

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Revision Case No.2402 of 2018

ORDER :

This Criminal Revision Case is filed under Section 397(1) of the Code of Criminal Procedure aggrieved by the orders dated 28.8.2018 passed in CrI.M.P. No.1338 of 2018 in C.C. No.1410 of 2018 by the I Additional Judicial Magistrate of I Class at Nizamabad, whereby petition filed by the petitioner/A1 praying to grant permission to him to go to abroad during pendency of the C.C. No.1410 of 2018 was dismissed and the police concerned were directed to seize the passport of petitioner/A1 forthwith and to deposit the same before the Court immediately.

2. The contention of the petitioner is that Lookout Notice cannot be issued in a routine manner in matters of Section 498-A I.P.C. The petitioner has to join the duty in the 1st week of September, 2018 and in view of the orders of the trial Court, the petitioner may lose the job. More so, the learned Public Prosecutor contended that by imposing certain conditions, the petitioner may be permitted to go abroad.

3. A reading of the order dated 28.8.2018 in CrI.M.P. No.1338 of 2018 in C.C. No.1410 of 2018 goes to suggest that basing on the complaint of Smt.Sheethal Varma, wife of the petitioner herein, the case in crime No.77 of 2017 for the offence under Section 498-A I.P.C. and Section 4 of the Dowry Prohibition Act has been registered.

After filing the charge-sheet, the trial Court took the cognizance of the offence and numbered it as C.C. No.1410 of 2018 and issued the summons to the petitioner/A1. At this stage, the petitioner filed the petition to permit him to go to abroad on his job, but the same was dismissed directing the police to seize the passport of the petitioner/accused No.1 and deposit the same in the Court.

4. In the similar circumstances, the Karnataka High Court in the case of *Brijesh Singh and Anr. Vs. State by All Women Police Station, Ulsoorgate, Bangalore and Ors.* (2002 CrI.L.J. 1362) held that the learned counsel for the husband rightly submitted that regard being had to the undisputed fact that the husband is employed in Australia and had been working there at the aforesaid addresses furnished by him, denial of delivery of passport to him would work out untold hardship and irreparable loss to him, in that, if he is compelled to stay at India till conclusion of the trial of the criminal case contemplated against him, he would be left virtually without any job in India. The Apex Court allowed the petition of the husband in the light of the pronouncement in **Gian Singh's case** wherein it was held that if his passport is not released to him, he will be compelled to remain in India which unfortunately is not his present home, and continue to remain here until the final end of the criminal proceedings now launched. No body knows when the trial will commence and end. In such circumstances, a solution has to be worked out in the interest of justice. So, directed the trial Court to return the passport to the

appellant on his executing a bond for sum of Rs.3,00,000/- with two solvent sureties to the satisfaction of the said Court. It was further held in ***Gian Singh's case*** as follows :

“To ensure his attendance in the Court when trial begins, we may make a provision. We agree that it would be difficult for the appellant to be present on all posting dates in the Trial Court. Therefore, we permit him to appear through Counsel except on days when his presence is imperatively needed. He must file an application before the Trial Court through Counsel and seek dispensation of his personal presence and ensure that his Counsel would be present on his behalf on days except when his presence is indispensable. If he makes such an application the Trial Court shall dispense with his physical presence in Court.”

5. Accordingly, the Apex Court in ***Brijesh Singh's case*** ordered that the husband shall deposit a sum of Rs.1,00,000/- in the trial Court by the end of December, 2001; that on first Sunday of every alternate month, petitioner-husband shall mark his regular attendance in the office of the High Commission at Australia; that he shall not shift himself to any country other than Australia, except India, without written permission of the trial Court, till conclusion of the trial against him, if charge-sheeted by the concerned investigating police. It is also ordered that notice to the husband of the next hearing date on which his personal attendance becomes necessary for further progress in the case shall be given to him at least fifteen days prior to that date of hearing.

6. In another case, in the unreported decision dated 14.12.2012 in CrI.M.C.No.4231 of 2012 in ***Nandini Bhatnagar Vs. State Govt. of NCT of Delhi*** the High Court of Delhi held that the

Court also takes judicial notice of the fact that the condition of obtaining prior permission before leaving the boundary of Delhi is a cumbersome one as the permission takes time and causes hardship to the petitioner. Undoubtedly, the accused's right to travel can be curtailed by a reasonable, transparent and fair procedure, but in the opinion of this Court such a restriction should be rarely imposed by the trial Court while granting bail and that too, for cogent reasons.

