

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.15821 of 2014

ORDER :

This Criminal Petition is filed by the Petitioner/ accused No.1 under Section 482 Cr.P.C seeking to set-aside the order passed on 01.12.2014 in CrI.P.M.P. No.2767 of 2014 on the file of Judicial Magistrate of First Class, Kurnool.

2) Heard learned counsel for the petitioner/ accused No.1, the 2nd respondent—de facto complainant and also the 1st respondent—State before admission. Perused the material on record. There is an order of Apex Court in S.L.A (Crl) No.4453 of 2015 dated 14.05.2015 directing the High Court to dispose of the CrI.P. No.15821 of 2014, within three months, which three months expire by 14.08.2015 by affording an opportunity to the petitioner herein, since permitting under Sections 482 and 24 (8) proviso of the amended Cr.P.C to assist the prosecution to represent the matter of her grievance in this petition vide CrI.P.M.P. No.17713 of 2014. Perused the impugned order of the learned Magistrate as well as this Court in CrI.P.No.15821 of 2014. The impugned order of the learned Magistrate dated 10.10.2014 in CrI.P.M.P. No.2601 of 2014 is in Crime No.67 of 2013 of Mahila Police Station, Kurnool, registered for the offences punishable under Sections 498-A, 417 and 506 IPC and Section 4 of Dowry Prohibition Act, which is outcome of the report of said de facto complainant dated 02.09.2013. The claim of the petitioner is that his passport having been seized by the police and deposited in Court custody and he went unsuccessful in the impugned order of the learned Magistrate, dated 01.12.2014 in CrI.P.M.P. No.2767 of 2014 for getting return of the passport. While dismissing the application, it was held that if the passport is being returned to petitioner/accused No.1, it is difficult to secure his presence to proceed with the case or in the event of jumping to apprehend by the prosecution agency and secure his presence before the Court.

3) Undisputedly, the passport was seized by the police and it was deposited in Court. It is settled law more particularly from the

expression of Apex Court in **Suresh Nanda vs CBI**^[1] of the Investigating agency has no right to seize passport but for on direction of Court to deposit. It is important for this Court to consider the subsequent development that it is subsequent to the seizure of the passport, bail application was moved by the petitioner in CrI.P.No.2601 of 2014 before the learned Magistrate after he was taken to custody and he was granted the concession of bail on 10.10.2014. Though it can be, it was not made a condition for deposit of the passport for the reason that police already seized rightly or wrongly that was deposited in the Court. But for that, the Court can direct as laid down by the Apex Court in **Siddharam Satlingappa Mhetre v. State of Maharashtra and Others**^[2] as one of the conditions of bail to deposit the passport so as not to leave the country by jumping bail. Thereby, that expression in Suresh Nanda (1 supra) no way available to the petitioner herein, that too, having submitted to it and asked for its return. However, the fact remains that his contention for return of passport is to pursue his employment as Behrin, which is a private job, he was earlier working for the past one year and after seizure of the passport he lost his avocation and held up in Indoor and that thereby, the passport is to be returned.

4) Right to pursue his avocation or source of life and go abroad is one of the fundamental rights of part-III of the Constitution of India. No doubt, it is a qualified fundamental right as Court is also bound to consider the plight of the victim as well as the larger interest of the society. Here, once the bail conditions can be imposed for depositing the passport by seizure and the passport is in deposit and as per Section 6 (2) (f) of Passports Act, 1967 – once the person is accused of an offence and he wants to renew the passport or to have a transit visa pending the crime, he must obtain the specific permission of the Magistrate for the passport authorities to renew or to issue transit visa. In fact without transit visa even passport is returned he cannot travel.

5) The contention of the de facto complainant is that once he is permitted to take back the passport and proceed by obtaining transit visa

to Behrin, it is very difficult to secure his presence to face the trial in the calender case since the police already filed charge sheet in Crime No.67 of 2013 that was taken cognizance for the offences (supra) by the learned Magistrate in C.C. No.680 of 2014.

6) Even as per the accused he received summons and he is going to appear on the hearing date fixed in the summons, to face the trial. However, because of the case pending he cannot be locked within India without going abroad by retaining the passport.

7) It is, in view of the above, factual matrix and to subserve the ends of justice by virtue of this order to renew the passport etc., if necessary, or to give transit visa pursuant to Section 6 (2) (f) of Indian Passport Act, the learned Magistrate is directed to return the passport to the petitioner and to avail the concession for six months from the date of receipt of the passport to go abroad and work there and return within six months and redeposit the passport before the trial Court, if the trial is not completed in the meantime. Return of passport to him by the Court is subject to executing a bond for Rs.2.5 lakhs with sufficient solvency before the learned Magistrate for his taking back the passport and redeposit and any failure on his part of redeposit before the six months period, the bond amount can be forfeited as part of penalty under Section 53 of IPC and to recover the same as if a fine under Section 421 Cr.P.C.

7) Subject to the above directions, the Criminal Petition is allowed setting aside the order dated 01.12.2014 in CrI.P.M.P.No.2767 of 2014 on the file of Judicial Magistrate of First Class, Kunrool. Needless to say as the petitioner can take back his passport to go abroad for which purpose, permission is accorded subject to execution of the bond (supra); the petitioner is at liberty to file an application under Section 205 Cr.P.C before the learned Magistrate to represent through special vakalath holder including for filing of any application for discharge or for hearing on charges or to answer the charges under Section 239/ 240 Cr.P.C before the learned Magistrate but for to appear personally, for Section 313 Cr.P.C examination and for any of his defence evidence.

8) Miscellaneous petitions, if any pending in this Criminal
Petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.13.08.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:13.08.2015

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[\[1\]](#) AIR 2008 SC 1414

[\[2\]](#) AIR 2011 SC 312