

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.14480 of 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to quash the Order in CrI.M.P.No.5262 of 2016 in Cr.No.356 of 2016 on the file of XIII Addl. Chief Metropolitan Magistrate, Hyderabad and direct to release the passport bearing No. G4126957 to the petitioner.

The petitioner is an accused for the offence punishable under Section 498-A IPC on the strength of complaint submitted by the *de facto* complainant and later the Police issued Notice under Section 41-A of Cr.P.C. directing him to appear before the Police concerned and accordingly, he received the Notice while working at Singapore and in pursuance of the notice, he appeared before Police and thereafter he was arrested and released on bail by the police on furnishing a personal bond of Rs.10,000/- with two sureties for a like sum each to the satisfaction of Judicial Magistrate of First Class and accordingly, he complied with the direction issued by the Court. But his passport was retained, which prevented him to report duty at Singapour even after expiry of eight weeks granted by the trial court for filing Charge sheet.

As the Passport was not returned to the petitioner, he filed a petition before XIII Additional Chief Metropolitan Magistrate (Mahila Court) at Hyderabad, for return of Passport explaining the reasons, but that petition was dismissed on the ground that the investigation is not completed and it is still pending.

However, the present Petition is filed raising several contentions and mainly contended before this Court that unless the Passport is returned, it is difficult for him to join duty at Singapore and on account of the Order passed by the trial Court, there is every likelihood of losing his employment and requested this Court to Order petition and placed reliance on a judgment reported in **Suresh Nanda v. Central Bureau of Investigation**¹ in support of his contention.

Whereas, the learned Public Prosecutor fairly requested this Court to issue a direction to the petitioner to furnish security for his appearance before the concerned Court so as to enable the Court to proceed with the trial for the offence under Section 498-A IPC if the police found any material and filed charge sheet.

In view of the request made by the learned Public Prosecutor and basing on the principle laid down by the Apex Court in Suresh Nanda's case, wherein it was held that "while the police may have the power to seize a passport

¹ (2008) 3 SCC 674

under [Section 102\(1\)](#)Cr.P.C, it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under [Section 10\(3\)](#) of the Passports Act, 1967. Hence, Hence, while the police may have power to seize a passport under [Section 102](#) Cr.P.C. if it is permissible within the authority given under [Section 102](#) of Cr.P.C., 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](#) Cr.P.C.), 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 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 Vs. Binapani Dei* [Air 1967 SC 1269].”

This principle has no direct application to the present facts of the case for the reasons that the police did not send the passport to the Passport Authorities for impounding, but only retained on account of pendency of investigation in the

crime. However, considering the request of the learned Public Prosecutor, the petitioner is directed to deposit Rs.2,00,000/- before XIII Additional Munsif Magistrate, Hyderabad to the credit of Crime No.356 of 2016, and on such deposit, the learned Magistrate is directed to return the Passport to the petitioner under proper acknowledgment so as to ensure his appearance before the Court as and when directed to face the trial.

At the stage, the learned counsel for petitioner requested to issue a direction to the Police for withdrawal of No Objection Certificate (NOC) and Lookout Circular(LOC), but no provision is brought to this Court. But, however, there is any such procedure in the department, the Police may follow necessary procedure and issue necessary proceedings.

With the above direction and observation, this Criminal Petition is disposed of.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 17-10-2016.

Note: Issue Copy in three days.

eha

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRIMINAL PETITION No.14480 of 2016

Dt. 17-10-2016

eha