

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.08.2016

PRONOUNCED ON: 17.08.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P.No.25910 of 2016

M. Shaji Purushothaman

Petitioner

vs.

State represented by the
Assistant Commissioner of Police
Traffic Investigation East
Anna Square
Traffic Investigation
Chennai

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondent to return the passports standing in the name of the petitioner herein, viz., M. Shaji Purushothaman bearing Nos.Z1762211; F 8704587 and Z074756 seized in S.C. No.19 of 2014 on the file of the VII Additional Sessions Judge, Chennai, within a time frame.

For Petitioner :Mr. B. Kumar, Senior Counsel
for M/s. R. Rajan

For Respondent :Mr. C. Mani Shankar
Addl. Advocate General
assisted by Mr. C. Emalias
Addl. Public Prosecutor

ORDER

This writ petition has been filed seeking a writ of mandamus directing the respondent to return the passports bearing Nos.Z1762211, F 8704587 and Z074756 standing in the name of the petitioner herein, viz., M. Shaji Purushothaman, seized in S.C. No.19 of 2014 on the file of the VII Additional Sessions Court, Chennai, within a time frame.

2 The petitioner is facing prosecution in S.C. No. 19 of 2014 before the VII Additional Sessions Court, Chennai, for various offences under the Indian Penal Code and the Motor Vehicles Act in respect of an incident, in which, it is alleged

that the petitioner and his friends ran over pavement dwellers in their high-end car, killing a 13 year old boy and injuring several others. The incident is said to have taken place on 22.05.2013 in the night hours and after the incident, the petitioner tried to escape via Cochin Airport, where, he was apprehended by the police. His passports are now in Court custody. While so, the petitioner filed a petition under Section 451, Cr.P.C. before the VII Additional Sessions Court, Chennai, for return of his passports. The VII Additional Sessions Judge, Chennai returned the petition for the following reason:

"The above case S.C. No.19/14 is stayed by the High Court in Crl.M.P. No.1/14 in Crl.R.C. No.974/14 dt. 23.09.14. How the petition is maintainable? Hence, the petition is returned."

3 From a perusal of records, it appears that the co-accused by name Syed Anwar seems to have filed a discharge application before the Trial Court and on the dismissal of the same, he has preferred Crl. Rev. Case No.974 of 2014 before this Court and this Court has stayed all proceedings before the Trial Court. On this ground, the petition filed by this petitioner under Section 451, Cr.P.C. has been returned by the Trial Court.

4 In ordinary circumstances, the petitioner should have re-submitted the papers explaining to the Trial Court as to how his petition under Section 451, Cr.P.C. is maintainable, albeit the fact that High Court has granted stay in the Criminal Revision Case filed by the co-accused. Instead, this petitioner has filed Crl.R.C. No.1291 of 2014 before this Court and this Court has dismissed the same on 09.01.2015, upholding the order of return passed by the Trial Court. The petitioner did not take up the matter further to the Supreme Court. Ergo, the order passed by the Trial Court has attained finality. While so, the petitioner has filed the present writ petition seeking a writ of mandamus directing the respondent to return his passports.

5 Mr. B. Kumar, learned Senior Counsel appearing for the petitioner submitted that the petitioner has a fundamental right to go abroad and that right cannot be infringed by withholding his passports and therefore, a writ as prayed for, deserves to be issued, in the facts and circumstances of the case.

6 In oppugnation, Mr. C. Mani Shankar, learned Additional Advocate General appearing for the respondent-State contended that the order of the Sessions Court refusing to entertain the petition filed by the petitioner under Section 451, Cr.P.C. having become final, the same cannot be re-agitated in a collateral proceedings.

7 This Court finds sufficient force in the argument of the learned Additional Advocate General. It is true that a person has got a fundamental right of movement and that right cannot be curtailed. But, here, the attempt by the petitioner to get back his passports by filing an application under Section 451, Cr.P.C., followed by filing a Criminal Revision Case before this Court, had attained finality. The petitioner did not elect further to agitate the matter before the Supreme Court. The order in CrI.Rev.Case No.1291 of 2014 was passed by this Court on 09.01.2015, which is almost 1 ½ years back. This judicial order cannot be set at naught by invoking the Constitutional power under Article 226 of the Constitution of India.

8 At this juncture, it will be apposite to point out that the Supreme Court, in Naresh Shridhar Mirajkar and 3 others vs. State of Maharashtra and another [AIR 1967 SC 1] has held in no uncertain terms that judicial orders cannot violate fundamental rights as they are amenable to appellate/revisional jurisdiction. The relevant passage from the said judgment runs thus:

"38 When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Art. 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Art. 19(1)."

In view of the foregoing discussion, this writ petition which is bereft of merits, is liable to be dismissed and is accordingly dismissed. Costs made easy.

cad

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

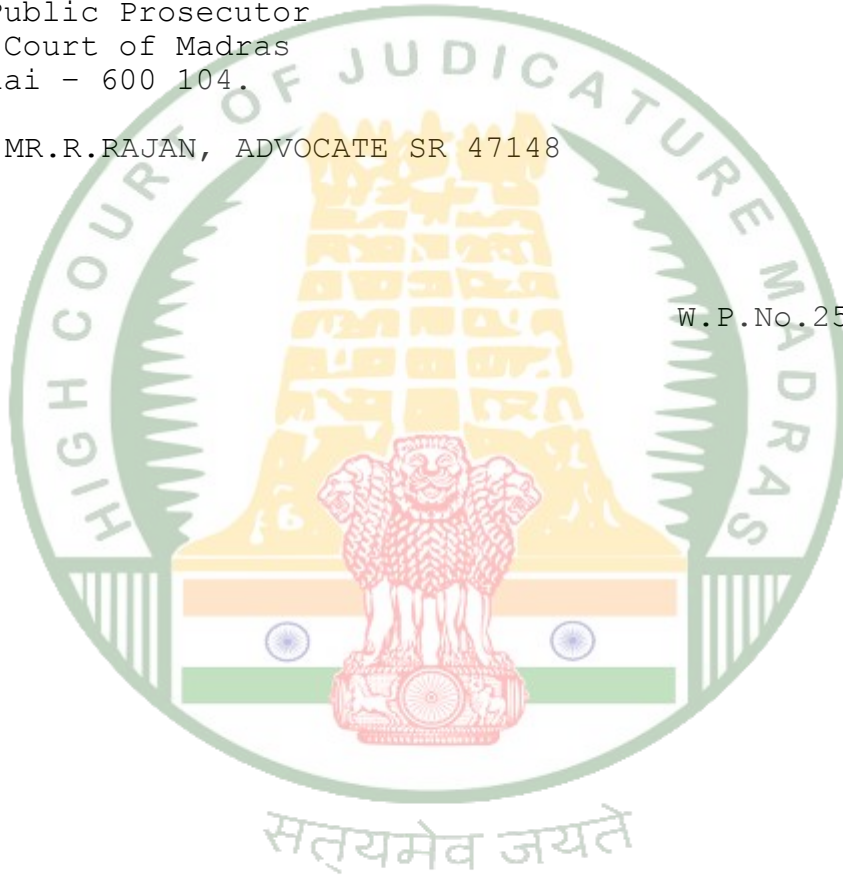
To

- 1 The Assistant Commissioner of Police
Traffic Investigation East
Anna Square
Traffic Investigation
Chennai
- 2 The VII Additional Sessions Judge
Chennai
- 3 The Public Prosecutor
High Court of Madras
Chennai - 600 104.

+ 1 CC TO MR.R.RAJAN, ADVOCATE SR 47148

KR/9/9/16

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