

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	17.12.2019
Date of Judgment	30.01.2020

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLICrI.R.C(MD)No.815 of 2019andCrI.MP(MD)No.9395 of 2019

Smt.Jarina Rani Abdul Kader

: Petitioner

Vs.

The Senior Intelligence Officer, DRI
Madurai Sub-Regional Unit No.7-1-32,
Mahatma Gandhi Nagar,
Main Road, Madurai.

: Respondent

Prayer: Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code, against the order passed in Cr.M.P.No.3247 of 2019, dated 27.09.2019 by the Judicial Magistrate No.1, Trichirappalli.

For Revision Petitioner : Mr.S.Kameswaran

For Respondent : Mr.Arul Vadivel @ Sekar
Special Public Prosecutor**J U D G M E N T**

This criminal revision is directed against the order passed in Cr.M.P.No.3247 of 2019, dated 27.09.2019 by the Judicial Magistrate No.1, Trichirappalli.

2.The petitioner and her son, who came from Malaysia on 21.05.2019 were intercepted at Trichy International Airport and on examination, 10 foreign made 24 carat gold bars and 4 gold chains totally weighing 5.461 grams worth about Rs.1,72,89,526/- were seized and both of them were arrested and remanded to judicial custody for the offence under sections 135(1)(a) and 135(1)(b) of the Customs Act and later, they were released on bail on 10.07.2019. The petitioner has to face adjudication as well as the criminal proceedings in India and admittedly, the petitioner is a Malaysian Nation having Malaysian Passport. The petitioner filed petition in CrI.MP No.3247 of 2019 before the Judicial Magistrate No.1, Trichy, seeking return of her passport to travel Malaysia. The said petition was dismissed on 27.09.2019. Aggrieved by the said order, the petitioner is before this court.



4. The main contention raised on the side of the petitioner/accused is that the main object of enactment of the Customs Act is to recover the excise duties and not to punish for infringement and the petitioner and her son was intercepted at the Airway Bridge and they never attempted to smuggle the gold into India and the petitioner has not done any overt-act to pass through the green channel and the petitioner lost the valuable opportunity to declare and pay the customs duty and if the petitioner was permitted to move the arrival hall, she would have declared the gold and paid the duty and since she was under the control of the Customs Officers, she could not make proper declaration about the gold and pay appropriate duty and the act of the Customs Officers is premature and the same is abuse of process of law and no statement was given by the petitioner and the petitioner is an Indian by origin and the relatives of the petitioner are residing in India, neither the Investigating Officer nor the Court have the power to impound the passport pending investigation or trial and only the Passport Authority can impound the passport and prays that the criminal revision has to be allowed. For that, the learned counsel for the petitioner submitted a ruling reported in **2008-1-LW (Cr1) 503 (Suresh Nanda Vs. CBI)** to show that only the Passport Authority has the power to impound the passport. Further, the learned counsel for the petitioner submitted that the petitioner's personal passport being held by the officers is clearly without any authority of law and for that, the learned counsel for the petitioner submitted a ruling reported in **2011(1)MLJ (Cr1) 326 (Veenita Gupta Vs. Deputy/Superintendent of Police, CBI, Chennai)**, wherein it has been held as follows:—

"In the above judgment the Hon'ble Madras High Court stated that the police are not empowered to retain the passports of the accused for the purpose of evidence of the prosecution of proof of the charges levelled against the provisions as the certified Xerox copies of the same can be exhibited as evidence in trial.

Passport Act which is special enactment while dealing with the impounding of passport will prevail over the provisions of the Criminal Procedure Code which is general law.

Impounding of passport cannot be done by the court under section 104 of Cr.P.C through it can impound any other document or thing."

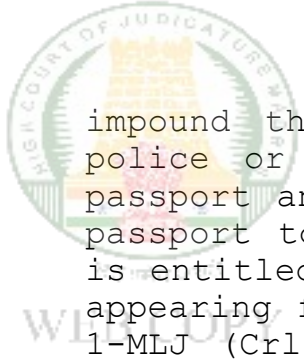
and further, the learned counsel for the petitioner submitted that the seizing of personal passport has also deprived the petitioner's opportunity to challenge the same which remedy is provided under the



5. On the other hand, the learned Special Public Prosecutor appearing for the respondent submitted the manner of concealment done by the petitioner and her son that they had no intention to clear the goods by declaration to the customs and after payment of appropriate duty and the entire proceedings were conducted in the presence of two independent witnesses and the petitioner and her son had voluntarily gave statement admitting their involvement in the smuggling of gold items of foreign origin into India from Malaysia by concealing in their luggage and stated that they were not the owner of the goods and in this case, they have to face all the legal proceedings in India and only after the procedures are completed, the petitioner is free to leave India and if the passport is returned to the petitioner at this stage, the petitioner would flee to Malaysia and she will not return to India to face the trial and other legal proceedings and prays that the criminal revision has to be dismissed.

