

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.04.2019

CORAM
THE HON'BLE MR.JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P.No.10273 of 2019

Gurusamy @ Raju

... Petitioner

Vs

The State
Rep by the Inspector of Police
CBI, Chennai.
(Cr.No.RC MA1 2009 A 0021)

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C to return the petitioner's passport No.N8778973 along with old passport No.F7921174 and set aside the order passed in Crl.M.P.No.289 of 2019 in C.C.No.29 of 2011 dated 05.04.2019 on the file of the Principal Special Judge for CBI Cases, Chennai.

For Petitioner : Mr.P.Pazhamalai

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

O R D E R

The Criminal Original Petition has been filed seeking to set aside the order passed in Crl.M.P.No.289 of 2019 in C.C.No.29 of 2011 dated 05.04.2019 by the learned Principal Special Judge for CBI Cases, Chennai and to direct the trial Court to return the petitioner's passport bearing No.N8778973 along with old passport No.F7921174.

2.The learned counsel for the petitioner would submit that the petitioner is running a travel agency in the name of 'Raja Travel Services' at No.66/1B, Irusappa Street, Ice House, Chennai for the past 35 years. He along with other accused was tried in C.C.No.29 of 2011 for the offences under Sections 120B r/w 8, 9, 10 and 13 (2) of the Prevention of Corruption Act, 1988. He would submit that during the year 2009, the petitioner was granted bail by the trial Court, with a condition to deposit his passport and that in due compliance of the order he had deposited the passport before the trial Court. Thereafter the petitioner had sought for return of his passport to travel abroad and that this Court by order dated 01.03.2016 in Crl.RC.No.290 of 2016, had permitted the petitioner to travel to USA and thereby after interim return of passport he traveled to

USA and after his travel had re-deposited the passport before the trial Court. He would further submit that thereafter the case in C.C.No.29 of 2011 ended in acquittal on 26.12.2018 and the appeal period has also been over now. He would also submit that till date no appeal has been filed by the respondent Department.

3.He would submit that meanwhile the petitioner had filed an application under Sections 439(2) and 452 Cr.P.C., seeking for return of passport and the trial Court by order dated 05.04.2019, had dismissed the petition on the ground that the passport submitted before the Court stands in the name of 'Gurusamy' and not in the name of 'Raju'. He would also submit that the name of the petitioner's father is Gurusamy Naidu and his name is also G.Gurusamy and in order to avoid confusion he had changed his name as 'Gurusamy' @ 'Raju' and it has been notified in the Tamil Nadu Gazette dated 19.10.2000. However, when he applied for a fresh passport, his alias name was not entered in the passport and the passport has been issued to him in his original name-'Gurusamy'. He would further submit that the petitioner has also filed an affidavit stating that 'Gurusamy' and 'Gurusamy @ Raju' pertains to one and the same person and that the petitioner has been issued with the passport only in the name of 'Gurusamy' and that the passport belongs to him. He would submit that if at all any clarification is required for obtaining a fresh passport, it is within the purview of the passport officials to seek for a clarification and the petitioner is prepared to furnish suitable clarification at the time of issuance of fresh passport. The learned counsel would further submit since the procedure requires submission of the old passport for applying for a fresh passport, the petitioner had filed the application seeking for return of the passport, whereas the trial Court without proper appreciation of facts had dismissed the application on flimsy grounds stating that the passport does not stand in the name of the petitioner. He would also reiterate that pursuant to the earlier order of this Court in CrI.RC.No.290 of 2016 dated 01.03.2016, petitioner had gone to USA with the same passport and after return from USA had re-deposited the passport before the trial Court. He would submit that as per the receipt memo issued by the respondent for acceptance of passport on 13.08.2013, description of passport has been clearly mentioned as 'Original passport of Gurusamy (G.Raju) S/o Gurusamy', and that there is no discrepancy with regard to the identity of the petitioner and it has been handed over by his co-brother-Shri Parthasarathy. He would further submit that as on date there is no case pending against him and the right to travel abroad is a constitutional right and if the passport is not returned to him, the petitioner will be very much prejudiced and thereby would seek to set aside the order and to direct the trial Court to return the petitioner's passport.

4.The learned Special Public Prosecutor for CBI Cases would submit that in the receipt memo dated 13.08.2013, issued by the Inspector of Police, Central Bureau of Investigation, Anti-Corruption Branch, Chennai - 06, for acceptance of original passport of the petitioner, it had been stated to be deposited by one Parthasarathy and the description of passport is also available, wherein the name of the petitioner has been stated as 'Gurusamy (G.Raju) S/o Gurusamy'.

5.Heard the rival submissions and perused the materials available on record. I have also taken into consideration the additional affidavit filed by the petitioner, wherein the petitioner had stated that the name of the petitioner is 'Gurusamy' and that 'G.Gurusamy' and 'Gurusamy @ Raju' are one and the same person. If there is any discrepancy with regard to the name and other particulars, it is for the passport authorities to look into the issue. Admittedly, the passport has been deposited by the co-brother of the petitioner-Parthasarathy, pursuant to the condition imposed by the trial Court at the time of grant of bail and the petitioner had been allowed to travel to USA with the same passport and after return from USA, the petitioner has re-surrendered his passport and further the passport has not been marked as an exhibit in the C.C.No.29 of 2011.

6.In view of the above, order passed by the trial Judge in CrI.M.P.No.289 of 2019 in C.C.No.29 of 2011 dated 05.04.2019 is set aside and this Court directs the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai, to return the passport bearing No.N8778973 along with old passport No.F7921174 to the petitioner. Accordingly, the Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Special Judge for CBI Cases,
VIII Additional City Civil Court,
Chennai.

2.The Inspector of Police
CBI, Chennai.
(Cr.No.RC MA1 2009 A 0021)

3.The Special Public Prosecutor for CBI
High Court of Madras.

+lcc to Mr.P.Pazhamalai, Advocate, S.R.No.38750

CrI.O.P.No.10273 of 2019

PMS (CO)

RRS (24/04/2019)



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