

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.26726 of 2018

ORDER:

This writ petition is filed challenging the order dated 17-07-2018 passed by the 3rd respondent impounding the passport of the petitioner and asking the petitioner to surrender the same with immediate effect on the ground that a criminal case vide S.C.No.585 of 2011 is pending against him before the VII Additional Metropolitan Sessions Judge, Hyderabad.

Learned counsel for the petitioner submits that though the criminal case is registered as Sessions Case No.585 of 2011, but it was wrongly mentioned as C.C.No.585 of 2011 throughout the affidavit and impugned order. The said case was numbered in the year 2011 and pending Sessions Case, the petitioner obtained permission of the concerned Court and travelled abroad and came back. There is no violation of the orders passed by the criminal Court and show-cause notice, dated 14-06-2018 was issued alleging that the petitioner has suppressed the fact of pending criminal case and obtained passport. For that, the petitioner filed explanation, but the impugned order is passed on different ground, which is in violation of principles of natural justice. He submits that the respondents have not given the reasons before impounding the passport and mere pendency of criminal case cannot be a ground for impounding the

passport. The passport authority has discretion either to impound or not. Section 10 (3) (e) of the Passport Act, 1967 (for short “the Act”) is directory in nature. He submits that in similar circumstances, the Madras High Court in WP (MD) No.23468 of 2017, dated 23-07-2018 granted relief to the petitioner and the same relief may be granted to the petitioner.

On the other hand, learned Standing Counsel for respondents basing on counter affidavit supports the impugned order saying that when once the criminal proceedings are pending before a criminal Court, the passport authority is entitled to impound the passport by invoking Section 10 (3) (e) of the Act and no exception can be taken. She also submits that the petitioner has obtained permission from the criminal Court, as the Central Government issued gazette notification vide GSR 570 (E) dated 25-08-1983 exempting the persons against whom criminal proceedings are pending and who produces orders from the Court thereby permitting them to travel abroad. As such if petitioner obtains orders from the concerned Court, where criminal case is pending, basing on the same, his request will be considered.

In this case, it is to be seen that the Madras High Court considered the similar issue in the judgment mentioned supra and respondents in the counter also want to adopt the same procedure and suggesting the petitioner to obtain

permission from the concerned criminal Court in GSR 570 (E), dated 25-08-1983. The Madras High Court on some conditions allowed the writ petition by setting aside the impugned order and the petitioner was granted liberty to make appropriate application seeking for issuance of 'No Objection Certificate' and for return of his passport before the Judicial Magistrate of First Class, Sivakasi before whom C.C.No.47 of 2018 is pending and on such application, the concerned Magistrate shall pass necessary orders within two days thereafter. It is also directed the petitioner therein to produce the 'No Objection Certificate'(NOC), if granted by the learned Judicial Magistrate, before the first respondent and on receipt of such NOC from the petitioner, the 1st respondent shall return back the passport of the petitioner forthwith. In this case also, earlier the petitioner obtained permission from the concerned criminal Court and travelled abroad.

In view of the same, the petitioner is granted liberty to make appropriate application seeking for issuance of 'No Objection Certificate'/permission from the concerned criminal Court where S.C.No.585 of 2011 is pending and on such application, the concerned Court shall pass orders within a period of one week and the petitioner is directed to produce the permission granted by the criminal Court before the 3rd respondent and on receipt of such permission from the petitioner, the 3rd respondent shall consider the same and pass orders in terms of GSR 570 (E), dated 25-08-1983.

Accordingly, this writ petition is disposed of. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

12-09-2018
Nvl



