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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.10.2021

Pronounced on : 04.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.468 and 469 of 2019 & 480 and 481 of 2021

Crl.R.C.Nos.468 and 469 of 2019

Kweon Mihwa ... Petitioner/Accused No.2 in
Crl.R.C.No.468 of 2019

Moon Seonmi ... Petitioner/Accused No.3 in
Crl.R.C.No.469 of 2019

Vs

1.The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
T.Nagar,
Chennai.

2.The Chief Immigration Officer,
Shastri Bhavan,
Haddows Road,
Chennai-600 006.

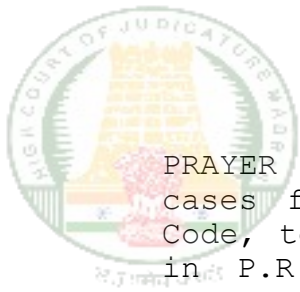
(2nd respondent is Suo motu impleaded as per the order of this
Court dated 11.06.2019 made in Crl.R.C. Nos.468 and 469 of 2019)

3.Union of India
represented by its Secretary, Ministry of Home Affairs
New Delhi.

4.The State of Tamil Nadu,
Public Home Department,
Fort S.T.George,
Chennai-9.

...Respondents in both Crl.R.C

(3rd and 4th respondents are Suo motu impleaded as per the order
of this Court dated 09.07.2019 made in Crl.R.C. Nos.468 and 469
of 2019)



PRAYER in Crl.R.C.Nos.468 and 469 of 2019: Criminal Revision cases filed under Article 397 r/w 401 of Criminal Procedure Code, to call for the records in Crl.M.P.Nos.993 and 994 of 2019 in P.R.No.37 of 2018 on the file of the Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai and set aside the order dated 16.05.2019 and return the original Passport of the petitioner bearing No.M31029853.

For Petitioner : M/s.F. Sajitha Fraveen
(In both Crl.R.Cs)
For Respondent : Mr.N.P.Kumar
(In both Crl.R.Cs) Special Public Prosecutor for R1
Mr.B.Rabu Manohar
Senior CG PC for R2
Mr.S.Sugendran
Govt. Advocate (Crl.Side) for R4

Crl.R.C.Nos.480 and 481 of 2021

Kweon Mihwa ... Petitioner/Accused No.3 in
Crl.R.C.No.480 of 2021
Moon Seonmi ... Petitioner Accused No.2 in
Crl.R.C.No.481 of 2021

Vs

1.The Assistant Commissioner of Customs (Prosecution Unit-Air)
Meenambakkam,
Chennai-600 027. ... 1st Respondent in both
Crl.R.C.480 & 481/2021
2.Moon Seonmi ... 2nd Respondent in Crl.R.C.480/2021
3.Kweon Mihwa ... 2nd Respondent in Crl.R.C.481/2021
4.The Additional Director of General,
Directorate of Revenue Intelligence,
No.27, Adharsh Towers,
G.N.Chetty Road,
T.Nagar, Chennai.
In RR.No.37 of 2018. ...3rd Respondents in both Crl.R.C

PRAYER in Crl.R.C.Nos.480 and 481 of 2021: Criminal Revision cases filed under Article 397 r/w 401 of Criminal Procedure Code,

(i) call for the records of the case in Crl.M.P.No.926 and 927 of 2021 in E.O.C.C. No.14 of 2021 (Split up from E.O.C.C.No.141 of 2019) on the file of the Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai.



(ii) Examine the legality, Propriety and correctness of the proceedings before the Court below and of the findings in their orders.

(iii) Set aside the order 26.07.2021 of the learned Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai in Crl.M.P.Nos.926 and 927 of 2021 in E.O.C.C.No.14 of 2021 and direct the return of passport of the petitioner in the interest of justice and equity.

For Petitioner : M/s.G.Derrick Sam
for M/s.Hari Radhakrishnan
(In both Crl.R.Cs)
For Respondent : Mr.N.P.Kumar
(In both Crl.R.Cs) Special Public Prosecutor for R1
Notice served on R2
Mr.N.Suresh Kumar
Special Public Prosecutor for R3

COMMON ORDER

Originally, the petitioners were arrested and remanded to judicial custody on 30.11.2018 by order of the learned Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai-8 in R.R.No.37 of 2018 for the offence under Section 135 of the Customs Act and subsequently, they were released on bail on 29.01.2019. Thereafter, they have filed petitions in Crl.O.P. (MD).Nos.6816 and 6817 of 2019 for modification and the same was modified on 14.03.2019. Based on the modification, passports were seized from the petitioners by the respondents and the same were produced before the learned Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai-8. During the course of investigation, the petitioners filed applications before the learned Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai, in Crl.M.P.Nos.993 and 994 of 2019, to return the passports and that the petitions were dismissed on 16.05.2019. Challenging the same, the petitioners have filed Crl.R.C(MD)Nos.468 and 469 of 2019.

