



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
18.11.2021	03.12.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. NO.20411 OF 2021
CRL. O.P. NO. 20337 OF 2021
AND

W.M.P. NOS. 21671, 21672 & 22807 OF 2021
CRL. M.P. NO. 11067 OF 2021

W.P. NO. 20411 OF 2021

Leena Manimekalai

.. Petitioner

- Vs -

The Regional Passport Officer
Chennai Royala Towers No.2 & 3
IV Floor, Old No.785, New No.158
Anna Salai, Chennai 600 002.

.. Respondent

Crl. O.P. NO. 20337 OF 2021

Susi Ganesan

.. Petitioner

- Vs -

Leena Manimekalai

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records of the respondent and quash the order dated 9.9.21 bearing Letter Reference No.IMP/311192857/21.

Criminal Original Petition filed u/s 482 Cr.P.C. praying this Court to set aside the order of the learned Principal Sessions Court, Chennai, in Crl.R.C. No.85/2021 dated 20.10.21 in Crl. M.P. No.119 of 2020 dated 6.9.2021 in C.C. No.344 of 2019.



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For Petitioner : Mr.Abdukumar in WP 20411/21
Mr.D.Alexis Sudhakar in CrI. OP 20337/21
For Respondents : Mr.Anbdukumar in CrI. OP 20337/21
Mr.Infant Dinesh, CGSC in WP 20411/21
For Intervener : Mr.D.Alexis Sudhakar in W.P. 20411/21

COMMON ORDER

While the writ petition has been filed against the order passed by the respondent impounding the passport of the petitioner, the criminal original petition has been filed to set aside the order passed by the learned Principal Sessions Court in and by which the order of the Magistrate directing impounding of the writ petitioner's passport has been set at naught.

2. As the facts surrounding the filing of both the petitions are intertwined, on the request made by the learned counsel on either side and on the directions of the Hon'ble Chief Justice, both the matters are listed today before this Court for hearing.

3. For the purpose of convenience, the petitioner in the writ petition will be referred to as the first party and the petitioner in the criminal original petition will be referred to as the second party. The facts leading to the filing of the above petitions before this Court, is briefly stated thus :-

A private complaint u/s 200 Cr.P.C. was lodged against the 1st party by the 2nd party before the IX Metropolitan Magistrate, Saidapet, Chennai, alleging that the posts in the social media by the 1st party against the 2nd party has tarnished the image of the 2nd party in the eyes of the general public and, thereby, the 1st party has committed an offence of defamation u/s 500 IPC. The said private complaint was taken on file and assigned C.C. No.344 of 2019 and ripe for trial. Pending trial, CrI. O.P. No.11681 of 2020 was filed before this Court in which this Court had directed the court below to dispose of the case within a period of three months. In the light of the said order, CrI. M.P. No.119/2020 was filed before the IX Metropolitan Magistrate Court, alleging that the 1st party is likely to leave the jurisdiction of the Court as she has got an admission at York University, Canada, for the purpose of studies and, therefore, there is every likelihood of the 1st party not attending the trial and her absence would cause irreparable damage and cause hardship to the 2nd party. With the aforesaid prayer, the miscellaneous petition was filed u/s 104 Cr.P.C. for a direction to the passport authorities to impound the passport of the 1st



party u/s 10 (3) (e) of the Passports Act, 1947 to prevent the 1st party from leaving India.

4. Pursuant to the said petition in Crl. M.P. No.119/2020, after hearing either side, the court below allowed the said prayer and directed the Passport authority to impound the passport of the 1st party u/s 10 (3) (e) of the Passports Act until further orders.

5. Against the aforesaid order directing impounding of the passport, the 1st party filed revision before the Principal Sessions Judge, Chennai in Crl. R.C. No.85/2021. The appellate court, after hearing either side, allowed the revision setting aside the order of the trial court directing impounding of the passport holding that court cannot directing impounding of the passport on a petition u/s 104 Cr.P.C.