7. In the instant case, the petitioner is husband of Smt. Sheethal Varma, who filed case against him for the offence punishable under Section 498-A I.P.C. and Section 4 of Dowry Prohibition Act. The trial court dismissed the petition CrI.M.P. No.1338 of 2018 filed by the petitioner praying to grant permission to go abroad and directed the police concerned to seize the passport of petitioner/A1 forthwith and to deposit the same before the Court. There is no dispute that the said passport was property of the petitioner/husband. The petitioner/husband is a citizen of India and he is residing in Shrirampur Taluq & District, Ahmednagar along with his family members comprising parents. Basing on the complaint of his wife, a case for the offence punishable under Section 498-A I.P.C. and Section 4 of Dowry Prohibition Act was registered. Summons were issued to the petitioner. The Police filed the charge-sheet for the same offences which were taken on file and numbered as C.C.No.1410 of 2018. The criminal case is pending for appearance of the petitioner and others, therefore, it will take some more time to frame charges,

commence trial and conclusion. Presently the petitioner is doing temporary job as 3rd Assistant Engineer in Synergy Maritime Recruitment Services Pvt. Ltd., Chennai Branch at Mumbai for earning and learning purpose since last six months. The employer lined up accused for the process and will place accused on board as per the earliest availability of ship on 20th August, 2018, on the rank of 3rd Engineer and his tenure will be 6+1 months from the commencement date of contract and tentative period of contract will be from end of August, 2018 to April, 2019. Therefore, petitioner/accused No.1 has to reside/stay out of country from September, 2018 to April, 2019, in any foreign country which will be depend on calling port of ship for the same. Therefore, the petitioner is directed by the company to be ready for going out of country.

8. In the petition the petitioner undertakes to remain present before the Court as and when required by the Court as well as for recording his statement under Section 313 of Criminal Procedure Code as well as at the time of pronouncement of the judgment and particularly as and when his presence is required.

9. The trial Court might have directed the Police to seize the passport of the petitioner and deposit the same into the Court with an object to prevent the petitioner/husband from leaving India and place him within the jurisdiction of the trial Court, so that his attendance could be ensured. In other words, the object of directing to seize the passport by the Police and its deposit into custody of the trial Court

was to place necessary restrictions on the liberty of the movements of the petitioner to secure his attendance on the hearing dates in the criminal trial against him. If the passport of the petitioner is seized and deposited into the Court, the petitioner will be compelled to remain in India until the end of the criminal proceedings. Certainly no body will know when the trial will be commenced and end.

10. Keeping in view of the above, I am of the considered view that the order of the trial Court is certainly on the liberty of the petitioner to go to abroad which will certainly restrict petitioner's fundamental right to travel. Certainly the right of the petitioner to travel can be curtailed by reasonable, transparent and fair procedure by imposing certain conditions.

11. However, the trial Court in the impugned order has not given any reason for passing such an order dismissing the petition filed by the petitioner seeking permission to go abroad during pendency of the present case and directing the police to seize the passport forthwith and deposit before the Court.

12. In such circumstances, I am of the considered view that the right to travel cannot be curtailed as a matter of routine as done in this case by not granting permission to go to abroad on his job. If the impugned order granted by the I Additional Judicial Magistrate of I Class at Nizamabad is not set aside, the petitioner/A1 will lose his job. More over, I am of the further opinion that the petitioner is having no

criminal antecedents and good academic qualifications, so, he is unlikely to abscond.

13. Consequently, Criminal Revision Case is allowed and the impugned order dated 28.8.2018 in CrI.M.P.No.1338 of 2018 in C.C.No.1410 of 2018 on the file of the I Additional Judicial Magistrate of I Class at Nizamabad, is set aside. The petitioner is granted permission to go aboard on his job on deposit of Rs.1,00,000/- in the trial Court as additional security to ensure his attendance, when required, on the hearing dates in the course of the trial proceeding against him. If it is not possible for the petitioner to appear in person, he can appear through counsel by following the procedure prescribed under the law. Further, the trial Court is directed to issue notice to the petitioner/husband of the next hearing date on which his personal attendance becomes necessary for further progress in the case, which shall be given to him at least fifteen days prior to that date of hearing and the petitioner shall appear on such date without fail. In case of any such failure, the amount deposited by him shall be paid to the wife/de facto-complainant.

14. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

14th September, 2018

Note : Issue copy by 15.9.2018.

B/O
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