

HONOURABLE JUSTICE G. SRI DEVI  
CRIMINAL PETITION No.3933 of 2019

ORDER:

1) The present Criminal Petition is filed under Section 482 of Cr.P.C., questioning the order, dated 25.06.2019 passed in CrI.M.P.No.1509 of 2019 in C.C.No.81 of 2016 on the file of the VII Special Magistrate, Hyderabad, wherein and whereunder an application for return of the original Passport to the petitioner was dismissed.

2) The brief facts of the case are that the second respondent herein filed a private complaint against the petitioner/ accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. After considering the evidence available on record, the learned Magistrate dismissed the complaint and accordingly acquitted the petitioner on 04.06.2019. It is stated that during pendency of the C.C. and at the time of examination of the petitioner/ accused under Section 313 Cr.P.C., the petitioner furnished her Passport bearing No.H0481042 before the Magistrate to show that at the time of issuance of cheque she was at U.S.A., and the said Passport was kept on file as un-marked document. It is further stated that after dismissal of the complaint, on 06.06.2019 the petitioner filed CrI.M.P.No.1509 of 2019 under Section 219 of Criminal Rules of Practice before the trial Court seeking return of the said Passport, which was submitted by her.

Vide order, dated 25.06.2019, the learned Magistrate refused to return the Passport. The relevant portion of the order, is as under:

“Because I decided one of the points involved in the Judgment basing on the Passport in question this Court is not empowered to say that the said Passport will not be required for the reference in proceedings before the Court of Appeal or Revision to be preferred by Respondent. It is Appellate Court to decide this point as per my considered opinion. When there is a mandatory hurdle under law this lower Court cannot look into matter on humanitarian grounds.”

3) Being aggrieved by the said order, the present Criminal Petition came to be filed.

4) By an order, dated 12.07.2019, this Court ordered notices to the second respondent. Though the notices were sent to the second respondent to the address which was mentioned in the complaint, the said notices were returned un-served with an endorsement as “the addressee left”.

5) It is the case of the petitioner that during the course of examination of the petitioner under Section 313 Cr.P.C., the petitioner has taken a specific plea that the petitioner was not present in India at the time of issuance of cheque and she was residing in U.S.A. at that time, to which the learned Magistrate directed the petitioner to submit her Passport to show her bonafides that she was not present in India at the time of issuance of cheque and accordingly, the petitioner has deposited her Passport before the trial Court and the same was kept on file

without marking. It is also submitted that the learned Magistrate ought to have returned the Passport which was an un-marked document and not connected with the case. It is further submitted that the only daughter of the petitioner is in advance stage of pregnancy and the presence of the petitioner is very much necessary to look after her daughter, as such, she seeks return of her Passport.

6) Having regard to the facts and circumstances, this is a fit case where the order, dated 25.06.2019, passed by the learned Magistrate is liable to be *set aside*.

7) Accordingly, the Criminal Petition is allowed by setting aside the order dated 25.06.2019 passed in CrI.M.P.No.1509 of 2019 in C.C.No.81 of 2016 on the file of the VII Special Magistrate, Hyderabad and the learned VII Special Magistrate, Hyderabad is directed to return the original Passport bearing No.H0481042 to the petitioner forthwith after submitting the certified copy of this order. The petitioner shall deposit the attested Xerox copy of her Passport before the trial Court to keep the same on file.

8) Miscellaneous petitions, if any, pending, shall stand closed.

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JUSTICE G. SRI DEVI

07.08.2019

Note: Furnish C.C. next week.

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