6. In the meanwhile, pursuant to the order passed by the trial court, the passport authority, vide an email dated 8.2.2021 issued a show cause notice seeking explanation as to why action should not be taken to impound the passport of the 1st party, bearing No.Z4015275 u/s 10 (3) (e) of the Passport Act on the ground that a criminal case is pending before the Court as also u/s 12 (1)(b) of the Passport Act. On receipt of the said show cause notice, reply dated 15.3.21 was issued on which no action was taken. Thereafter, once again, vide email dated 23.8.21, another show cause notice was issued pointing to an adverse police verification report and called upon the 1st party to submit explanation as to why action should not be taken to impound the passport on account of pending criminal case against the 1st party for which reply was given by the 1st party on 24.8.21. However, without properly considering the reply of the 1st party, vide email dated 9.9.21, the impugned order, impounding the passport of the 1st party has been passed aggrieved by which the present writ petition has been filed.

7. Learned counsel appearing for the 1st party submitted that the direction by the trial court to impound the passport of the 1st party is wholly unsustainable order, as the court is not vested with power to cause direction on the Passport Authority to impound the passport u/s 10 (3)(e) of the Passport Act. It is the further submission of the learned counsel for the 1st party that the Passport Act is a special enactment and the power of the Court to impound the passport u/s 104 Cr.P.C. would yield to the special provision and what is codified in the special enactment would survive over the general enactment. That being the case, the trial court passing an order has been rightly set aside by the appellate court.



8. Learned counsel appearing for the 1st party further submitted that the crime alleged against the 1st party is not a heinous offence, which requires impounding of the passport. At best, the sentence that could be passed in the said case is limited to below two years and that being the case, the action of the respondent in impounding the passport at the behest of the letter written by the law enforcing agency pointing out that a criminal case is pending against the 1st party is bad in law and on facts. Further, it is the submission of the learned counsel for the 1st party that the criminal case has not been initiated for any act committed by the 1st party by the law enforcing agency; rather the criminal action is on the basis of the private complaint lodged by the 2nd party against the 1st party for certain acts, which are alleged to have defamed the 2nd party. The said private complaint cannot be equated to a normal complaint laid by the law enforcing agency for any penal offence committed by an individual.

9. It is the further submission of the learned counsel for the 1st party that if the passport authority impounds the passport of individuals, who are alleged to have committed the act of defamation u/s 500 IPC, which is to be construed as a heinous criminal offence, then a chunk of the passport holders would be losing the passport, as the social media tag under which the 1st party is alleged to have defamed the 2nd party extends quite long.

10. It is the further submission of the learned counsel for the 1st party that the show cause notice also reveals non-application of mind, as the said show cause notice proceeds on the footing that the 1st party has not divulged the details about the criminal offence pending against the 1st party, though on the date when the application for passport was submitted, there was no criminal case pending against the 1st party and, therefore, the said show cause notice premising that certain materials particulars have not been divulged is wholly erroneous and not made out by the documents available before the passport authority.

11. It is the further submission of the learned counsel for the 1st party that the show cause notice dated 23.08.21, is bereft of any particulars with regard to the adverse police report and the petitioner having given her explanation to the said show cause notice, however, the impugned order passed by the passport authority reveals total non-application of mind as the impugned order specifies that no response was given by the 1st party, but in actuality, the 1st party has submitted her detailed explanation to the said show cause notice. The non-application of mind on the part of the passport authority vitiates the impugned order.



12. It is further submitted by the learned counsel for the 1st party that the 1st party intends to continue her higher studies for which necessary formalities stood completed and only due to the pandemic situation the movement of the 1st party was restricted. Further, it is submitted that the 1st party has no intention to evade the trial and would be fully available when her presence is needed and summons requiring her presence are served on her. It is further submitted that the 1st party is a law abiding citizen and would scrupulously adhere to the summons issued by the trial court and merely because a private complaint, alleging criminality committed by the 1st respondent has been filed, that should not be put against her to curtail her rights to right to education. Therefore, it is prayed that this Court may allow the writ petition by setting aside the order of the passport authority directing impounding of the passport of the 1st party.

13. In spite of notice, no counter has been filed on behalf of the respondent/passport authority. However, learned standing counsel appearing for the passport authority submitted that on receipt of report from the law enforcing agency relating to adverse report showing criminal case pending against the 1st party, show cause notice was issued to the 1st party and after obtaining the reply, the explanation not being satisfactory, the passport authority had impounded the passport for violation u/s 10 (3)(e) of the Passport Act by virtue of the power vested in the said authority. It is further submitted by the learned standing counsel for the respondent that liberty has also been given to the 1st party to file fresh application with all the details and the authority would consider the said application in accordance with law.

