



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD) No.45 of 2018

Arivuperumal

... Petitioner / Accused No.3

vs.

State,
rep. by the Inspector of Police,
Pappanadu Police Station,
Thanjavur District.
(Crime No.172 of 2014)

... Respondent / Complainant

PRAYER: Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records of the learned District Munsif-cum-Judicial Magistrate, Orathanadu in Cr.M.P.No.3456 of 2017 in C.C.No.184 of 2014 and to set aside the same and further to direct the learned District Munsif-cum- Judicial Magistrate, Orathanadu to grant custody of the Passport to the petitioner.

For Petitioner : Mr.P.Kandasamy

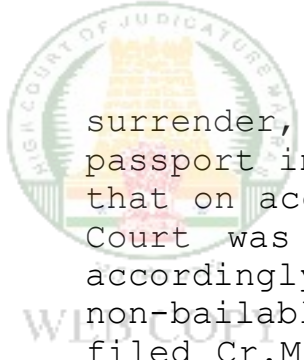
For Respondent : Mrs.S.Bharathi

Government Advocate (Criminal side)

O R D E R

On the complaint lodged by one Arul Kannan, the respondent police registered a case in Crime No.172 of 2014 and after completing the investigation, have filed a charge sheet in C.C.No.184 of 2014 before District Munsif cum Judicial Magistrate, Orathanadu under Sections 294(b), 323 and 325 I.P.C. against Kirubakaran/A1, Suman/A2, Arivu Perumal/A3 and Nageswaran/A4.

2.It is the case of the prosecution that on 29.08.2014 around 8.00 p.m., when the defacto complainant and his friend went to the river for immersing the Vinayagar Idols, the accused attacked them, abused them and caused injuries to them. It appears that after the Court took cognizance of the offences and issued process for the appearance of the accused, Arivuperumal did not appear before the Trial Court and therefore non-bailable warrant was issued for securing his presence on 20.05.2016. On 10.10.2017 Arivuperumal surrendered before the trial Court and prayed for recalling the non-bailable warrant. The Trial Judge accepted the



surrender, however, directed the petitioner to deposit his passport in order to ensure that he does not abscond. It is a fact that on account of the non-appearance of the petitioner, the Trial Court was not able to proceed with the trial. The petitioner accordingly, deposited his passport before the Trial Court and the non-bailable warrant was also recalled. Thereafter, the petitioner filed Cr.M.P. No.3456 of 2017 in C.C.No.184 of 2014 for return of his passport under Section 451 Cr.P.C. In the affidavit sworn to by the petitioner, he has stated that he needs the passport for getting passports for his wife and child. The Trial Court by the impugned order dated 22.12.2017, dismissed the petition and refused to return the passport to the petitioner. Challenging the same, the petitioner has filed the present Criminal Revision Case.

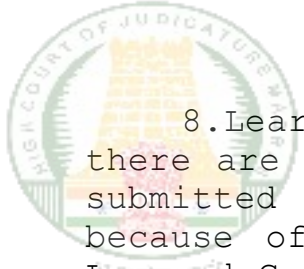
3.Heard Mr.P.Kandasamy, learned counsel appearing for the petitioner and Mrs.S.Bharathi, learned Government Advocate (Criminal side) appearing for the respondent.

4.Learned counsel for the petitioner submitted that the petitioner is an Indian citizen and he is holder of Indian Passport bearing No.P.6314206, but was issued at Singapore, since the petitioner has been working at Singapore for the last 10 years. Learned counsel further submitted that the Re-Entry Permit to enter Singapore expires on 10.04.2018 and therefore, the petitioner has to necessarily go to Singapore for the Re-Entry Permit, failing which the petitioner will not only lose his job but will also lose the Permanent Resident status in Singapore.

5.When this Court posed a question to the learned counsel for the petitioner as to why the petitioner did not disclose all these facts in the affidavit filed before the trial Court and had instead stated that the passport is required for obtaining passports for his wife and child, learned counsel candidly conceded the mistake and sought condonation.

6.As directed by this Court, the petitioner has filed an affidavit dated 12.02.2018, wherein in paragraph No.4, he has stated that he unconditionally apologizes for having given wrong particulars before the trial Court in his petition under Section 451 Cr.P.C.

7.In the opinion of this Court, for having given such wrong particulars itself, the petitioner would not be entitled to any relief because one who seeks relief in equity has to come to the Court with clean hands. On this ground alone, the Criminal Revision Case requires to be dismissed. However, this Court does not want to take the extreme step for the reason that the allegations made against the petitioner is for minor offences, which were committed during the immersion of Vinayagar Idols in the river.



8. Learned Government Advocate (Criminal Side) submits that there are no other previous case against the petitioner. She also submitted that the trial in this case could not be proceeded because of the abscondence of the petitioner and Nageswaran/A4. Learned Government Advocate (Criminal side) further submitted that if the passport is handed over to the petitioner, the trial will further get prolonged.

9. This Court cannot reject the apprehension of the learned Government Advocate (Criminal side). In the affidavit filed by the petitioner, he has stated that he is giving an undertaking that he will validate his Re-Entry Permit and return to India in June, 2018. In such view of the matter, this Court is of the view that the passport of the petitioner can be returned to the petitioner by imposing certain stringent conditions.

10. Accordingly, the learned District Munsif - cum - Judicial Magistrate, Orathanadu is directed to return the passport to the petitioner on the following conditions:

- (i) the petitioner is directed to engage an advocate in C.C.No.184 of 2014 by executing a Special Vakalat.
- (ii) the petitioner shall file an affidavit of undertaking before the Trial Court stating that charges can be framed in his absence and that he has given instruction to his advocate to submit his plea on his behalf. The petitioner shall further give an undertaking in his affidavit that he will not dispute his identity and his counsel will cross-examine the witnesses on the date they are examined in chief as stated by the Hon'ble Supreme Court in Vinothkumar v. State of Panjab reported in 2015 (3) SCC 222.
- (iii) further the petitioner shall give an undertaking to return to India during June, 2018 and thereafter, leave the country only on the permission of the trial Court. In the affidavit of undertaking, the petitioner shall also disclose his residential address and employment address at Singapore and also enclose a photo copy of his Singapore Identity Card and furnish it to the police.
- (iv) the petitioner shall deposit a sum of Rs.30,000/- (Rupees Thirty Thousand only) to the credit of C.C.No.184 of 2014 on the file of the learned District Munsif cum Judicial Magistrate, Orathanadu, which will be returned only after the judgment in C.C.No.184 of 2014 is pronounced. If the petitioner absconds in the meantime, the amount will be forfeited to the State and



separate surety action can be taken to recover Rs.50,000/-

(v) the petitioner shall be present for questioning under Section 313 Cr.P.C. and on the date of judgment.

(vi) the petitioner shall execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two sureties, of whom, one should be his parent, each for a like sum to the satisfaction of the learned District Munsif cum Judicial Magistrate, Orathanadu undertaking to appear before the end of June 2018.

(vii) the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity.

(viii) The Magistrate shall take two photocopies of the passport and retain one in the Court and give the other to the Police.

(ix) If the petitioner absconds, a fresh First Information Report can be registered under Section 229 A of the Indian Penal Code.

11. The Criminal Revision Case is ordered accordingly.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To:

1. The District Munsif-cum-Judicial Magistrate,
Orathanadu.

2. The Inspector of Police,
Pappanadu Police Station,
Thanjavur District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC TO M/S.P.KANDASAMY, ADVOCATE, SR NO.48155

Cr1.R.C. (MD) No.45 of 2018

13.02.2018