petitioner.

Sd/-

Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar

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To

1.The Judicial Magistrate Court/Additional Mahila Court,
Madurai.

2.The Inspector of Police,
All Women Police Station,
Samayanallur, Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to MR.J.Anandkumar, Advocate in Sr NO.38205

CRL.O.P (MD) No.12840 of 2015
13.07.2015

rg.21.07.2015

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