14. It is the further submission of the learned standing counsel for the respondent that Section 10 (3) (e) of the Passport Act only speaks about criminal case pending against a person holding a passport and it does not distinguish the type of cases and in the said backdrop, the passport authority, on the strict interpretation of the provision of Section 10 (3)(e) of the Passport Act, has acted in a bona fide manner and had impounded the passport of the petitioner after affording due opportunity to the 1st party and, therefore, the order does not suffer the vice of illegality or arbitrariness or unreasonableness.

15. Learned counsel appearing for the 2nd party, who has filed intervening petition in respect of the writ petition filed by the 1st party submitted that the 1st respondent is trying to flee from the jurisdiction of this Court after causing irreparable damage to his reputation. It is the further submission of the learned counsel for the 2nd party that the 1st



party is merely trying to drag on the trial without appearing before the court, thereby the 2nd party is put to grave prejudice and hardship.

16. It is the further submission of the learned counsel for the 2nd party that the trial court has appreciated all the above aspects and had directed impounding the passport of the 1st party, mainly for the reason that the 1st party is trying to adopt dilatory tactics by not appearing for the hearing, which had prompted the said order and the above aspect has not been appreciated in proper perspective by the appellate court which has erroneously set aside the said order. Therefore, it is submitted for the early completion of the trial it is just and necessary that the presence of the 1st party within the jurisdiction of this State is required and, therefore, the impounding of the passport of the 1st party is mandatory for the proper conduct of the trial and, therefore, prays for dismissal of the writ petition and also for setting aside the impugned order passed by the appellate court by restoring the order passed by the trial court.

17. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

18. The question in the present case revolves around a very narrow campus. Whether the passport impounded by the authority is based on just and reasonable grounds and within the touchstone of the provisions as laid down under the Passports Act.

19. It is borne out by record that the trial court, on the application of the 2nd party, had passed directions to the passport authority to impound the passport of the 1st party. The fact, which had weighed much in the mind of the trial court was the act of the 1st party in seeking numerous adjournments in spite of the directions of this Court in the earlier round of litigation to complete the trial expeditiously. To further the said end, the trial court had directed impounding of passport. However, it is to be pointed out that for non-appearance of the 1st party, no summons or warrant has been issued. It is also borne out by record that on some of the occasions, the 1st party was represented through counsel and memo have also been filed.

20. It has been consistently held by this Court as well as the Hon'ble Apex Court that the Courts are not empowered to pass direction for impounding the passport u/s 104 Cr.P.C. and it is purely within the domain of the passport authority to conduct a proper enquiry and, thereafter, take decision for impounding the passport. This Court is not inclined to cloud this order with



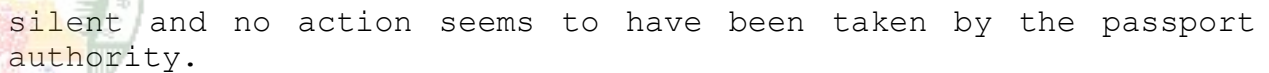
reproducing very many judgments on the above aspects and suffice to state that the order of the trial court directing impounding of passport is beyond its jurisdiction. In the above backdrop, the order of the appellate court setting aside the direction of the trial court impounding the passport is based on proper application of law and does not require interference.

21. Now coming to the impounding of passport by the passport authority, it is the stand of the passport authority that based on the communication which emanated from the law enforcing agency relating to pendency of criminal case against the 1st party, after following the due process of law, viz., issuing of show cause notice and receiving reply, the passport of the 1st party stood impounded. Therefore, there being no infraction of the provision of law, as mandated, the prayer of the 1st party deserves to be negatived.

22. To appreciate the above contention, it is but necessary to delve into certain factual aspects, which are relevant for consideration of the issue.

23. The 1st party was initially holding passport bearing No.G8049321, which was due to expire in the year 2017 and, therefore, she applied for renewal of the passport and after following all the procedural formalities, a fresh renewed passport, bearing No.Z4015275 was issued to the 1st party on 23.3.2017. The above fact is not in dispute as the copy of the issued passport is filed in the typed set of documents. Subsequent to the issuance of the aforesaid passport, a complaint u/s 200 Cr.P.C. has been filed before the trial court by the 2nd party for an offence u/s 500 IPC against the 1st party during November, 2018, on which summons were issued and pending trial, order has been passed by the trial court for a direction to the passport authority to impound the passport on the application filed by the 2nd party, which has subsequently been set aside by the appellate court, which has been approved by this Court above.

