

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	05.04.2019
Date of Judgment	26.04.2019

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CORAM**THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI****Cr1.RC(MD)No.109 of 2019**

P.Mahesh : Petitioner/Petitioner

Vs.

The State represented by
The Sub Inspector of Police,
Keelavalavu Police Station,
Madurai District.
(Crime No.333 of 2018)

: Respondent/Respondent

Prayer: This Criminal Revision has been filed under Sections 397 and 401 of Criminal Procedure Code, against the order, dated 31.01.2019 made in Cr.M.P.No.107 of 2019 on the file of the III Additional District Court (PCR), Madurai and set aside the same and consequently direct the respondent to return the petitioner's passport bearing No.M8861684.

For Revision Petitioner : Mr.P.R.Prithiviraj

For Respondent : Mr.A.Robinson
Government Advocate
(Criminal side)

O R D E R

This criminal revision is filed against the order, dated 31.01.2019 made in Cr.M.P.No.107 of 2019 on the file of the III Additional District Court (PCR), Madurai.

2.The said petition has been filed before the III Additional District Judge, (PCR), Madurai, seeking return of the passport of the petitioner, bearing No.M8861684. The learned Judge dismissed the said petition by the impugned order, dated 31.01.2019. Aggrieved over the same, the petitioner is before this court by way of the present criminal revision.



3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The contention of the learned counsel appearing for the petitioner is that though the police have power to seize any document including the passport, the Passports Act being a special enactment, its provisions relating to impounding of passport will prevail over the provisions found in the general law, namely Criminal Procedure Code dealing with seizure and impounding of document and the police has no power to seize the passport of the petitioner and the police have no power to impound the passport of the petitioner under Section 102(1) Cr.P.C or under Section 104 Cr.P.C; that if at all the police thought it fit to have the documents impounded, the same ought to have been referred to the authorities under the Passports Act, who shall decide the question regarding impounding of the passport, after giving an opportunity of being heard and no such procedure had been adopted in this case. It is further submitted that the police cannot impound/retain the passport when Act would amount to impounding the passport and the passport is necessary for the petitioner seeking for job in abroad and the police is not expected to retain the passport of the petitioner and prays that the impugned order of the trial court has to be set set and the revision has to be allowed.

5. In support of the above contention, the learned counsel for the petitioner submitted a ruling reported in **(2011)1 MLJ (Cr1) 326 (Veenita Gupta Vs. State rep. by Deputy Superintendent of Police, Central Bureau of Investigation, Anti Corruption Branch, Chennai-600 006)**. In that case, it has been held as follows:-

"7. In support of the contention of the petitioner that neither the C.B.I nor the trial court does have the power to retain the passport, which will amount to impounding the passport, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in Suresh Nanda V. Central Bureau of Investigation AIR 2008 SC 1414; (2008)2 SCC (Cr) 121: (2008)1 MLJ (Cr1) 1195. In the said judgment, the Hon'ble Supreme Court considered the scope of the power of the police who seize any property, document or a thing under Section 102 Cr.P.C and the power of the Court under Section 104 Cr.P.C to impound a document or a thing, produced before it. While dealing with the scope of those provisions, the Hon'ble Supreme Court has held that the power of the police under Section 102 Cr.P.C to seize any property or document shall include the power to seize even a passport. But the power to impound a document or thing found in Section 104 Cr.P.C should give way



to the corresponding provision found in the Special enactment, namely the Passports Act regarding impounding of passport."

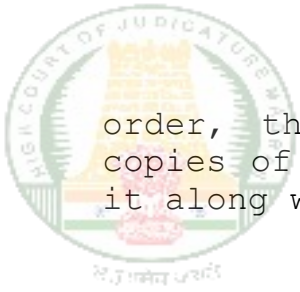
6. Further, the learned counsel for the petitioner argued by citing the observation made in **(2008)1 MLJ (Cr1.)1195 (Suresh Nanda Vs Central Bureau of Investigation)**, which would run thus:-

"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 of a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law which Cr.P.C is 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 Edn. p.133). This principle is expressed in the maxim *generalia specialibus non derogant*. Hence, 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."

7. On coming to the instant case on hand, the respondent police seized the passport of the petitioner and handed over the same to the custody of the court. It is settled law that only Passport Authorities are empowered to impound the passport. The petitioner stated that he is searching job in abroad and for that, his passport is essential. In this case, no steps have been taken by the Passport Authorities to impound the passport of the petitioner. But the respondent police has seized the passport of the petitioner and handed over the same to the court custody. Hence, it is held that the Court below is directed to return the passport of the petitioner, which was kept in its custody, after retaining xerox copy of the same and further, the respondent is directed to send requisition to the Passport Authorities to impound the passport of the petitioner, if necessary.

8. For all the reasons stated above, this court is of the considered view that the order passed by the court below is defective and is not in accordance with law and that the same is liable to be set aside.

9. In the result, this criminal revision is **allowed**. The impugned order, dated 31.01.2019 passed by the III Additional District Judge (PCR), Madurai, is set aside. It is directed that the passport of the petitioner shall be returned to the petitioner on his undertaking to produce the same whenever required by the trial court. Before returning the passport in compliance with the



order, the trial court shall take clean xerox copies or typed copies of the passport, certified them to be true copies and place it along with the records to be used for trial.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar (CS)

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To

- 1.The III Additional District Judge (PCR),
Madurai.
- 2.The Sub Inspector of Police,
Keelavalavu Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.P.R.PRITHIVIRAJ, Advocate Sr. No. 63050

Order made in
Crl.R.C (MD) No.109 of 2019
26.04.2019

SP (30.04.2019) 4P 5C