6. It is admitted by the respondent that the petitioner is the origin of India. The main contention of the petitioner is that only the Passport Authority has the power to impound the passport. In this case, the passport of the petitioner was in the custody of the court. The learned counsel appearing for the petitioner submitted that section 104 of the Code of Criminal Procedure authorised the court to impound the document or things produced before it and where there is a special Act dealing with specific subject, resort should be had to that Act instead of General Act, for the matter connected with the specific Act and a court can impound the passport and for that, the learned counsel appearing for the petitioner submitted the ruling reported in **AIR 1966 SC 135 (Damji Valaji Shah and another Vs. LIC of India and others)** and **1999(7) SCC 76 (Gobind Sugar Mills Ltd. Vs. State of Bihar and others)** and **AIR 1999 SC 3125 (Belsund Sugar Co. Ltd., Vs. State of Bihar and others)** and section 104 of the Criminal Procedure Code authorised the court to impound any document or thing produced before it and when there is a special Act dealing with specific, resort should had to that Act instead of general Act, for the mother corrected with the Specific Act and as the Passport Act is a special Act, the rule that general provision should yield to the specific provision is to be applied.

7. In this case, the Passport Act is a special Act and section 104 of the Criminal Procedure Code is a general provision for impounding any document or thing and the special Act only prevails over the general Act as against the passport and thus by necessary implication, the power of Court to impound any document or thing produced before it would exclude passport and the respondent has not taken any steps to impound the passport under the Passport Act. As per section 10(3) of the Passport Act 1967, the impounding of a passport can only be done by the Passport Authority and only the Passport Authority has to decide whether the passport of the petitioner is impounded or not by giving reasonable opportunity to the petitioner. Further, the learned counsel appearing for the petitioner submitted that the police or the court has no power to



impound the passport and when the passport was returned by the police or the court, the petitioner is entitled to receive the passport and the police has the power to take steps to impound the passport to the passport authorities and prays that the petitioner is entitled to receive the passport. For that, the learned counsel appearing for the petitioner submitted the ruling reported in 2013-1-MLJ (Cr1) 720 (M.Kaja Mohideen Vs. Senior intelligence Officer, DRI, Coimbatore), 2008(1) MLJ (Cr1) 1195 (Suresh Nanda Vs. Central Bureau of Investigation) and 2011(1)MLJ (Cr1) 325 (Veenita Gupta Vs. DSP, CBI Anti-Corruption BR, Chennai).

8.In this case, the learned Special Public Prosecutor submitted that if the court ordered to release the passport, there is a chance for the petitioner to abscond from the clutches of law. In this case, it is to be decided is that whether the police or court has the power to impound the passport. As per section 10(3) of the Passport Act, only the passport authorities has the power to retain the passport. Hence, this court is of the considered view that the trial court is to be directed to return the passport of the petitioner with certain conditions and the respondent may take steps to impound the passport of the petitioner.

9.In the result, this criminal revision is **partly allowed**. The learned Judicial Magistrate No.1, Tiruchirappalli is directed to return the passport of the petitioner within a period of two weeks from the date of receipt of a copy of this order. Further, the petitioner is directed not to leave India till the disposal of the main case before the trial court. The concerned Passport Authority is at liberty to impound the passport of the petitioner, in accordance with law. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To,

1.The Judicial Magistrate No.1,
Trichirappalli.

2.The Chief Judicial Magistrate, Trichy.



3.The Senior Intelligence Officer, DRI
Madurai Sub-Regional Unit No.7-1-32,
Mahatma Gandhi Nagar,
Main Road, Madurai.

4.The Special Public Prosecutor for Intelligence
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Passport Officer / Authority
Trichirappalli.

+1 CC to Mr.S.KAMESHWARAN, Advocate (SR-3983[F] dated 30/01/2020)

+1 CC to Mr.C.ARULVADIVEL SEKAR, Advocate (SR-4047[F] dated
31/01/2020)

Judgment made in
Cr1.R.C (MD) No.815 of 2019
30.01.2020

VB(11.02.2020) 5P 8C