



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.03.2017

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CORAM:

THE HONOURABLE MR.JUSTICE **A.M.BASHEER AHAMED**

Cr1.RC(MD)No.607 of 2016

and

Cr1.MP(MD)No.1762 of 2016

[Orders Reserved on 21.03.2017]

N.Chandrababu

: Petitioner/Petitioner/A3

Vs.

1.The Sub-Inspector of Police,
Palakkarai Police Station,
Tiruchy - I.

: Respondent/Respondent/ Complainant

2.The Passport Officer,
Passport Office,
Tiruchy - 8.

: Respondent/ 2nd Respondent/ Respondent

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records and set aside the order dated 07.06.2016 in C.M.P.No.2191 of 2016 in C.C.No.21 of 2015 on the file of the learned Judicial Magistrate No.V, Tiruchirappalli, and consequently direct the respondents to return the Passport of the petitioner.

For Petitioner : Mr.Rajagopal

For Ms.R.Harivarshini

For Respondent : M/s.P.Kandasamy

No.1 P.Kannithevan

Govt.Advocate (crl.side)

For Respondent : M/S.S.Jeyasingh

No.2 CGSL

ORDER

The present Revision is filed by the petitioner / A3 praying to set aside the order passed in C.M.P.No.2191 of 2016 in C.C.No.21 of 2015, dated 07.06.2016, by the learned Judicial Magistrate No.V, Tiruchirappalli, seeking return of Passport bearing No.Z2971459, which was surrendered by the Revision



Petitioner before the learned Judicial Magistrate IV, Tiruchirappalli, by way of a Memo, dated 25.04.2016 of the petitioner herein, and consequently direct the respondents to return the Passport of the petitioner.

2. The background of filing of the present Revision under Section 451 of Cr.P.C., stated as follows:-

The petitioner submitted an application through on-line for re-issuance of the Passport vide File No.TR2078034667114 in continuation of Passport No.K5703462, dated 29.07.2014 before the second respondent herein. The Passport No.Z2971459, dated 03.11.2014 was re-issued on post verification basis by the second respondent. After receiving an adverse police verification report of the Commissioner of Police, Tiruchirappalli stating that a criminal case in Crime No.319 of 2013 was registered by the first respondent herein against the petitioner and others and is pending trial before the Court, and was not recommended by the said Commissioner of Police, since pending trial of the Criminal case before the criminal Court is suppressed by the petitioner. A show-cause notice was served to the petitioner vide Letter Ref.No.SCN/302157595, dated 19.12.2014 of second respondent and also the remainder was issued to call for an explanation for suppression of criminal case. In responding, the petitioner furnished his explanation on 10.09.2015 stating that there was a criminal case pending against him and then advised him to surrender the Passport immediately otherwise, impounding process would be initiated on the said Passport. Accordingly, the petitioner surrendered the Passport on 10.09.2015 and in order to restore the Passport facilities to the petitioner, he has been advised to furnish either acquittal order in C.C.No.21 of 2015 from the concerned Court or to furnish permission from the concerned Court, where concerned case is pending or any higher Court.

3. In the above stated scenario, the petitioner has not taken any steps to seek permission from the concerned trial Court in which C.C.No.21 of 2015 is pending against the petitioner and others for trial, as advised by Respondent No.2, but the petitioner filed CMP.No.125 of 2016 before the learned Judicial Magistrate No.V, Trichy, for passing an order of remand the Passport, which stands in the name of the petitioner bearing No.Z2971459, which was surrendered on 10.09.2015, before the second respondent, for the purpose of filing a petition under Section 451 Cr.P.C., for interim custody. The learned Judicial Magistrate passed in his order dated 27.01.2016 directing to hand over the said Passport to the petitioner upon certain conditions. After receipt of the above order directing the second respondent to hand over the original Passport to the first respondent on or before 19.01.2016, in turn submitting the same to the said Court, the original Passport was handed over to the first respondent on



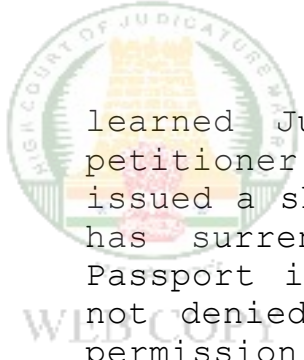
18.01.2016 and in turn was submitted to the Court. The petitioner also received his original Passport from the Judicial Magistrate Court, as per the order dated 27.01.2016.

4. The second respondent has requested the learned Judicial Magistrate in its official letter, dated 11.03.2016 that after completion of judicial process, the original Passport would be returned to the petitioner through the second respondent / Passport Issuing Authority for completing the formalities. Then, the learned Judicial Magistrate No.V, Trichy in its letter under D.No.536/2016, dated 23.03.2016, has directed the petitioner to hand over the Passport to the concerned Court on 28.03.2016. The petitioner filed CrI.O.P(MD)No.6461 of 2016 under Section 482 of Cr.P.C., seeking to set aside of the order, dated 23.03.2016, passed in D.No.536/2016 and this Court has posted the matter on 26.04.2016 for reporting compliance of re-submitting the Passport to the Judicial Magistrate No.V, Trichy, accepting the submission of the counsel for the petitioner stating that since the petitioner has gone abroad and would come back on 23.04.2016 and re-submit the Passport on 25.04.2016. The said Criminal Original Petition was closed on 26.04.2016 itself, after reporting compliance of handing over of the Passport to the learned Judicial Magistrate No.5, Trichy on 25.04.2016.

