

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.899 of 2017

ORDER :

Impugning the dismissal order dated 06.03.2017 of the Judicial Magistrate of First Class, Mydukur, in CrI.M.P.No.549 of 2017 in Crime No.3 of 2017 of Mydukur Police Station, registered for the offences punishable under Sections 323, 498-A, 494 r/w 34 I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, this Revision is filed by the petitioner/ A1.

2. Heard. Perused the material on record.

3. The impugned order, with reference to the facts, reads that at this stage if the passport is returned to the petitioner to go to Kuwait, it will be difficult to secure his presence and thereby not inclined to return the passport by dismissing said request.

4. During the course of hearing in this Revision, one of the submissions of learned counsel for the petitioner/ A.1 is that, the police have no right to impound the passport and the seizure is thus illegal and the learned Sessions Judge ought to have considered the same for its return.

5. In fact in this regard, the expression of this Court in *Abdul Gaffur Khan Vs State of Telangana*¹ considered the scope of law referring to the expressions of the Apex Court in *Suresh Nanda Vs Central Bureau of Investigation*² and *Gian Singh Vs State of Rajasthan*³. It is observed from the expressions that investigation

¹ 2015 (1) ALT (CrI) 91 (A.P)

² (2008) 3 SCC 674

³ (1999) 5 SCC 694

officials have no right on their own to impound the passport by seizure and withholding, but for the officials under the provisions of the Indian Passport Act, 1967 (for short 'the Act') (Section 10). However, as held by the Apex Court in *Siddharam Satlingappa Mhetre Vs State of Maharashtra*⁴ in its guidelines as part of the conditions of bail to be granted that besides property title deeds and bank account and passport of accused, if any, required to be deposited before the learned Magistrate. It is there from in the expression in *Abdul Gaffur Khan's* case referred to supra, this Court observed that impounding the passport by investigating officer is entirely different from seeking to deposit the passport by the Court as one of the conditions of bail to see that the accused shall not jump the bail and flew from the clutches of justice by using or misusing the passport. It is also observed that there is a bar also under Section 6 (2) (f) of the Act to use Passport without permission of Court as a person who is accused of any crime in India, passport cannot be obtained including travel permit on existing passport to travel beyond the country without prior permission of the Magistrate concerned and there is a circular of the Central Government in GSR 570 E, dated 25.08.1993, as per Section 22 of the Act, issued in this regard by the Ministry of External Affairs in the public interest that by said notification exempted the citizens of India against whom criminal proceedings are pending in India, without facing any hardship for their

⁴ 2011 (1) ALT (Gr) 69 (SC)

requirement, to travel abroad the permission of concerned Magistrate, where the case is pending shall be obtained.

6. In this regard there are other expressions of this Court in Crl.P.No.5795 of 2014 dated 14.07.2014 in *State Vs K.Gangi Reddy* in cancelling the bail for leaving the country without prior permission of the Magistrate, contemplated under Section 6 of the Act, and the circular instructions of the Central Government supra. Likewise in Crl.P.No.7756 dated 15.07.2014 in *William Scott Pinckney Vs State*, with a direction to the police officers who seized the passport to deposit in Court saying though they cannot retain which tantamounts to impounding, if not submitted to the passport authorities if at all to impound under Section 10 of the Act, to submit before the Court to withhold by the Court and to permit if at all any application is filed showing necessity to travel. There are also other expressions referred in this regard of *Hamide Habib Jeelani Hamide Vs The Secretary to Government (Home)*⁵ and *Rajiv Tayal Vs Union of India*⁶.

7. Having regard to the above, once the passport is in Court deposit the petitioner is not entitled to take the passport under the guise of leaving to Kuwait without even specifying that if passport is given to him, how he could face trial without his presence and what security sufficiently he can furnish to ensure his presence before the Court for facing same for nothing even

⁵ 1995 (3) ALT 740

⁶ AIR 2006 Delhi 81

mentioned in his petition. Hence, there is nothing wrong in the impugned order of the lower Court.

9. Accordingly, the Criminal Revision Case is dismissed. However, liberty is given to the petitioner, if at all there is any justification for seeking return of passport to obtain permission from the concerned trial court by filing application under Section 6(2) of the Act, and from GSR-570 E, dated 25.08.1993 supra as laid down in the expression of *Abdul Gaffur Khan's* case referred supra to decide on its own merits.

10. Consequently, miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

Date: 03.04.2017.
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Dr. B. SIVA SANKARA RAO J,