24. It is further borne out by record that first show cause notice dated 8.2.2021 has been issued by the respondent authority calling upon the 1st party to explain as to why action for impounding of passport should not be taken u/s 10 (3) (e) in view of pending criminal case before the Court and also u/s 12 (1) (b) of the Passports Act, which details have not been disclosed by the 1st party at the time of submission of renewal application. To the aforesaid show cause notice, explanation dated 15.3.2021 has been filed by the 1st party. All the above communications have been through e-mail, which are not in dispute. Further to the above communications, the matter stood



notice
with re

"10. Variation, impounding and revocation of
passports and travel documents

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

12. Offences and penalties

(a) contravenes the provisions of section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

27. It is not in dispute that the renewal passport was issued to the 1st party as early as on 23.3.17, on which date, no qualms was raised by the respondent relating to any criminal case pending against the 1st party and the passport of the 1st party was renewed and a fresh passport was issued. From the above, the only inference that could be drawn is that as on the



date of making the application by the 1st party, there is neither infraction of Section 10 (3) (e) nor 12 (1) (b). The case against the 1st party, based on the private complaint made by the 2nd party, had culminated into a complaint only in November, 2018, and, therefore, on the crucial date when passport application was made, there was no criminal case pending against the 1st party.

28. A private complaint u/s 200 Cr.P.C. came to be lodged at the behest of the 2nd party during November, 2018 and, thereafter, after series of swaggering between the courts and trial, the order has been passed by the trial court directing impounding of the passport.

29. However, in the above factual background, this Court is at a loss to understand as to the genesis of the show cause notice dated 8.2.21 citing suppression of material relating to criminal case by the 1st party in her application, as Section 12 (1) (b) of the Passports Act has been invoked. When the private complaint itself has been lodged against the 1st party only in November, 2018, there was no criminal case pending against the 1st party when application for renewal of passport was made during March, 2017 as without quarrel the passport was renewed. Further, it could safely be presumed that at the time of renewal of the passport, the passport authority would definitely have called for report from the law enforcing agency with regard to the 1st party and only after satisfying itself, the renewal of passport would have been processed. That being the case, invocation of Section 12 (1) (b) against the 1st party clearly shows total non-application of mind on the part of the respondent authority.

30. Further, it is to be pointed out that no action has been taken by the respondent authority pursuant to the receipt of the explanation from the 1st party to the first show cause notice. The whole issue was put to rest until 6.8.21 when the order directing impounding of passport has been ordered by the trial court. Subsequent to the said order of the trial court, on 23.8.21, the second show cause notice seems to have been issued by the respondent authority, wherein specific attention of the 1st party is drawn to the receipt of an adverse police verification report with regard to the application of the petitioner for renewal of passport dated 22.3.17. In this backdrop, a perusal of the materials clearly show that the passport renewal has been made as early as on 23.3.17, on which date, no adverse criminal complaint was said to have been subsisting against the 1st party.

31. When there was no criminal case against the 1st party on the date of issuance of passport, the only inference that could



be drawn is that the passport authority, acting on the orders of the trial court, has invoked the power vested under it u/s 10 (3) (e) of the Passports Act to issue the show cause notice and, consequently, impound the passport. The above view of this Court gains further strength from the fact that while the show cause notice details about an adverse police verification report disclosing criminal case pending against the 1st party, however, no materials whatsoever, detailing the nature of the adverse police verification report is put to the 1st party, nor such a material is placed before this Court to give credence to its stand of impounding the passport. Merely quoting some police verification report without actually putting the 1st party on notice about the same and claiming that criminal case is pending before the court would not suffice to pass the impugned order impounding the passport.

32. Section 10 (3) (e) of the Passports Act pertaining to pendency of criminal proceedings in any court of law committed by the holder of the passport is pressed into service to claim that the pending criminal case before the trial court was the reason for impounding the passport. The said fallacious reasoning of the respondent authority exhibits the lack of understanding of law and also the provisions governing impounding of passport.

