

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. NO. 111 OF 2019

Subash

.. Petitioner

- Vs -

State, rep. By
The Inspector of Police
Central Crime Branch
Coimbatore.
Crime No.2/2018

.. Respondent

Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, praying to set aside the order in dated 18.12.2018, passed by the Judicial Magistrate No.III, Coimbatore, made in C.M.P. No.7930 of 2018.

For Petitioner : Mr. W.Camyles Gandhi

For Respondent : Mr. A. Harihara Arun Somashankar,
GA (Crl. Side)

ORDER

The above criminal revision has been filed by the petitioner against the order passed by the Judicial Magistrate No.III, Coimbatore, in C.M.P. No.7930/18 dated 18.12.18, whereby the petition filed by the petitioner u/s 451 Cr.P.C. for return of his passport has been rejected.

2. The petitioner herein moved the trial court by filing a petition u/s 451 Cr.P.C. for return of his passport, which was seized from him consequent upon the offences charged against him. The petitioner moved the trial court for return of his passport on the ground that he did not have proper identity proof for carrying out his day-to-day activities and, therefore, he is in need of the passport. However, the learned Magistrate, after advertng to the materials and also considering the offences for which the petitioner stood charged and also after taking into consideration the objections raised by the prosecution, rejected the petition vide impugned order dated 18.12.18. As against the same, the present revision petition has been filed.

3. Learned counsel appearing for the petitioner, at the outset, submitted that the rejection by the Judicial Magistrate is against the law laid down by the Hon'ble Supreme court and also the legal principles laid down by this Court stating that the Court cannot impound the passport as it was entirely within the domain of the Passport Issuing Authority to impound same under the Passports Act. Learned counsel drew the attention of this Court to the judgment of the Hon'ble Supreme Court rendered on this aspect in the case of Suresh Nanda - Vs - CBI (Appeal (Crl.) No.179/08 dated 24.1.2008). Learned counsel drew specific reference to paras 14 & 15 of the judgment, which is extracted hereunder for better clarity :-

"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, the 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."

4. Learned counsel for the petitioner also drew the attention of this Court to a recent order passed by this Court in the case of Malaisamy - Vs - The State (Crl. R.C. No.1201/18 - Dated 29.11.2018). This Court, after taking note of the

judgment of the Supreme Court in Suresh Nanda's case (supra) has allowed a revision petition on similar grounds. The findings of this Court, which is evident from paras 3 to 6 and the final conclusion, as is evident from para-7 of the said order are extracted hereunder for reference :-

"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 (Crl.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.

In view of the above, learned counsel for the petitioner submits that the above issue is no longer res integra and, therefore, the petitioner is entitled to the relief of return of his passport.

5. Per contra, learned Government Advocate (Crl. Side) submitted that in the earlier case also, there was an objection from the prosecution, but this Court has discountenanced such objection and allowed the revision petition.

6. After considering the rival submissions advanced by either side, this Court is in complete agreement with the submission made on behalf of the petitioner that the issue of impounding of passport by the trial court is no longer res integra and it is only the passport authority, who could impound the passport under the provisions of the Passports Act. The above has been clearly laid down by the Hon'ble Supreme Court in Suresh Nanda's case (supra) as also by this Court in Malaisamy's case (supra).

7. In the above circumstances, this Court is unable to appreciate as to how the trial court could reject the petition u/s 451 Cr.P.C. filed by the petitioner herein for return of the passport notwithstanding the legal principle as evolved by the Hon'ble Supreme Court and followed by this Court.

8. For the reasons stated above, this revision petition is allowed and the impugned order, dated 18.12.18, rejecting return of the passport is set aside. The learned Judicial Magistrate No.III, Coimbatore, is directed to return the impounded passport back to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

GLN
To

- 1) The Judicial Magistrate No.III
Coimbatore.
 - 2) - do - through The Chief Judicial Magistrate,
Coimbatore.
 - 3) The Inspector of Police,
Central Crime Branch,
Coimbatore.
 - 4) The Public Prosecutor,
High Court, Madras.
- +1 cc to Mr. W.Camyles Gandhi, Advocate, S.R.No.8906

CRL.R.C. NO. 111 OF 2019

AK(CO)
SSM(06/03/2019).

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