

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 3672 of 2017

Date of Decision: 16.11.2017

Gaurav Kirpal

...Petitioner

VERSUS

Central Bureau of Investigation

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Deepanshu Mehta, Advocate
for the petitioner.

Mr. Sumeet Goel, Advocate
Retainer counsel for respondent-CBI.

Ms. Ranjana Shahi, Advocate
for the applicant.

SURINDER GUPTA, J.(Oral)

CRM-36632-2017

This is application to implead Directorate of Enforcement,
Chandigarh Zonal Office as necessary party in this case.

Learned counsel for the petitioner submits that he has no
objection, if the present application is allowed and Directorate of
Enforcement, Chandigarh is ordered to be impleaded as party in this case.

Ordered accordingly.

Amended memo of parties is taken on record.

CRR No. 3672-2017

CBI during investigation of the case bearing FIR No. RCBD
No. 1/2016/E/0007 dated 08.08.2016 registered for offences punishable
under Sections 120-B read with Section 420 IPC and 13 (2) read with
Section 13 (1) (d) of Prevention of Corruption Act, joined the petitioner in

investigation and seized his passport, which is stated to have been deposited with Special Judge, CBI Court, Chandigarh. CBI has also issued look out circular against all the accused named in the FIR including the petitioner. On 09.08.2016, the petitioner was departing for U.A.E. and was off-loaded by Immigration Authorities at I.G.I. Airport, New Delhi. The petitioner has sought return of his passport by moving application before the Special Judge, CBI Court, Chandigarh, which was declined.

I have heard learned counsel for parties and have gone through the paper-book.

Admittedly, the petitioner has joined the investigation with CBI as and when called and has not been arrested so far.

Learned counsel for the petitioner submits that CBI even after joining the petitioner in investigation 15 times during the period of more than 15 months, has not found anything against him. No money ever came to account of petitioner and no letter of credit or request was issued by the firm of petitioner for raising any credit facility from complainant. The passport of petitioner has been impounded without any provision by the CBI. The petitioner is an exporter and having business in other countries. Withholding of passport has not only affected business of petitioner but has also prevented him from collecting huge amount, which are due to foreign traders.

Learned counsel for parties, during course of arguments, are *ad idem* that impounding of passport of petitioner is permissible only under Section 10 of Passport Act and so far, no such proceedings have been initiated.

Learned counsel for the petitioner has argued that if CBI finds

that any claim against petitioner is made out from any document that has come during investigation, he is ready to furnish security to that extent to the satisfaction of investigating agency.

Learned counsel for CBI has argued that passport was taken into possession under Sections 102 and 104 Cr.P.C. and presently the same is not in custody of CBI, rather it has been deposited with the Special Judge, CBI Court, Chandigarh.

I find no merit in submission of learned counsel for CBI. Section 102 Cr.P.C. provides power to police officer to seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. The passport recovered in this case does not fall in this category. Section 104 Cr.P.C. gives power to any Court to impound any document or thing produced before it under this code, if it so desires. There is no order passed by Special Judge, CBI Court to impound the passport of the petitioner.

Learned counsel for CBI has referred to observations of Apex Court in case of **Suresh Nanda vs. C.B.I., 2008 (3) SCC 674**. In that case also observations of Hon'ble Apex Court do not uphold the contention of CBI to retain passport of the petitioner. It was observed in paras 15 and 16 in that case as follows:-

“15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any

document or thing other than a passport. This is because impounding a passport is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edition pg. 133). This principle is expressed in the maxim "Generalia specialibus non derogant". Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing.

16. *For the aforesaid reasons, we set aside the impugned order of the High Court and direct the respondent to hand over the passport to the appellant within a week from today. However, it shall be open to the respondent to approach the Passport Authorities under Section 10 or the authorities under Section 10A of the Act for impounding the passport of the appellant in accordance with law."*

The submission of passport of petitioner with Special Judge, CBI Court, is not as per any order passed by the Court. Rather CBI just to escape its liability and to show that the passport is not lying with it, has adopted this route to deposit the passport with the Court.

Learned counsel for applicant appearing for Directorate of Enforcement, Chandigarh, which has been impleaded as party in this case, has also opposed the release of passport of the petitioner.

I find that Directorate of Enforcement has no *locus standi* in this petition to oppose the submission of learned counsel for the petitioner. If there is any other proceedings pending against the petitioner, this department can separately avail legal remedy available to it under the law.

In view of my above discussion, the instant revision petition is allowed and impugned order dated 04.09.2017 passed by Special Judge, CBI Court, Chandigarh is set aside with direction of learned Court to return the passport of petitioner. It is, however, made clear that petitioner, if at any point of time, intends to go abroad, he will seek necessary permission from the Court, as and when so required. On filing of such application, learned trial Court will decide the same expeditiously in accordance with law.

November 16, 2017

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No