

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.2163 of 2018

ORDER:

In the present writ petition, the petitioner herein is praying for release of passport bearing No.H1308750, dated 22.10.2008, from the custody of the Regional Passport Officer, Vijayawada/second respondent herein.

2. Petitioner herein is accused No.1 in C.C.No.624 of 2017, on the file of the Court of the Second Additional Judicial First Class Magistrate, Nuzvid, Krishna District for the alleged offence under Section 498-A I.P.C. Seeking quashment of the said Criminal Proceedings, petitioner herein filed Criminal Petition No.11715 of 2017. This Court, by way of an order dated 28.11.2017, disposed of the said Criminal Petition and the operative portion of the said order reads as under:

“Learned counsel for the petitioner after arguing the matter for sometime, requested this Court to direct the police to follow the procedure laid down under Section 41-A of Cr.P.C and guidelines formulated by the Apex Court in “Rajesh Sharma v. State of U.P.1”

Acceding to the request of the learned counsel for the petitioners, without touching the merits, I find that it is a fit case to issue direction to the police to follow the procedure laid down under Section 41-A of Cr.P.C and the guidelines issued by the Apex Court in “Rajesh Sharma case referred supra. Accordingly, the Magistrate concerned is directed to adhere to the guidelines issued in “Rajesh Sharma case referred supra.”

3. Petitioner was arrested at Rajeev Gandhi International Airport, Hyderabad and his passport was seized by the police and he was produced before the Court of the II Additional Judicial First Class Magistrate, Nuzvid on 30.09.2017 and on which date the learned Magistrate passed the following order:

“Accused A1 produced through PC of Hanuman Junction Verified identity a summons for app ana of A1 is pending in CC.No.624/17 before this Court U/sec 498A of IPC against the accused The investigation in this matter is already completed charge sheet filed no amount wants is pending in this CC No.624 of 2017 against A1 perused mediator report copy of letter of Addl DG.

However the A1 is apprehended pursuant to a lookout notice issued by immigration authority the A1 is produced along with a pass for of Visa since the case age is not A1 is U/sec 498 A IPC following guidelines of Hon'ble Supreme Court in Kumar Us State of Bihar the Court is of opinion that detention of A1 at this stage of case is unwarranted provided conditions are imposed, A1 reported no ill treatment at hands of police the grounds of attested by police are insufficient.

Hence, the A1 is humbly directed to released to police provided the A1 executed self band for Rs.10,000/-, police any just directed to submit the passport of A1 to Regional Pass Port Authority Vijayawada for impounding of his pass port U/sec 10 (3) (e) of pass port act along with photo copy of charge sheet for necessary direction by pass port authorities.”

4. Subsequently, vide letter bearing No.523, dated 05.10.2017, the learned Magistrate directed the second respondent to initiate proceedings for impounding the passport of the petitioner and to intimate the same to the Court. Pursuant to the above directions of the learned Magistrate, the second respondent/Regional Passport Officer issued a notice vide Letter Ref.No.SCN/306108123/17, dated 10.10.2017, calling upon the petitioner to show-cause as to why action should not be taken to impound the passport of the petitioner under Sections 10 (3) (e) and 12 (1) (b) of the Passport Act, 1967.

5. According to the petitioner, he submitted an explanation in response to the said show-cause notice. In the above background, assailing the action of the second respondent in withholding the passport of the petitioner, the present writ petition came to be filed.

6. Heard Sri J.Ugra Narasimha, learned counsel for the petitioner and Sri A.Sumanth, the learned Additional Standing Counsel for the Union of India for the respondents apart from perusing the material available before the Court.

7. Learned counsel for the petitioner contends that the action impugned in the present writ petition is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution of India and opposed to the very spirit and object of the provisions of the Indian Passports Act, 1967. It is further contended by the learned counsel that the Indian Passports Act, 1967, being the special legislation, would prevail over the provisions of any general enactment including Section 104 of the Code of Criminal Procedure which confers power upon a Criminal Court to impound any document but not passport. The learned counsel further argues that withholding of passport, thereby curtailing the movement of the petitioner is also not in the interest of the *de facto* complainant. In support of his submissions and contentions, learned counsel for the petitioner takes the support of the order of this Court in the case of *K.SOWMYA v. REGIONAL PASPORT OFFICER, KUMMARI GUDA, SECUNDERABAD AND ANOTHER*<sup>1</sup>.

