



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P. (MD) .Nos.2463 and 6693 of 2019

Kanaga ... Petitioner (in W.P.(MD).No. 2463 of 2019)

Shanthi ... Petitioner (in W.P.(MD).No. 6693 of 2019)

Vs.

1.The Regional Passport Officer,
Regional Passport Office,
Madurai, Bharathi Ula Veethi,
Race Course Road,
Madurai - 02.

2.State through the Inspector of Police,
CBI, ACB Police Station,
in R.C.No.229 of 2018 A0001,
Madurai. ... Respondents (in both petitions)

PRAYER in W.P. (MD) .No.2463 of 2019: Petition filed under Article 226 of the Constitution of India, seeking a Writ of certiorarified Mandamus, to call for the records of the first respondent in his proceedings in Letter Ref.No.IMP/307894049/2018, dated November 28, 2018 and to set aside the same inconsequentially direct the respondents to return the petitioner's passport bearing Passport No.S1988237 to the petitioner.

PRAYER in W.P. (MD) .No.6693 of 2019: Petition filed under Article 226 of the Constitution of India, seeking a Writ of certiorarified Mandamus, to call for the records of the first respondent in his proceedings in Letter Ref.No.IMP/307894049/18, dated November 28, 2018 and to set aside the same inconsequentially direct the respondents to return the petitioner's passport bearing Passport No.24628091 to the petitioner.

For Petitioner : Mr.R.Rajamohan
(in both petitions)

For R1 in
WP(MD) 2463/2019 : Mr.V.Kathirvelu, ASG
for Mr.V.Malaiyendran
Central Government Standing Counsel



For R1 in
WP(MD) 6693/2019

: Mr.V.Kathirvelu, ASG
for Mr.K.Prabhu, Central Government Counsel

For R2
(in both Petitions)

: Mr.Nagendran,
Special Government Pleader for CBI

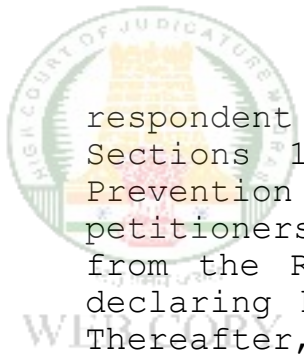
COMMON ORDER

These Writ Petitions have been filed to challenge the proceedings in Letter Ref.No.IMP/307894039/2018, and Ref.No.IMP/307894049/18, dated 28.11.2018 and direct the respondents to return the petitioners' passport bearing Passport Nos.S1988237 and Z4628091 to the petitioners.

2.The learned counsel appearing for the petitioners submitted that the second respondent registered a case as against the petitioners and others in R.C.No.229 of 2018 A 0001 for the offences punishable under Sections 120(B) of IPC r/w Sections 7, 7A, 8 and 12 of Prevention of Corruption Act, alleging that in conspiracy with the public servants, namely, A1 to A7 were illegally smuggled the restricted items such as liquor bottles, Laptop, I-phones, Fish Tin, Perfumes, etc., from abroad without paying paying customs duty in connivance with the public servants. The petitioners are arrayed as A14 and A15.

3.During the course of investigation, the second respondent police seized their passports and other articles. But, the second respondent did not produce the seized items before the concerned jurisdiction Court. Contrary, the second respondent simply kept its under their illegal custody. He further submitted that on 12.09.2018, the first respondent issued notice to the petitioners for explanation in pursuant to the crime registered against them. They appeared before the first respondent and also submitted their explanation. Even then the first respondent passed the impugned order, thereby impounded their passports under Section 10(3)(e) of the Passports Act, 1967, on the ground that the 'criminal case is pending before the Court'. He further submitted that the impugned order has been passed without application of mind, since impounding of passport is not automatic and the pendency of criminal case is not a criteria to impound the passport. He further submitted that they were not given proper opportunity before passing impugned order and as such it is clear violation of principle of natural justice. Therefore, he sought for quashment of the impugned order.

4.Per contra, the first respondent filed a counter and submitted that the petitioners were arrested and remanded to judicial custody in pursuant to the crime registered by the second



respondent in R.C.No.229 of 2018 A 0001 for the offence under Sections 120(b) of IPC r/w Section 7, 7(a), 8 and 12 of the Prevention of Corruption Act. He further submitted that the petitioners initially obtained passport and it was valid 10 years from the Regional Passport Office, Trichy in the name of Chandra declaring her date of birth as 04.05.1971 and born in Kalkurichi. Thereafter, she was obtained additional booklet valid till 08.11.2017. Again she obtained another passport and it was valid till 07.07.2020. While being so, the petitioner had again applied for re-issue of passport during the year 2013 declaring that she had changed her name from Chandra to Santhi and also changed her address. On the basis of the documents submitted by her, the first respondent issued another passport in the name of Santhi. It is also time to time extended by fresh application, due to exhaustion of pages in the previous passport.

