



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.793 of 2017

Sathishkumar

: Petitioner/Petitioner/A1

Vs.

State Rep.by
The Sub-Inspector of Police,
All Women Police Station,
Thiruparankundram
Madurai.

: Respondent/Respondent/
Complainant

Prayer: Revision Petition is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order passed by the learned Judicial Magistrate, Additional Mahila Court, Madurai in Cr.M.P.No.1107 of 2017 in C.C.No.51 of 2015, dated 05.05.2017 by allowing this Criminal Revision Petition.

For Petitioner in : Mr.K.Mahendran

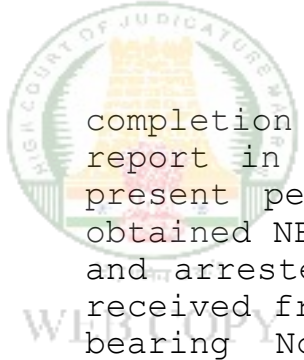
For 1st Respondent : Mr.C.Mayilvahana Rajendran
Addl.Public Prosecutor

O R D E R

The Criminal Revision has been filed praying to set aside the orders passed in Cr.M.P.No.1107 of 2017 in C.C.No.51 of 2015, dated 05.05.2017, by the learned Judicial Magistrate, Additional Mahila Court, Madurai.

2. The Criminal Revision is taken up for final disposal, in the admission stage itself with the consent of either side.

3. The petitioner herein is arrayed A1 in pending C.C.No.51 of 2015, on the file of the learned Judicial Magistrate, Additional Mahila Court, Madurai. The FIR was registered in Crime No.88 of 2013, dated 13.09.2013 against 7 accused persons including the petitioner herein, on the basis of the complaint given by one Marohina, who is the wife of the petitioner herein. After



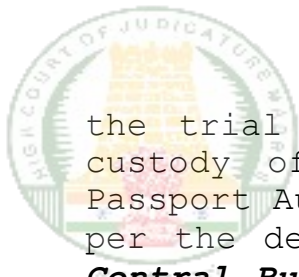
completion of the investigation, the respondent filed the final report in the above case before the Magistrate Court showing the present petitioner / A1, as absconding accused. The respondent obtained NBW from the trial Court against the Petitioner / A1 herein and arrested the accused / petitioner on 04.02.2017, on intimation received from the Immigration Authority and seized his old Passport, bearing No.F 8255339 issued at Trichy, for the period from 25.05.2006 to 24.05.2016 and the new Passport bearing No.8812986 issued at Madurai for the period from 22.02.2018 to 21.02.2028, under From-91 and produced before the Court on 03.02.2017 in R.P.R.No.10 of 2017. The petitioner filed a petition in Cr.M.P.No.1107 of 2017, before the learned Judicial Magistrate, Additional Mahila Court, Madurai, seeking interim custody of the above Passport under Section 451 of Cr.P.C., during the pendency of the trial of the case and the said petition was heard and dismissed by the learned Judicial Magistrate vide order, dated 05.05.2017. Aggrieved by the order of dismissal, the petitioner / A1 filed the present Criminal Revision Petition before this Court, for the aforesaid relief.

4. The learned counsel appearing for the petitioner would contend that the petitioner was in abroad at the time of registering the FIR and he never absconded and the Magistrate has no power to retain the Passport pending disposal of the case and the power to impound the Passport is vested only with the Passport Authority alone and that the reason assigned by the trial Court for not ordering interim custody of the Passport, is erroneous one and hence, the impugned order is liable to be set aside.

5. The learned Additional Public Prosecutor appearing for the respondent, based on the counter statement filed by the respondent herein, would submit that the petitioner was secured only after taking effective steps and the case is in the stage of framing charges and the presence of the petitioner is very much essential and the petitioner may flew foreign country, if his Passport is returned and his absence will affect the trial of the case and hence, the Revision is liable to be dismissed, considering the stage of the case.

6. I have perused the materials available on record. Heard and considered the rival submissions advanced by either side.

7. Admittedly, the petitioner was shown as absconding accused in the charge sheet itself, which was taken on file and is pending as C.C.No.51 of 2015, on the file of the learned Judicial Magistrate / Additional Mahila Court, Madurai. The petitioner was only arrested on 04.12.2017 and his Passports were also seized and produced before the trial Court in RPR No.10 of 2017. The petitioner and other accused were charged under Sections 498(A), 294 (b), 406 and 306(i) of IPC., r/w Section 34 IPC., which is pending for commencement of trial by issuing summons to L.Ws.1 to 3 before



the trial Court. Admittedly, the said Passports are now in the custody of the Court and they are not so far impounded by the Passport Authorities. Even the Court cannot impound the Passport as per the decision of the Hon'ble Supreme Court in **Suresh Nanda Vs. Central Bureau of Investigation** reported in (2008 (1) MLJ (Crl.) 1195).

8. The respondent has also sent a requisition to the Passport Authority, Madurai, for impounding the Passport of the petitioner due to pendency of the proceedings in C.C.No.51 of 2015 on the file of the learned Judicial Magistrate, Additional Mahila Court, Madurai, while Cr.M.P.No.1107 of 2017 is pending. There is no record to show that proceedings are initiated by the Passport Authority for impounding the Passport of the petitioner herein. The petitioner requested the Passport only for renewal of his Visa and also his Passport. However, the Court is not competent to have the custody of the Passport, till the impounding proceedings are initiated by the Passport Authority.

9. The counsel for the petitioner further states that A2, A5, A6 & A7 in this case filed Crl.O.P(MD)No.6854 of 2017 before this Court for quashing the charge sheet and interim stay was also granted by this Court in Crl.M.P.(MD)No.4602 of 2017 and is still in force. The said order was passed on 09.06.2017 and both the quash petition and interim stay petition also still pending before this Court. The petitioner has not averred the said fact in his application, but he has submitted the above fact only at the time of argument. It is not denied by the respondent herein.

10. Considering the above facts and circumstances of the case and also impounding proceedings are not initiated so far on the requisition of the respondent herein, this Court is inclined to set aside the impugned order, dated 05.05.2017, passed by the Court below.

11. In the result, this Criminal Revision stands allowed and the impugned order passed in Cr.M.P.No.1107 of 2017 in C.C.No.51 of 2015, dated 05.05.2017, by the learned Judicial Magistrate, Additional Mahila Court, Madurai, is set aside, with the following directions:-

i. The learned Judicial Magistrate (Additional Mahila Court, Madurai), is directed to handover the Passport produced in RPR.No.10 of 2017 to the interim custody of the petitioner herein.

ii. The petitioner should file an affidavit before the concerned Magistrate stating that he will not abscond and he should co-operate with the trial proceedings before the trial Court.



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iii. The petitioner should seek prior permission of the Court, if he wants to leave the country, well in advance.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Additional Mahila Court,
Madurai.
2. The Sub-Inspector of Police,
All Women Police Station,
Thiruparankundram
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Record Keeper,
Criminal Record Section
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.MAHENDRAN, ADVOCATE IN SR No. 91155

MPK

TE/MR-KKR/SAR-2 : 15/12/2017 : 4P/6C

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Dated:- 06.12.2017