

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 42342 of 2016

Order:

Heard learned Senior Counsel for the petitioners, learned Government Pleader for the respondents 1 and 2 and learned counsel for the third respondent.

The third respondent lodged a complaint against the petitioners and the same was registered as Crime No.42 of 2015, under Sections 498-A and 304-B IPC and Sections 3 and 4 of the Dowry Prohibition Act, by the III Town Police Station, SPSR Nellore district. The first petitioner is residing in USA, whereas the petitioners 2 and 3 are residing in Hyderabad. The petitioners 2 and 3 are attending the Court, but in spite of issuance of Non-Bailable Warrant (NBW) against the first petitioner, he has not been attending the Court and the NBW could not be executed. In those circumstances, the Investigating Officer filed a memo before the Special Judicial Magistrate of First Class, Mobile Court, Nellore, where PRC No.4 of 2016 is pending, seeking a direction to the Passport Officer to impound the existing passport of the first petitioner in order to complete the trial at an early date. On such memo, the following order was passed by the learned Magistrate on 03.11.2016.

“As per the circulars of our Hon'ble High Court in ROC No.5550/OP Cell-E/2012, dated 14.08.2012 and (2) ROC No.1644/SO-3/2008 the Subordinate Courts has to take necessary steps to secure the presence of accused for trial. In the present case unless directions are issued it is not possible to secure the presence of accused.

In view of the facts and circumstances of this case this is a fit case to give necessary directions to the passport authorities to secure the presence of the accused and for the investigation.

Hence, in the interest of justice, issue directions to the Hon'ble Ministry of External Affairs, Passport Office situated at Door No.8-2-215 to 219, adjacent to Prasanthi Theatre, Kummariguda, Secunderabad – 500 003 to impound the passport of A1 Dasari Udayakumar for the purpose of executing warrant of arrest against him.”

The same is challenged in the present Writ Petition.

Learned Senior Counsel appearing for the petitioners submits that the Court cannot issue a direction to the Passport Officer to impound the passport, as it is for him to take action under the provisions of the Passports Act, 1967 (for short 'the Act') and the law is well settled in *Suresh Nanda v. Central Bureau of Investigation*¹.

Learned Government Pleader as well as the counsel for the third respondent placed reliance on Sub-section (3) of Section 10 of the Act and submitted that the Passport Officer is competent and the present order can be taken as an information to the said Passport Officer to exercise his power in accordance with the provisions of the Act.

There is no dispute that a crime was registered against the petitioners and in spite of issuance of Non-Bailable Warrant the presence of the first petitioner could not be secured by the Investigating Officer. Admittedly, the first petitioner is a resident of USA. On the memo filed by the Investigating Officer, the impugned order was passed on 03.11.2016. This Court, by order dated 06.12.2016, granted suspension of the said order, as a result of which, no further proceedings could be taken in the pending case.

In *Suresh Nanda's* case (*supra*) the passport of the appellant, which was seized by the CBI officials, was sought to be released in order to enable the appellant to travel abroad for a period of 15 days. Learned Special Judge for CBI Cases directed release of the passport to the appellant by imposing upon him certain conditions. When a Criminal Revision was preferred before the High Court against the said order, the High Court reversed the said order and refused to release the passport to

¹ (2008) 3 SCC 674

the appellant. The same was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court considering the provisions of the Passport Act held as follows.

“10. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 CrPC authorizes the court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special Act, the rule that “general provision should yield to the specific provision” is to be applied. See *Damji Valji Shah v. LIC of India* (AIR 1966 SC 135); *Gobind Sugar Mills Ltd. v. State of Bihar* (1999 (7) SCC 76); and *Belsund Sugar Co. Ltd. v. State of Bihar* ((1999) 9 SCC 620 : AIR 1999 SC 3125).

11. The Act being a specific Act whereas Section 104 CrPC is a general provision for impounding any document or thing, it shall prevail over that Section in the CrPC as regards the passport. Thus, by necessary implication, the power of court to impound any document or thing produced before it would exclude passport.

12. In the present case, no steps have been taken under Section 10 of the Act which provides for variation, impounding and revocation of the passports and travel documents. Section 10-A of the Act which provides for an order to suspend with immediate effect any passport or travel document; such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks, if the Central Government or any designated officer on its satisfaction holds that it is necessary in public interest to do without prejudice to the generality of the provisions contained in Section 10 by approaching the Central Government or any designated officer. Therefore, it appears that the passport of the appellant cannot be impounded except by the Passport Authority in accordance with law. The retention of the passport by the respondent (CBI) has not been done in conformity with the provisions of law as there is no order of the Passport Authorities under Section 10(3)(e) or by the Central Government or any designated officer under Section 10-A of the Act to impound the passport by the respondent exercising the powers vested under the Act.”

The power of the Court to impound a document was held to be not extending to passport. Accordingly, the order of the High Court was set aside and the respondent was directed to handover the passport to the appellant.

The power of the Passport Officer to vary or cancel the endorsements and impounding and revoking of passports was specified in Section 10 of the Act. Sub-section (3) of Section 10 of the Act reads as follows.

“(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document;-

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;

Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(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.”

In the instant case, Non-Bailable Warrant is already issued and the said information should have been brought to the notice of the Passport Officer by the Investigating Officer and instead of that the Investigating

Officer approached the Court which resulted in passing the impugned order. In the normal course the petitioners should have invoked the criminal jurisdiction of this Court, but instead chose to approach this Court under Article 226 of the Constitution of India. In exercise of the powers under Section 482 Cr.P.C., this Court would have confined itself to the legality of the order passed by the lower Court, but in a proceeding under Article 226 of the Constitution of India this Court can travel beyond the examination of the validity of the order and do justice to the parties. Now criminal cases are being delayed and there is clamour for early justice. If the impugned order is set aside and the matter is left open it may further delay the proceedings.

In the circumstances, the impugned order is clarified as an information to the Passport Officer for exercising his power under Sub-section (3) of Section 10 of the Act by obviating the need for fresh action by the *de facto* complainant or the Investigating Officer to approach the Passport Officer as the proceedings are held up for the presence of the first petitioner.

Accordingly, the Writ Petition is disposed of directing the Passport Officer to take appropriate action in accordance with the provisions of Sub-section (3) of Section 10 of the Act, within a period of thirty (30) days from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 17.03.2017
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