5. In view of the report submitted by the second respondent the action of the petitioners attracts Section 10(3)(c) of the Indian Passport Act, 1967. Therefore, the first respondent issued show cause notice on 13.11.2018, seeking their explanation on the allegations that their involvement in smuggling restricted items gold, electronic items, goods that are of security concern etc., into India without paying customs duty but also on the allegations against her for bringing restricted items, posing a threat to the economy as also security of our country. In her explanation she went to Colombo on her business trip and the airport authorities has interrogated her and sent her to Madurai Jail, thereafter, she came out from prison. She further submitted that in the application submitted by the petitioner applying passport, she mentioned that 'she is a home maker'. Whereas in the explanation she went to abroad on her business visit. Therefore, she suppressed so many informations about her profession in her passport application. Further the investigation is pending on the file of the second respondent and as such the first respondent rightly impounded the passport of the petitioner and directed her to surrender her original passport. Till today, she did not surrender her passport and as such the writ petition is liable to be dismissed.

6. The learned counsel for the second respondent filed a counter and submitted that the petitioners were involved in the case in R.C.No.229 of 2018 A 0001 for the offence under Sections 120(b) of IPC r/w Section 7, 7(a), 8 and 12 of the Prevention of Corruption Act. In which, the petitioners are arrayed as A14 and A15. The petitioners conspired with the other accused persons illegally smuggled the restricted items such as Cigarettes which do not have proper pictorial warning on it as prescribed by the Ministry of Health and Family Welfare, 24 carat gold. They also illegally smuggled liquor bottles, Laptop, Iphones, Fish Tin, Perfumes, etc from abroad without paying customs duty in connivance with the public servants. They were smuggling these items by evading customs



economy of our country. It is also causes huge loss to the Government exchequer.

7. In pursuant to the crime committed by the petitioners, their passports rightly impounded by the first respondent by an order dated 28.11.2019 and also directed the petitioners to submit their passports. Insofar as the investigation is concerned, it is still pending. At this stage, the petitioners cannot be allowed to take the passports. Therefore, he prayed for dismissal of these writ petitions.

8. Heard the learned counsel for the petitioners and the learned standing counsel for the first respondent and the learned Special Government Pleader for the second respondent.

9. The second respondent registered a case in R.C.No.229 of 2018 A 0001 for the offences punishable under Sections 120(B) of IPC r/w Sections 7, 7A, 8 and 12 of Prevention of Corruption Act. On the allegation that the petitioners along with public servants in pursuance of the conspiracy among themselves, they illegally smuggled the Cigarettes, Gold, liquor bottles, Laptop, Iphones, Fish Tin, Perfumes, etc., without paying customs duty. The petitioners are arrayed as A14 and A15 and the investigation is still pending.

10. In pursuant to the crime registered against them, the first respondent passed the order impugned in these writ petitions, thereby impounded the passports of the petitioners and also directed them to submit their passports to the passport office with immediate effect. Even till today, the petitioners did not surrender their passports to the first respondent.

11. It is seen that the petitioners used to travel abroad only for smuggling the above said items without paying customs duty, thereby causing huge revenue loss to the Government exchequer and also affecting the economy of our country. However, the first respondent issued show cause notice dated 13.11.2018 to the petitioners, seeking their explanation on the complaint registered by the second respondent herein. Therefore, the petitioners submitted their explanation and their explanation was considered, thereafter, their passports were impounded. As such, no violation of principle of natural justice and the order has been passed only after receipt of the explanation submitted by the petitioners. The offence committed by the petitioners are very serious in nature. If the petitioners are allowed to fly abroad again, they would commit similar in nature of offence and it would affect the economy of our country. Further the investigation is pending at this stage, the passports of the petitioners cannot be returned back to them. Therefore, these writ petitions are devoid of merits and it is liable to be dismissed. Accordingly, these Writ Petitions are dismissed.



12. That apart, the order passed under Section 10(3)(e), of the Passports Act, 1967, is appealable under Section 11 of the said Act. Therefore, the petitioners are at liberty to file an appeal before the authority concerned as against the order passed by the first respondent herein. No costs.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Das

To

1. The Regional Passport Officer,
Regional Passport Office,
Madurai, Bharathi Ula Veethi,
Race Course Road,
Madurai - 02.

2. The Inspector of Police,
CBI, ACB Police Station,
in R.C.No.229 of 2018 A0001,
Madurai.

+2 CC to M/s.R.RAJAMOHAN, Advocate SR-91064.

+1 CC to M/s.V.MALAIYENDRAN, Advocate SR-91380.

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