8. On the contrary, learned Additional Standing Counsel for the Union of India, appearing for the respondents, contends that there is no illegality nor there exists any infirmity in the impugned action, as such, the same is not amenable for any judicial review under Article 226 of the Constitution of India. It is further maintained by the learned counsel that the petitioner, instead of assailing the orders of the learned Magistrate directing to impound the passport of the petitioner herein, filed the present writ petition and on the said ground alone the present writ petition is liable to be rejected.

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<sup>1</sup> 2016 (2) ALD (CrI.) 998

9. In the above backdrop, now the issue that emerges for consideration of this Court is \_ “Whether, in the facts and circumstances of the case and in the light of the provisions of law as mentioned *supra*, petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India?

10. The sum and substance of the case of the petitioner, as advocated by the learned counsel for the petitioner is that having issued a show-cause notice to the petitioner, calling upon the petitioner to show-cause as to why action should not be initiated under Section 10 (3) (e) of the Passports Act and having received the reply of the petitioner herein, the second respondent is not justified in withholding the passport of the petitioner and the second respondent should have released the passport of the petitioner and the Court has no power to order impounding in view of the provisions of the Indian Passports Act.

11. On the other hand, it is the principal objection of the second respondent that in view of the orders of the learned Magistrate, directing the second respondent to impound passport of the petitioner the passport cannot be released.

12. The Hon'ble Supreme Court in the case of *SURESH NANDA v. C.B.I*<sup>2</sup> on which the petitioner places strong reliance, categorically ruled that the Court cannot impound a passport under Section 104 of the Code of Criminal Procedure and that the authority alone under Section 10 (3) of the Passports Act has such power of impounding. In fact, this Court in the case of *K.SOWMYA (supra 1)* placed reliance on the said judgment of the Hon'ble Supreme Court in the case of *SURESH NANDA (supra 2)* and directed the passport authority to reconsider the application of the petitioner therein for

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<sup>2</sup> (2008) 3 SCC 674

impounding the passport of the second respondent therein by taking into account Section 10 (3) (h) of the Passports Act, 1967. In the said case, the petitioner therein filed a case under Domestic Violence Act before the Court of the Metropolitan Magistrate and she also filed a petition before the learned Magistrate under Section 10 (3) (h) of the Passports Act for revocation/impounding of the passport of her husband and the said petition was returned by the learned Magistrate on the ground of maintainability. Thereafter, the petitioner therein approached the passport authorities for impounding the passport of her husband and in response to the said request the passport officer issued an endorsement, asking her to obtain orders from the competent Court to impound the passport of her husband and aggrieved thereby she filed the writ petition before this Court.

13. In the above said background, this Court in the said judgment in *K.SOWMYA (supra 1)*, while referring to the provisions of the Indian Passports Act and while placing reliance on the judgment of the Hon'ble Apex Court in *SURESH NANDA (supra 2)*, directed the passport authority to reconsider the application of the petitioner for impounding under Section 10 (3) (h) of the Passports Act. But, in the case on hand, the learned Magistrate passed an order on 30.09.2017 when the petitioner was produced before the Court directing the Regional Passport Authority to impound the passport under Section 10 (3) (e) of the Indian Passports Act.

14. It is also significant to note that thereafter vide letter dated 05.10.2017, the learned Magistrate also directed the Regional Passport Authority/the second respondent herein to initiate proceedings for impounding the passport of the petitioner and to intimate the same to the Court. In the considered opinion of this Court, there is absolutely no unreasonableness on the part of the second respondent in not releasing the

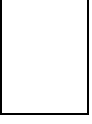
passport of the petitioner herein in view of the orders of the learned Magistrate dated 30.09.2017. So long as the said orders remain intact, this Court cannot find fault with the action of the second respondent.

15. For the aforesaid reasons, writ petition is disposed of, keeping it open for the petitioner herein to avail the remedies open to him in the light of the observations made *supra*. As a sequel, the miscellaneous petitions pending if any shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:09.03.2018  
grk





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.2163 of 2018

Dated:09.03.2018

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