2. After investigation, the police has filed a complaint before the Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai-8 and the same was taken on file in E.O.C.C.No.14 of 2021, in which, the petitioners were arrayed as A2 and A3. During the pendency of the above said criminal case, the petitioners herein filed applications for compounding the offence and the same was allowed with sentence imposing the fine amount and all the conditions were duly complied with by the petitioners. Therefore, the petitioners were exonerated from the



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alleged complaint by order dated 16.04.2021 in Crl.M.P.No.865 of 2021 in C.C.No.14 of 2021. Since the petitioners were exonerated from the alleged offence, the petitioners have filed applications in Crl.M.P.Nos.926 and 927 of 2021, to return the passports and the same were dismissed. Challenging the said orders, the petitioners filed Crl.R.C.Nos.480 and 481 of 2021.

3. Since the subject matter is same and the petitioners/Accused 2 and 3 are same, this Court is passing the common order.

4. Admittedly, the petitioners involved in a criminal case, in which, the petitioners were arrayed as A2 and A3. Further, it is admitted that both the petitioners, during the pendency of the C.C, have filed the petitions for compounding the offence and the same were allowed and the offence is also compounded. Since they complied with the order of compound, the petitioners were exonerated from the offence.

5. Since the petitioners are Korean citizens and they cannot go back to their country unless the passports are returned, which are detained by the trial Court and therefore, they cannot move from the place. Hence, they filed the petitions to return the passports. Though the trial Court found that under Section 10(f) of the Act, the Court cannot impound the passport. But, however, this Court while modifying the bail condition directed the petitioners to surrender the passport before the trial Court and the trial Court has detained the passport unless on the legal proceedings is over. Therefore, Sections 6 and 10 (f) of the Act are not attracted. But as per the bail order, the petitioners have to co-operate for identification of A1 and unless they cannot identify A1, they cannot be permitted to leave from the place. If the passports are handed over to them, they leave from India and it is very difficult to secure them and it is very difficult to identify A1. Therefore, considering all the facts, the trial Court dismissed the petitions filed by the petitioners, since the legal proceedings is yet to be over.

6. Admittedly, the petitioners were exonerated from the offence and as on date there is no criminal case pending against them and the only reason for retaining the passport is that they have to identify A1 during the trial. The identification and examination of witnesses are not in the hands of the petitioners and it is the duty of the respondents. The Court can expediate the same and the petitioners cannot be detained indefinitely since they are not accused and only they are treated as witnesses for limited purpose. Therefore, unless any time is stipulated, the Court cannot pass a blanket order and therefore, the order passed by the trial Court is set aside.



7. However, the trial Court is directed to expedite the trial and the respondents are directed to examine the petitioners to identify A1 in this case within a period of three months from today and whatever the evidence can be obtained from them. In any case, within three months, the trial Court has to complete the proceedings regarding the examination of these petitioners for identifying A1. The Trial Court is directed to release the Passports and in case, there is any necessity, they can issue summons to the petitioners in future or otherwise even considering the technology advanced as on date and they can examine them through Video Conferencing and even A1 can be identified through the petitioners through Video Conferencing.

With the above directions, these Criminal Revision Cases are disposed of.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

tta

To

1. The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
T.Nagar, Chennai.
2. The Chief Immigration Officer,
Shastri Bhavan,
Haddows Road,
Chennai-600 006.
3. The Secretary,
Union of India,
Ministry of Home Affairs,
New Delhi.
4. The Secretary,
The State of Tamil Nadu,
Public Home Department,
Fort S.T.George, Chennai-9.
5. The Assistant Commissioner of Customs (Prosecution Unit-Air)
Meenambakkam,
Chennai-600 027.



6. The Additional Director of General,
Directorate of Revenue Intelligence,
No.27, Adharsh Towers, G.N.Chetty Road,
T.Nagar, Chennai.

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+1cc to Mr.B.Rabu Manohar, Senior Central GPC, SR. No.7219

Cr1.R.C.Nos.468 and 469 of 2019 &
480 and 481 of 2021

NRJK (CO)
PR (14/02/2022)