

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.4370 OF 2015

ORDER:

Heard the petitioner, who appeared in person and the learned counsel for the 2nd respondent.

The petitioner is wife of the 2nd respondent. She filed Domestic Violence Case against the 2nd respondent and his family members in the Court of the XI Metropolitan Magistrate, L.B. Nagar, Ranga Reddy District. The learned Magistrate awarded Rs.20,00,000/- as compensation and Rs.30,000/- per month as maintenance, by order, dated 09.12.2013. The 2nd respondent preferred an appeal to the Court of the II Additional Metropolitan Magistrate seeking stay of the said order and the order of the XI Metropolitan Magistrate, dated 09.12.2013, was stayed subject to the condition of furnishing third party immovable security for the amount of compensation. The 2nd respondent failed to comply with the said order. Thereafter, the 2nd respondent never attended the Court. In those circumstances, the XI Metropolitan Magistrate issued Non-Bailable Warrant against the 2nd respondent on 14.03.2014, which is pending now. Meanwhile, the 2nd respondent filed divorce O.P.No.1092 of 2010 and the petitioner filed a petition for restitution of conjugal rights in O.P No.1172 of 2012. Both the cases are pending. The 2nd respondent is residing in Dubai. The petitioner states that she filed SR No.5624 of 01.09.2014 before the lower Court seeking a direction from the Court under Section 10(3)(h) of the Passports Act, but the said petition was dismissed stating that it was not maintainable. Thereafter, she submitted a letter to the passport officer requesting him to impound the passport of the 2nd respondent. The petitioner was asked to furnish the orders from the competent Court to impound the

passport of the 2nd respondent since Section 10 (3) of the Passports Act is only an enabling provision and not a mandatory one. In those circumstances, she filed the present writ petition seeking a direction to the 1st respondent to impound the passport of the 2nd respondent.

Initially, this Court disposed of the present writ petition by order, dated 16.08.2016, directing the 1st respondent to reconsider the application of the petitioner for impounding the passport of the 2nd respondent by taking into account Section 10 (3) (h) of the Passports Act and pass appropriate orders. Against the said order, the 2nd respondent preferred Writ Appeal No.1343 of 2016 and the same was allowed on 09.12.2016 setting aside the order of the learned single Judge and restoring the writ petition to file and the 2nd respondent was allowed to file his counter in the pending writ petition. Thereafter, the 2nd respondent filed counter on 04.01.2017 stating that the petitioner had left the matrimonial home on her own accord and the efforts to reconcile the disputes between the petitioner and the 2nd respondent, did not yield any result. In those circumstances only, he filed OP No.1092 of 2010 for dissolution of marriage. It is also stated that against the order passed by the XI Metropolitan Magistrate, dated 09.12.2013, the 2nd respondent preferred Criminal Appeal No.71 of 2014 on the file of the II Additional Chief Judge, Ranga Reddy District, at L.B.Nagar, and he confirmed the orders of the Magistrate, without considering the merits of the case. As against the said order, Criminal Revision Case No.2675 of 2016 was filed before this Court. It is also stated that the petitioner cannot seek impounding of the passport of the 2nd respondent on the basis of pendency of cases and issuance of NBW, and mere issuance of NBW does not empower the passport authorities to impound the passport.

It appears that when the present writ petition is pending, Criminal Revision Case No.2675 of 2016 was disposed of by this Court on 03.02.2017 confirming the award of the maintenance, but reducing the quantum of compensation from Rs.20,00,000/- to Rs.15,00,000/-.

Now the only point for consideration is whether the order passed by the 1st respondent on 20.10.2014 is valid in law?

Section 10(3)(h) of the Passports Act, 1967, reads as follows:

“ 10. Variation, impounding and revocation of passports and travel documents----

(1)...

(2)...

(3)...

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.”

The petitioner already brought to the notice of the 1st respondent with regard to pendency of NBW against the 2nd respondent. Though the provision of law is not coached in any mandatory terms, the 1st respondent is supposed to exercise his discretion of taking the overall facts into consideration and pass appropriate orders. He cannot abdicate his responsibility and seek an order from the Court for exercising the power conferred on him under Section 10(3)(h) of the Passports Act. In the circumstances, the impugned order, dated

20.10.2014, passed by the 1st respondent is set aside and liberty is given to the petitioner to furnish information for exercising the power by the 1st respondent in terms of Section 10(3)(h) of the Passports Act. The petitioner shall supply the material to the 1st respondent within a period of one week from the date of receipt of a copy of this order and on receipt of the said information, the 1st respondent shall take necessary action in accordance with law within a period of four (4) weeks thereafter.

The writ petition is disposed of accordingly. No order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

March 08, 2017.

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A. RAMALINGESWARA RAO, J

