



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.08.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C (MD) .No.617 of 2017

WEB COPY

R.Somasundaram

.. Petitioner/Accused No.1

-Vs-

State through the
The Inspector of Police,
All Women Police Station,
Madurai Town,
In Cr.No.13 of 2016.

... Respondent/Complainant

Prayer : Criminal Revision Case filed under Section 397 r/w 402 of the Code of Criminal Procedure, challenging the order of dismissal of Crl.M.P.No.2727 of 2017, dated 13.07.2017, by the learned Judicial Magistrate, Additional Mahila Court, Madurai.

For Petitioner : Mr.R.Devaraj
For Respondent : Mr.C.Mayil vahana Rajendran
Additional Public Prosecutor (Crl. Side)

O R D E R

Challenging the order dismissing the petitioner's application, filed for return of passport, the present Criminal Revision Petition has been filed.

2.I have heard Mr.R.Devaraj, learned counsel appearing for the petitioner and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor, appearing for the respondent.

3.The learned counsel appearing for the petitioner would submit that there is a matrimonial dispute pending between the petitioner and his wife, the defacto complainant herein. Based on the complaint given by the defacto complainant/wife, a case has been registered against the petitioner for an offence under Section 498-A , 406, 294(b) and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002. Thereafter, after investigation, a final report has been filed against the petitioner and the matter was taken cognizance by the court below in C.C.No.2 of 2007. Earlier, the petitioner was arrested and during the investigation, his passport was also seized by the respondent police. The petitioner is employed in the Kingdom of Saudi Arabia as a Lecturer in a College and since his passport has



been seized by the police, he is likely to loose his job, and the petitioner also undertakes that he will appear for the trial, without fail, as and when summons is issued by the trial court. The learned counsel appearing for the petitioner would further submit that under the Passport Act, the police has no power to impound the passport; seizing and retaining of passport amounts to impounding. In this regard, he has also relied upon a decision of the High Court of Kerala, wherein, in similar circumstances, the Kerala High Court released the passport with some conditions. Apart from that, he also relied upon a recent judgment of the Honourable Supreme Court in **2017 SCC Online Mad 1654 in Kakulamarri Kalyan Srinivasa Rao Vs. The Central Bureau of Investigation, Bank Securities and Frauds Cell, rep. by its Superintendent of Police, Bangalore, Karnataka**, wherein, the Honourable Supreme Court has issued various directions relating to the investigation in cases arising out the offence under Section 498(A) I.P.C, wherein, the Supreme Court has held that the passport should not be impounded as a matter of routine and seek for return of passport.

4. On the other hand, the learned Additional Public Prosecutor would submit that since the petitioner was not appearing before the court, a non-bailable warrant was issued, on execution of warrant, the petitioner was arrested and his passport has been seized, now, the petitioner not even present before the trial court for getting the copies under Section 207 Cr.P.C. If the passport is released, he is likely to abscond from India. Hence, his passport should not be released.

5. I have considered the rival submissions and perused the records carefully.

6. It is stated that the petitioner is employed as a Lecturer in a College at the Kingdom of Saudi Arabia and in the event of his absent from duty continuously for two months, he will loose his job and his Work Permit will be cancelled. Recently, the Honourable Supreme Court in Crl.A.No.1265 of 2017, dated 27.07.2017, in **Rajesh Sharma & Others Vs. State of Uttar Pradesh and another**, (supra) issued various directions:

"19. Thus, after careful consideration of the whole issue, we consider it fit to give following directions:-

i)

ii)

iii) ..

iv)

v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be routine;



vii) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.

Viii)....."

As it is a matrimonial dispute between the husband and wife and also considering the undertaking given by the petitioner, I am inclined to issue the following directions:

"1. The petitioner is directed to appear before the trial court on 17.08.2017 and on that day, the court below is directed to furnish a copy under Section 207 Cr.P.C.

2. On that day, the petitioner shall file an affidavit undertaking to appear before the learned Judicial Magistrate as and when he was specifically directed by the learned Judicial Magistrate to appear.

3. The petitioner shall also execute a surety for a sum of Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties, each for a likesum before the trial court.

4. On satisfying the above conditions, the court below is directed to release the passport of the petitioner temporarily."

8. This Criminal Revision Petition is disposed of with the above direction.

Sd/-
Assistant Registrar

/Truecopy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Additional Mahila Court, Madurai

2. The Inspector of Police,
All Women Police Station,
Madurai Town.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.R.DEVARAJ, Advocate SR.No.71752

VS

MAS/KK/SAR2:11.08.2017:3P-5C