

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CRIMINAL PETITION No.7202 of 2015

ORDER :

This Criminal Petition is filed by the petitioner/accused under Sections 451 and 482 Cr.P.C seeking to set-aside the order passed on 15.07.2015 in Crl.M.P.No.524 of 2015 on the file of the Judicial Magistrate of First Class at Kamareddy.

2. Heard learned counsel for the petitioner/accused and also respondent-State before admission. Perused the material on record.

3. This Court passed order dated 13.07.2015 in Crl.P.No.6154 of 2015 directing the petitioner herein to file an appropriate application before the Court below for return of his passport said to have been seized by the police in Crime No.106 of 2015 of Kamareddy Police Station, Nizamabad District within 15 days from the date of order and on filing such application, the Court below was directed to dispose of the same and pass appropriate orders thereon on the same day, in accordance with law. Crime No.106 of 2015 of Kamareddy Town Police Station, Nizamabad District, registered for the offences punishable under Sections 498-A IPC and Section 4 of the Dowry Prohibition Act, which is outcome of the report of said de facto complainant dated 17.04.2015. Pursuant of the above order of this Court, the petitioner filed Crl.M.P.No.524 of 2015 before the Court below and the

same was dismissed by the impugned order dated 15.07.2015.

4. 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 15.07.2015 in CrI.M.P. No.524 of 2015 for getting return of the passport. While dismissing the application, it was held that if the passport is being returned to petitioner/accused, 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.

5. 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.

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 that he will lose his permanent employment at

Muscat as he is working there since nine years.

6. 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 pass port authorities to renew or to issue transit visa. In fact without transit visa even passport is returned he cannot travel.

7. The contention of the Public Prosecutor is that once he is permitted to take back the passport and proceed by obtaining transit visa to Muscat, 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.106 of 2015 that was taken cognizance for the offences (supra) by the learned Magistrate in C.C. No.182 of 2015.

8. 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.

9. 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 nine months from the date of receipt of the passport to go abroad and work there and return within nine 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 nine 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.

10. Subject to the above directions, the Criminal Petition is allowed setting aside the order dated 15.07.2015 in CrI.M.P.No.524 of 2015 on the file of the Judicial Magistrate of First Class, Kamareddy. 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.

11. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

19th August 2015.

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

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