5. The petitioner thereafter filed CMP.No.2191 of 2016 before the learned Judicial Magistrate No.V, Tiruchirapalli under Section 451 of Cr.P.C., for return of his Passport for interim custody and the said petition was dismissed on 07.02.2016. Aggrieved by the said dismissal order, the present Revision is filed for setting aside the said order and directing the respondent to return the Passport of the Revision petitioner. During pendency of the Revision Petition, petition filed Cr.M.P.No.1762 of 2017 for granting interim direction to the respondent to return the Passport bearing No.Z2971459 of the petitioner.

6. Perused the materials on record produced by the petitioner and heard the arguments advanced by either side.

7. It is admitted that a criminal case was registered in Crime No.319 of 2013, dated 04.06.2013, against the petitioner and two others by the first respondent Police, for the offence punishable under Sections 120(b), 418, 419, 420, 463, 468 and 506 (i) of IPC., and is pending as C.C.No.21 of 2015, on the file of the learned Judicial Magistrate No.V, Tiruchirapalli and the petitioner is arrayed as A3 in the said case and is pending for trial. Further, it is admitted that the petitioner has applied for issuance of Passport through on-line process and was issued on <https://hccs.ecourt.gov.in/cases/> on process and on receipt of adverse Police verification report, suppressing the fact of registration of criminal case and pending as C.C.No.21 of 2015 on the file of the



learned Judicial Magistrate No.V, Tiruchirapalli, against the petitioner in his Passport application, the passport authority has issued a show-cause notice and is pending in which, the petitioner has surrendered his original Passport and the said original Passport is now in the custody of the second respondent. It is not denied that the petitioner has been advised to furnish the permission from the concerned Court in which, the criminal case is pending.

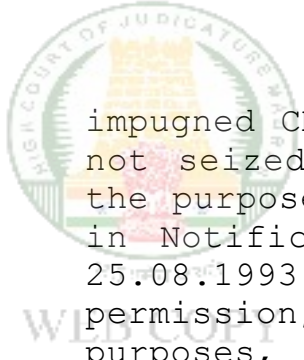
8. Admittedly, the petitioner has not taken any steps to get the permission of the concerned Court and to submit the same to the Passport Authority / R2, as required under the Notification of the Gazete of India vide GSR 517(E), dated 25.08.1983 for issuance of the Passport to the petitioner. Without seeking and furnishing the permission of the concerned criminal Court, as advised by the Passport Authority, the petitioner has obtained his original Passport in the guise of filing petition, under Sections 451 and 457 of Cr.P.C., It is pertinent to note here that the petitioner has gone abroad and returned to India without seeking any permission from the concerned Criminal Court and furnishing the same to the second respondent, as stated in the said Notification. The information about handing over of the Passport to the petitioner was not intimated to the Passport Office, Tiruchy by the concerned Criminal Court.

9. It is further admitted that the first respondent Police has not seized the impugned Passport from the petitioner in the said criminal case pending before the concerned criminal Court. The said original Passport is not yet demanded by the first respondent or by the concerned criminal Court in this case. The second respondent has not stated in his counter that the Passport Authority has impounded the Passport of the petitioner herein.

10. The counsel for the petitioner referred the following decisions:-

(1) W.P.No.7021 of 2015 of the Principal Bench of this Court, dated 25.06.2016 between Dr.P.T.Manoharan and The Regional Passport Officer, Chennai.; (2) W.P.(MD)No.14167 of 2016 of this Court in its order, dated 25.08.2015 between M.Abbas Khan and The Regional Passport Officer, Madurai and (3) the Judgment of the Principal Bench of this Court in Arockia Jeyabalan Vs. The Regional Passport Officer, Chennai reported in (2016 (2) MWN (Cr1.) 299).

11. The above decisions referred by the counsel for the petitioner are not applicable in the case on hand. In this case, there is no seizure and impounding of the Passport of the petitioner herein. The present Revision is preferred against the ~~decisions reported in the orders~~ of the learned Judicial Magistrate passed in an application filed under Section 451 of Cr.P.C., for return of the Original passport of the petitioner. The petitioner filed the



impugned CMP.No.219 of 2016 for return of the Passport, which was not seized and remanded in the concerned criminal case only for the purpose of by-passing the procedures and provisions prescribed in Notification in the Gazette of India vide GSR.517(E), dated 25.08.1993. There is no bar to move the trial Court for obtaining permission, as prescribed in the said Notification for travel purposes, as mentioned in this Revision, if the Passport of the petitioner is not impounded by the Passport Authority. In the above said facts and circumstances of the case, this Court is not inclined to interfere with the order passed by the learned Judicial Magistrate No.5, Trichy, dated 07.06.2016 in C.M.P.No.2191 of 2016.

12. In the result, the Criminal Revision Petition stands dismissed. Consequently, the connected CrI.M.P(MD)No.1762 of 2017 is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.V,
Tiruchirappalli.
- 2.The Sub-Inspector of Police,
Palakkarai Police Station,Tiruchy - I
- 3.The Passport Officer,
Passport Office,Tiruchy - 8.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

+1cc to M/S.S.JAYASINGH, Advocate SR.No.18558

+2cc to M/S.R.RAJAGOBAL Advocate SR.No.18236

Pre-Delivery Order made in

CrI.RC(MD)No.607 of 2016

28.03.2017