

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3186 of 2016

ORDER :

Impugning the dismissal order dated 07.09.2016 of the III Additional Metropolitan Sessions Judge, Hyderabad, in CrI.M.P.No.2470 of 2016 filed under Section 439 (1) (b) Cr.P.C., in Cr.No.6 of 2016 of P.S.Musheerabad, Hyderabad for the offence punishable under Sections 498-A, 307 and 506 IPC, in P.R.C.No.27 of 2016 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad, this Revision is filed.

2. The grounds of Revision maintained against the respondent-State besides oral submissions of learned counsel for the revision petitioner in brief are that:

(a) The impugned order of the learned Sessions Judge is without proper appreciation of facts and law apart from no merits in the crime registered for the offence under Section 307 IPC including from the police final report; its taking cognizance for committal by allotting P.R.C.number and also for the distorted and different versions of the defacto complainant covered by the record; that the petitioner had been working in Dubai even prior to his marriage with defacto complainant and he is ready to furnish security to ensure his presence to face trial and withholding of passport is depriving of his right to work and livelihood causing innumerable loss and hardship as it is his only source of income by employment in Dubai and by withholding passport, it is not permitting him to leave the country by making him jobless.

(b) The learned Sessions Judge, ought to have observed that police have no right to seize the passport and when request was made by filing a petition the learned Sessions Judge, dismissed the same, which is unsustainable and is liable to be set aside.

3. Whereas it is the submission of learned Public Prosecutor in support of the impugned order that the same holds good, that the petitioner may jump bail and it is difficult to secure him back to face trial once jumped bail and thereby a direction may be issued at best for early disposal of the PRC and there are no grounds to return the passport.

4. Heard. Perused the material on record.

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

6. In fact pending investigation at the crime stage, for the offence supra while he was under arrest and in judicial custody since 01.03.2016, he moved regular bail application in CrI.M.P.No.642 of 2016 as A.1, leave about other accused, and by order dated 14.03.2016, the learned III Additional Metropolitan Sessions Judge, Hyderabad, granted bail to the petitioner by directing to release him on execution of personal bond for Rs.5000/- with two sureties for like sum each to the satisfaction of the Magistrate concerned and further directed to surrender his passport, if any, before the same Magistrate.

7. A perusal of the remand report dated 01.03.2016 shows that on 01.03.2016 at about 10.00 a.m., the investigating officer (LW.8) on information about availability of the petitioner/1st accused at his residence, rushed to the spot and apprehended him and there is disclosure statement and later arrested after observing the formalities and during the course of disclosure, his passport was seized saying if the passport is not seized, the petitioner may escape to Dubai after enlarging him from jail as he is claimed to be working as A.C.Mechanic in Dubai.

8. A perusal of the charge sheet filed from the investigation shows that the passports were submitted to the Court and there was an endorsement of the Court Clerk on the charge sheet which was made on 25.04.2016 that the passports of A.1 to A.3 are kept in safe custody of the Court.

9. The bail order dated 14.03.2016 clearly speaks about surrender of passport by the petitioner/A.1 and the same infact shows that during the course of investigation and arrest of petitioner, the passport of petitioner/A.1 was seized from him on 01.03.2016 and later submitted which tantamounts to compliance of the bail order dated 14.03.2016 referred supra to say practically the passport is in Court custody as part of the bail conditions to withhold by Court.

10. 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.

11. 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 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

¹ 2015 (1) ALT (GrI) 91 (A.P)

² (2008) 3 SCC 674

³ (1999) 5 SCC 694

⁴ 2011 (1) ALT (GrI) 69 (SC)

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

12. In this regard there are other expressions of this Court in CrI.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 CrI.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.

13. Having regard to the above, once the passport is in Court deposit which is practically in compliance with the bail conditions to deposit the passport by the petitioner/A.1, the petitioner is not entitled to take the passport under the guise of leaving to Dubai without even specifying that if passport is given to him, how he could face trial without his presence and what security sufficiently

⁵ 1995 (3) ALT 740

⁶ AIR 2006 Delhi 81

he can furnish to ensure his presence before the Court for facing same for nothing even mentioned in his petition but for raised in the ground No.4 of the Revision which is also bereft of particulars even to consider.

14. Having regard to the above, there is nothing wrong in the impugned order of the lower Court. 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.

15. Accordingly and subject to the above observations, the Revision is dismissed.

Consequently, miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

Dr. B.SIVA SANKARA RAO J,

08.02.2017.
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