

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.1201 of 2018

Malaisamy

...Petitioner

Vs.

The State represented by
The Inspector of Police,
E-1, Singanallur Police Station,
Coimbatore. (Cr.No.782/2016)

...Respondent

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order dated 12.10.2018 made in Crl.M.P.No.6389 of 2018 on the file of the Judicial Magistrate Court III, Coimbatore.

For Petitioner : Mr.K.Selvakumareswar for
Mr.C.Prabakaran

For Respondent : Mr.G.Harihara Arun Somasankar,
Govt. Advocate (Crl.Side)

ORDER

This criminal revision case has been filed against order dated 12.10.2018 made in Crl.M.P.No.6389 of 2018 by the learned Judicial Magistrate No.III, Coimbatore, rejecting the petition filed under Section 451 of Cr.P.C. seeking to return the passport of the petitioner herein, pending finalisation of trial.

2 According to the learned counsel for the petitioner, the petitioner is a permanent resident of the address given in the cause title to the revision case and he was implicated in a criminal case in Crime No.782/2016 registered on 05.10.2016, based on the complaint given by one Basheer for the alleged offence punishable under Sections 170, 419, 420 and 451 of IPC. According to the petitioner, originally his name did not find a place in the FIR or in the alteration report. He was implicated as A13, only after confession of accused person and no overt act has been attributed on him. According to the petitioner he is running a Manpower Agency and in furtherance of his activities, he is required to travel abroad frequently. According to him, the police had seized his passport and the same was also filed before the jurisdictional Magistrate. Since he was in dire need of the passport for his day to day activities, he moved the learned Judicial Magistrate No.II, Coimbatore, for return of passport under Section 451 of Cr.P.C. in C.M.P.No.6389 of 2018.

However, the learned Magistrate rejected the petition on the ground that it will impede the investigation and there was also likelihood that the petitioner would be flee from the clutches of law.

3 Mr.Selvakumaraswamy, the learned counsel appearing for the petitioner at the outset would submit that the issue of impounding of passport by the Court under Section 104 of Cr.P.C. had come up for consideration of the Hon'ble Supreme Court and the Supreme Court held that the said section cannot be invoked for impounding of passport and such impounding can be done only under Section 10(3) of the Passport Act. The passport Act, being a special enactment, will prevail over the general enactment namely Cr.P.C. He would draw the attention of this Court to para nos. 14 and 15 of the judgment of the Hon'ble Supreme Court, which are extracted hereunder:

14. In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal. Under Section 10A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport authority under Section 10(3).

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.

3 The learned counsel would also draw the attention of this Court to a recent order passed by the learned Judge of this Court on 12.05.2017 in CrI.O.P.No.5521 of 2017. The learned Judge, following the above order of the Hon'ble Supreme Court, has held that the Passport Act overrides the provision of Cr.P.C. for the purpose of impounding the passport. The operative portion of the order of the learned judge as found in

para nos. 7 to 9 are extracted hereunder:

"7. The objections raised by the learned Special Public Prosecutor for CBI Cases may not be of much relevance since what would be pertinent to decide in the present petition is the powers of police to retain the passport of the petitioner. The Passport Act which is a special law will prevail over the provisions of the Cr.P.C., the General law.

8. Section 10(3)(e) of the Passport Act specifically deals with impounding of passport whereas Section 104 Cr.P.C., allows the Court to impound the document to produce before the Court. The Passport Act overrides the provision of Cr.P.C., for the purpose of impounding passport. In the present case in hand, the order directing to surrender the passport indefinitely amounts to impounding of the passport itself.

9. In view of the foregoing findings, the order dated 05.11.2016 passed in CrI.M.P.No.16123 of 2016 dated 05.11.2016, insofar as the condition to surrender the petitioner's passport before the Court is illegal. Accordingly, the condition to surrender the petitioner's passport is set aside. It is also made clear that all other conditions imposed in the impugned order dated 05.11.2016 passed in CrI.M.P.No.16123 of 2016 dated 05.11.2016, by the Sessions Court, shall remain unaltered. The Criminal Original Petition is allowed to the extent mentioned above."

He would therefore submit that the jurisdictional Court cannot retain the passport under Section 104 of Cr.P.C. He would further submit that even otherwise, the petitioner herein was arrayed as A13 and his culpability in the crime is questionable and therefore, his passport cannot be impounded for an indefinite period till the disposal of trial.

4 The learned Government Advocate (CrI.Side) appearing for the state would object saying that there is no particular provision in the Passport Act, which excludes the application of Section 104 of Cr.P.C. He would therefore submit that impounding of passport under the said Section cannot be found fault with and in any case the learned Magistrate felt that it was not in the interest of investigation to return the passport at this stage and therefore, he would submit that no relief need be granted to the petitioner.

5 This Court is unable to appreciate the argument advanced on behalf of the respondent police. When the Hon'ble Supreme Court has clearly held that the provisions of Passport Act will prevail over the provisions of Cr.P.C., and even the learned Judge of this Court in his order, as cited supra, has

held that the provisions of Passport Act will override the provisions of Cr.P.C. The law declared by the Hon'ble Supreme Court, as per Article 141 of the Constitution of India, is binding on all the Courts in India.

6 The contention on behalf of the respondent police that there is no express provision in the Passport Act for excluding the application of Section 104 of Cr.P.C is a far-fetched argument, which cannot be countenanced in the face of the law laid down by the Hon'ble Supreme Court. When such enactment like Passport Act provides for a particular action to be taken in impounding passport, such action could be taken only under the Passport Act and not by general enactment like Cr.P.C. Even otherwise, this Court is of the view, on the basis of the materials placed for consideration that there was no overt act of accusation against the petitioner herein and in such circumstances, retaining the passport for a considerable length of time, during pendency of trial before the trial Court does not advance the cause of administration of justice, since impounding passport would result in affecting fundamental rights of the petitioner for his free movement.

7 For the above said reasons, this Court finds that the order impugned in the revision is unsustainable in law and therefore, the same is set aside and the criminal revision is allowed. The learned Judicial Magistrate No.III, Coimbatore, is directed to return the passport to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

cgi

To

1. The Judicial Magistrate No.III, Coimbatore.
2. The Public Prosecutor, High Court of Madras.

+1cc to Mr.W.Camyles Gandhi, Advocate, S.R.No.81836

Crl.R.C.No.1201 of 2018

KAN(CO)

rrs 13/12/2018