

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.8127 of 2015

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioner/A.1 to set aside the order in Crl.M.P.No.2221 of 2015 in C.C.No.710 of 2015, dated 10.07.2015 on the file of the XIX Metropolitan Magistrate, Cyberabad at Miyapur, Kukatpally.

2. Heard the learned counsel for the petitioner so also learned Public Prosecutor for the 1st respondent-State and perused the material on record.

3. The petitioner is resident of Louisiana, U.S.A. practicing there as doctor. The above Calender Case is taken cognizance for the offences punishable under Section 498-A, 406 and 506 of I.P.C. which is outcome of the report of the 2nd respondent/defacto in Cr.No.216 of 2015. The petitioner-A.1 at the post-cognizance stage of the above Calander Case failed to attend. It is because of that reason, the N.B.W. issued against him for on summons could not secure. While pendency of the execution of the warrant, at the instance of the defacto-complainant, the learned Asst Public Prosecutor representing the State filed a petition in Crl.M.P.No.2221 of 2015 against A.1 in seeking to cause impound the Passport of the A.1 as he is not turning up to India to face trial in the above Calendar Case. The learned Magistrate on that petition passed the docket order as follows:-

“Perused the record. Address a letter to the Regional Passport Office, Secunderabad to impound the passport of A.1.”

4. The impugned order now challenged herein saying the order is not only laconic but legally unsustainable, as the Apex Court in

Suresh Nanda Vs. CBI^[1], observed particularly in paras-14 to 18 that the investigating officer has no right to seize passport and the Court also for that reason though got power under Section 102 C.P.C. to seize passport, it has no right to impound but for the authorities concerned under Section 10(3) of the Indian Passports Act, 1967 and that if Section 104 Cr.P.C. permits the Court to impound any document, passport is an exception to it as Section 10(3) of the Passports Act. The learned counsel for the petitioner placing reliance on the observations in the expression of the Apex Court supra contending that the order thereby liable to be set aside.

5. Whereas, it is the contention of the learned counsel for the 2nd respondent/defacto that it is not even the endeavour to impound the passport but to secure the presence of the accused on summoning himself but he cannot take advantage of his absence for appearance having knowledge about the case is pending as he is bound to appear to face the trial.

6. Having regard to the above, the Criminal Petition is disposed of while setting aside the order of the learned Magistrate in CrI.M.P.No.2221 of 2015 in C.C.No.710 of 2015, dated 10.07.2015 on the file of the XIX Metropolitan Magistrate, Cyberabad at Miyapur, Kukatpally, invoking the inherent power under Section 482 of the Cr.P.C. directing the petitioner/accused to land in India and surrender before the learned Magistrate within 8 weeks from date of receipt of the order and in the meantime he shall not be arrested based on the pending N.B.W. and in the event of his surrender before the learned Magistrate with bail application with a notice to learned Public prosecutor concerned, the learned Magistrate shall hear and grant bail on the same day by virtue of this order with necessary conditions. Needless to say after obtaining bail, he can move an application under Section 205 of Cr.P.C. and went back to prosecute

his studies, for the learned Magistrate to hear and permit him to represent through special vakalath holder with necessary condition of personal appearance only for Section 313 of Cr.P.C. examination and in the meantime the proceedings shall go on in his absence since being representing through special vakalath-holder.

7. Consequently, miscellaneous applications, if any, pending in this Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 27.10.2015

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[\[1\]](#) 2008(3) SCC 674