33. If the passport authority is invoking the provisions of Section 10 (3) (e) on the basis of the orders passed by a court of law, necessarily an advert to Section 10 (3) (h) is mandatory, as without the passport authority being brought to notice about the passport holder evading warrant or summons or warrant of arrest by a court of law, the passport authority cannot act on the alleged report of the law enforcing agency and impound the passport, more so when on the crucial date, i.e., the date of renewal, no criminal case was pending against the 1st party. In this case, as already pointed out, there is no police verification report tabled to show that that 1st party has contravened Section 10 (3) (e) at the time of applying for passport.

34. The passport authority not having acted on the explanation given by the 1st petitioner to the show cause dated 8.2.21, wherein identical allegations have been levelled against the 1st party, but without acting on the said explanation, thereafter, had issued the second show cause notice on 23.8.21, not on the basis of any material which has been suppressed by the 1st party, but more on the orders of the trial court being brought to the knowledge of the respondent authority by the law enforcing agency. The said act of the passport authority impounding the passport of the 1st party, in the above backdrop of the events, not only reveals total non-application of mind to



the provisions of law which have been taken aid of to pass the said order, but also no proper reasoning has been given in the said order to establish its case for impounding of the passport. In such a scenario, this Court is of the considered view that the impugned order passed by the respondent/passport authority deserves to be set aside.

35. One more aspect, which needs to be pointed out is that the act of the passport authority appears to be very strange. Offences of criminal nature, which have far reaching consequences and more penal in nature, which affects the society, wherein persons who have committed such heinous offences, being holders of passport, in such of those cases, seldom the passport authority, invoking its powers u/s 10 (3) (e) of the Act, impounds the passport of such of those individuals. Yet, for an offence, alleged to have been committed u/s 500 IPC and that too on a private complaint, the passport, without any rhyme or reason, after a lapse of four years from the date of issuance of passport has taken the extreme step of cancelling the passport of the 1st party, which act does not augur well with this Court. However, judicial discipline warrants this Court to refrain from dealing any further on this aspect.

36. Though this Court has held that the impugned order is bad and had quashed the same, however, it should not be lost sight of that this Court, in the earlier round of litigation, had directed the trial court to complete the trial, expeditiously. Such being the case, it is expected of the 1st party to submit herself to the rigours of trial and have the same completed without getting any unnecessary adjournment or absenting herself from the hearings. It is not that the 1st party should be present in person for all the hearings, but definitely, the 1st party should be represented by a counsel at all the hearings so that the trial is taken to its logical end at an early date so as to avoid multiplicity of litigations and mud slings at each other. As and when the presence of the 1st party is required, requisite summons shall be issued by the trial court to the 1st party well in advance and to this end, if the 1st party intends to proceed overseas for doing her further education, necessary plan be submitted in advance by the 1st party before the trial court and the trial court shall frame the trial schedule keeping in mind the necessity for the parties to be present at the time of trial and take steps to complete the trial as expeditiously as possible. It is also made clear that the 1st party shall not adopt any dilatory tactics to circumvent the trial and prolong the same and any such act on the 1st party will be viewed seriously. In the same breadth, the 2nd party also shall co-operate with the trial court in the schedule framed for early disposal of the trial.



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37. In the result,

i) W.P. No.24011 of 2021 is allowed and the impugned order passed by the respondent/passport authority dated 9.9.2021 is set aside and the respondent/passport authority is directed to release the passport back to the 1st party within a period of one week from the date of receipt of a copy of this order;

ii) Crl. O.P. No.20337/2021 is dismissed with the observations and directions as issued in Para-36 of the order above.

iii) Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The IX Metropolitan Magistrate,
Egmore, Chennai.
2. The Principal Sessions Court,
Chennai.
3. The Regional Passport Officer,
Chennai Royala Towers No.2 & 3,
IV Floor, Old No.785, New No.158,
Anna Salai, Chennai 600 002.

+2ccs to Mr.D.Alexis Sudhakar, Advocate, S.R.No.63941 & 63942

+3ccs to Mr.V.S.Senthil Kumar, Advocate, S.R.No.63924

W.P. NO.20411 OF 2021
CRL. O.P. NO. 20337 OF 2021

PL(CO)
RLP(15/12/2021)