

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.451 of 2011

N.Selvaraj

..

Petitioner

Vs

State rep. By the
Inspector of Police,
F-2, Egmore Police Station,
Chennai - 600 008

..

Respondent

Prayer:- Criminal Revision filed under Section 397 r/w. 401 Cr.P.C., to set-aside the order passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.2357 of 2007 in Crime No.635 of 2007, dated 25.10.2007.

For Petitioner : Mr.T.P.Kathirraavan,
for
M/s.A.K.Rajeswari Associates.

For Respondent : Mr.M.F.Shabana,
Gov. Adv.(Crl. Side),
assisted by
Dr.D.Simon,

ORDER

Challenging the order of dismissal passed by the XIV Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.2357 of 2007 on 25.10.2007, the present revision has been filed.

2. According to the petitioner, on 29.03.2007, the respondent police has registered a case against the petitioner under Section 12(1)(b) of Passport Act, on the ground that when the respondent police on regular patrol in Egmore, on suspicious, enquired the petitioner and while verifying the passport, he fled away in the crowd. On enquiry from the investigation office, it was found that the petitioner already obtained two passports and it is his third passport and they seized it and registered the case. Thereafter, the petitioner filed a petition under Section 457 of Cr.P.C for seeking the return of passport in Crl.M.P.No.2357 of 2007 and the said petition was dismissed on the ground that investigation is still pending. Challenging the above order, the present revision has been filed.

3. I have heard Mr. T.P.Kathirrajan, learned counsel appearing for the petitioner and Mr.S.M.f.Shabana, Gov. Adv. (Crl.side) appearing for the first respondent and Dr.D.Simon, learned counsel appearing for the second respondent.

4. The learned counsel for the petitioner would submit that even though the petitioner's passport has been seized as early as on 29.03.2007, so far the investigation is not completed and no charge sheet has been filed. Apart from that the respondent police has no power to withhold the passport, only the passport authority has power to impound the passport. Hence, the seizure of passport itself is illegal and sought for return of passport.

5. The learned counsel appearing for the respondent would submit that investigation is yet to be completed and the same is still pending, and final report has not been filed. Hence, at this stage, it cannot be returned.

6. I considered the rival submissions.

7. As rightly contended by the learned counsel for the petitioner under Section 10(3) of the Passports Act, the passport authorities only have the power to impound the passport and the respondent police has no power to impound the passport, after seizure, if the passport is retained by the police, such retention amounts to impounding the passport, for which the respondent police has no power.

8. In a judgment reported in a case in Suresh Nanda /vs/ C.B.I. in 2008(5) CTC 277, the Hon'ble Supreme Court has held that the police and the court has no power to impound the passport and held as follows:

" 12. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document. In the Law Lexicon by P.Ramanatha Aiyar (2nd Edition), the word " impound" has been defined to mean " to take possession of a document or thing for being held in custody in accordance with law". Thus, the word " impounding" really means retention of possession of a good or a document which has been seized."

"15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104, Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "Passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P.Singh's Principles of Statutory Interpretation 9th Edition pg.133). This principle is expressed in the maxim "Generalia specialibus non derogant". Hence, impounding of a passport cannot be done by the court under Section 104, Cr.P.C. though it can impound any other document or thing"

8. Apart from that for more than 9 years, the respondent police yet to complete the investigation and file a final report. Hence, no useful purpose will be served by keeping the passport in the court.

9. In the result, the criminal revision case is allowed and the order passed by the court below is set aside and the learned XIV Metropolitan Magistrate, Egmore, Chennai, is directed to return the passport to the petitioner forthwith.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The XIV Metropolitan Magistrate,
Egmore, Chennai,
2. The Public Prosecutor,
High Court, Madras.

Copy to: The section officer,
Criminal section, High Court, Madras-104.

+1cc to M.R.T.P.Kathiravan, Advocate SR.No.2268/17
+1cc to Dr.D.Simon, CGSC., sR.No.2599/17

Cr1.R.C.No.451 of 2011

SDR 11.10.2017