THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.6649 of 2016

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C., seeking a direction to the Principal District and Sessions Judge, Nellore, to return the passport to the petitioner, which was seized in connection with Crime No.37 of 2008 on the file of the II Town Police Station, Kavali, SPSR Nellore Ditrict.

2. The petitioner is the accused in six crimes and in Crime No.37 of 2008 on the file of the II Town Police Station, Kavali, SPSR Nellore District, he is arrayed as accused No.6. The petitioner filed the petition before the Principal District and Sessions Judge-cum-Special Court under A.P. Protection of Depositors in Financial Establishment Act, 1999, SPSR Nellore District, for release of the passport on various grounds, but the Principal District and Sessions Judge, SPSR Nellore District, dismissed the petition recording a finding that in case the passport of the petitioner is returned to him, it will be difficult to secure his presence, as he was arrested on intimation by the RGI Airport authorities, in view of the look-out circular issued by the C.I.D., Andhra Pradesh against the petitioner who is concerned with the affairs of M/s.Quest Net Enterprises India Private Limited, Chennai.

3. The contention of the petitioner before this Court is that the petitioner is not a director or engaged in the business transactions of M/s.Quest Net Enterprises India Private Limited, Chennai, but he is only a top line customer, who is engaged in chain business transactions and, therefore, he is not concerned with the alleged crime and the directors alone are responsible for punishment, if any. The second ground urged is that when the passports of the directors of M/s.Quest Net Enterprises India Private Limited, Chennai, were already released, the passport of the petitioner, who is only a top line customer dealing with the chain business, cannot be retained.

4. During hearing, the learned counsel for the petitioner, while reiterating the contentions urged in the petition, drawn the attention of this Court to the order dated 28.08.2015 passed by this Court in Crl.P.No.7929 of 2015, whereby, this Court released the passport of one of the directors of the company, namely Pushpam Appalanaidu, and contended that the petitioner agrees to give information whenever he leaves the country and execute a bond for his appearance before the Court, and requested this Court to pass order, releasing the passport of the petitioner.

5. *Per contra*, the learned Public Prosecutor for the state of Andhra Pradesh appearing for the respondent opposed the application mainly contending that the petitioner successfully avoided his arrest in connection with the above crime and only after look-out circular was

issued, the police could nab the petitioner, that too on the intimation by the RGI Airport authorities, Shamshabad, and in case the passport of the petitioner is directed to be released, there is every chance of the petitioner fleeing away to avoid his appearance before the Court below during trial and in such case, it would be difficult for the prosecution to complete the investigation. Accordingly, he prayed for dismissal of this Criminal Petition by relying on the judgment of a Division Bench of this Court in ***Hamids Habid Jeelani Vs. Secretary to Government and another***[1].

6. A bare look at the order passed by the Court below would reveal that the petitioner is one of the accused, i.e., Accused No.6 in the above crime. The first contention of the petitioner is that he is not a Director or an employee of M/s.Quest Net Enterprises India Private Limited, Chennai, but is only a top line customer and that and it is only the directors who are liable for punishment.

7. Section 5 of the A.P. Protection of Depositors and Establishments Act, 1999, fastened criminal liability on all the persons responsible in a financial establishment for default in return of deposits. According to it, all who are dealing with offence of default that where any financial establishment defaults in the return of the deposit either in cash or in kind or defaults in the payment of interest on the deposit as agreed upon, every person responsible for the

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[1] (1996) 1 ALD 414 (DB)

management of the affairs of the financial establishment including the promoter, Manager of Member of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to rupees one lakh and such financial establishment shall also be liable for fine which may extend to rupees five lakhs.

8. Therefore, it is evident from the above provision that every person responsible for the management of the affairs of the financial establishment is liable for punishment. The petitioner contended that he is only a top line customer involved in the chain business transactions and he is no way connected with the management and affairs of the financial establishment. The said question cannot be decided by this Court at this stage as the scope of enquiry in the petition while exercising jurisdiction under Section 482 Cr.P.C. is very limited. Hence, on this ground, accepting petitioner's contention, the passport of the petitioner cannot be ordered to be released.

9. The other contention of the learned counsel for the petitioner is that since the passports of the directors of the financial establishment was already ordered to be released, retention of the passport of the petitioner, who is no way responsible for the business of the financial establishment, is nothing but adopting double standard to the directors and the top line customers involved in the chain business.

10. No doubt, this Court by order dated 28.08.2015 passed in Crl.P.No.7929 of 2015 ordered release of the passport of one of Directors of the financial establishment. But the Public Prosecutor contends that the petitioner in Crl.P.No.7929 of 2015 did not abscond and she cooperated with the investigating agency till completion of investigation, whereas the petitioner herein absconded and failed to cooperate with the investigating agency to complete investigation and only when a look-out circular was issued, the Immigration Authorities of the RGI Airport, Shamshabad, detained the petitioner and intimated the police and then only the police could arrest the petitioner on 15.05.2014 though the crime was registered in the year 2008, i.e., almost after six years. The learned counsel for the petitioner admitted that during six years period, i.e., from the date of complaint till the date of his arrest, the petitioner went abroad on several occasions. That itself is sufficient to hold that the petitioner is undertaking frequent travels outside the country, obviously for the reasons best known to him. If the passport of the petitioner is released, there is every chance of the petitioner fleeing away and the chances of facing the trial are bleak.

11. The learned Public Prosecutor, in support of his contentions relied on ***Hamida Habid Jeelani***'s case *supra*, wherein, a Division Bench of this Court, in paragraph Nos.15 and 16, held as follows:-

"A reading of sub-section (1) of Section 165, Cr.P.C. makes it abundantly clear that the investigating officer can seize any property, belonging to any person, believed by him to be necessary for the purpose of investigation into the commission of any offence. No doubt, the police officer seizing the property of any person has to record the grounds for doing so in writing and also follow the provisions laid down under Section 100, Cr.P.C. which apply to the general provisions as searches. Therefore, it follows that the police officer under the provisions of Section 165, Cr.P.C. has got the power to seize the passport if in his opinion it is necessary to control the movement of the person alleged to have committed an offence and to secure his/her presence whenever necessary for the purpose of investigation. Once a passport is seized during the course of investigation by a police officer, under sub-section (5) of Section 165, Cr.P.C. the police officer has to send the passport to the nearest Magistrate empowered to take cognizance of the offence and for impounding the same if necessary he has to intimate the passport authority through the concerned Magistrate.

It is now well-settled that non-compliance of the provisions of Section 100, Cr.P.C. and Section 165, Cr.P.C. would amount to an irregularity and the effect of the same on the main case depends upon the facts and circumstances of each case and in such a situation the Court has to consider whether any prejudice has been caused to the accused by the search conducted and the seizure of the property effected. (vide State of Punjab v. Balbir Singh (1994) 3 SCC 299"

12. In view of the law laid down in the above judgment, the police are competent to seize the property in connection with the investigation used for the commission of offence. But the said judgment is not relevant to decide the real controversy between the parties. A perusal of the order passed by the Court below would reveal that the petition was dismissed only to secure the presence of the petitioner during trial and otherwise it will be difficult for the Courts and the police to complete the investigation and trial. Hence, I find no ground to set aside the said order while exercising jurisdiction under Section 482 of Cr.P.C., since the chances of the petitioner facing the trial are very bleak in view of the journey undertaken by him for six years after filing of the complaint, avoiding his presence before the investigating agency to complete investigation. The Criminal Petition is *de void* of merit and is liable to be dismissed.

13. In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand dismissed.

M. Satyanarayana Murthy, J

11th November, 2016
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