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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 19.05.2017

+ **W.P.(C) 4373/2017**

MOHAN LAL SEHJPAL

..... Petitioner

versus

STATE (THROUGH C.B.I) & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner :

Mr Amit Saxena, Advocates

For the Respondent :

Mr Anupam Sharma and Ms Aditi Rath,
Advocates for CBI.

Mr Rajesh Gogna, Advocate for R-2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

19.05.2017

SANJEEV SACHDEVA, J. (ORAL)

CM No.19123/2017(exemption)

Allowed, subject to all just exceptions.

W.P.(C) 4373/2017

1. The petitioner, by the present petition, seeks a direction to Respondent No. 1 – CBI as well as the respondent No. 2 – Regional Passport Officer, Chandigarh to release the passport of the petitioner seized vide seizure memo dated 03.03.2014 in complaint case No.RC.BD1/2014/E/2004, P.S.:CBI/BS&FC/New Delhi under Section 120-B r/w.409/411/420/467/468/471/474 IPC titled as “State (CBI) vs Nirmal

Singh Bhangoo & Ors pending in the Court of Ms Charu Aggarwal, CMM (West) Tis Hazari Courts, Delhi.

2. It is contended that the petitioner was called for an investigation and inquiry in 2014 and the passport of the petitioner was directed to be surrendered. The passport was thereafter seized in 2014.

3. It is submitted that the chargesheet was filed in the said case, for the investigation of which the petitioner was called, however, petitioner was not arrayed as an accused. It is contended that till date, the petitioner is not arrayed as an accused by the respondent – CBI.

4. Learned counsel for the petitioner relies on the decision in the case of **Suresh Nanda versus Central Bureau of Investigation**, (2008) 3 SCC 674 to contend that the CBI has no power to impound a passport.

5. Issue notice. Notice is accepted by the learned counsel appearing for respondent No.1 as also by the learned counsel for respondent No.2. With the consent of parties, the Writ Petition is taken up for disposal.

6. Learned counsel for respondent No.1 submits that the passport of the petitioner was seized and referred to respondent No.2 for taking action in terms of Section 10 of the Passports Act, 1967 (hereinafter referred to as 'the Act'). He further submits that investigation qua the roll of the petitioner is still pending and appropriate action would be taken on conclusion of the investigation.

7. Learned counsel appearing for respondent No.2 – Regional Passport Officer submits that it is the Passport Authorities alone, which under Section 10 of the Act have the power to take a decision, *inter alia*, with

regard to impounding, revoking or suspending a passport.

8. The Supreme Court in **Suresh Nanda** (*supra*) has held as under:-

*“16. Hence, while the police may have power to seize a passport under [Section 102](#) Cr.P.C. if it is permissible within the authority given under [Section 102](#) of Cr.P.C., it does not have power to retain or impound the same, because that can only be done by the passport authority under [Section 10\(3\)](#) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under [Section 102](#) Cr.P.C.), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in [Section 10\(3\)](#) of the Act. It is thereafter the passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party (vide *State of Orissa Vs. Binapani Dei*).*

*18. 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 of 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.”*

9. The Supreme Court has laid down that while the Police may have power to seize a passport under Section 102 of the Cr.P.C., it does not have the power to retain or impound a passport. The power to retain or impound a passport has been conferred on the Passport Authority. If the Police seizes a Passport under Section 102 Cr.P.C., the Police has to thereafter send it along with a letter to the Passport Authority stating the reasons why the passport deserves to be impounded. It is thereafter for the Passport Authorities to decide whether to impound the passport or not.

10. Similarly, even a Court cannot impound a passport. The power under Section 104 Cr.P.C. would enable the Court to impound any document or thing other than a passport. The Supreme Court has further held that the Passport Act is a special law while Cr.P.C. is a general law and special law would override the general law. In these circumstances, the Supreme Court has held that impounding of a passport cannot be done even by the Court under Section 104 Cr.P.C. and it is for the Passport Authority under Section 10(3) of the Act to take a decision.

11. In **Suresh Nanda** (*supra*), the Passport Authority has been obliged to grant an opportunity of hearing to the party whose passport has been referred for taking appropriate action under Section 10 of the Act.

12. Accordingly, this petition is disposed of directing respondent No.2 to take a decision in terms of Section 10 of the Act within a period of eight weeks from today.

13. The respondent No. 2 – Passport Authority shall grant an opportunity of a hearing to the petitioner. Since the request to impound the passport has emanated from respondent No.1, respondent No.1 shall

also be granted an opportunity of hearing before a decision is taken under Section 10 of the Act.

14. The respondent No.2 shall communicate its decision to the petitioner as well as respondent No.1.

15. Needless to state that in case the petitioner is aggrieved by the decision of the respondent No.2, he shall be entitled to avail of such remedies as are available to him in law.

16. The Writ Petition is disposed of in the above terms.

17. *Dasti* under signatures of the Court Master.

MAY 19, 2017/

SANJEEV SACHDEVA, J

