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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2021

PRONOUNCED ON : 12.01.2022

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case Nos.1413 and 1414 of 2019

CHITHRA @ AMUTHA VENKADESH

... Petitioner in Crl.R.C.No.1413 of 2019/Petitioner

K.PRASANNA VENKADESH

... Petitioner in Crl.RC.No.1414 of 2019/Petitioner

Vs.

State represented by

The Inspector of Police

Central Crime Branch

Coimbatore

Crime No.2 of 2018

... Respondent in both Crl.RCs/Respondent

COMMON PRAYER: The Criminal Revision case is filed under under Section 397 read with 401 of the Code of Criminal Procedure, 1973 praying to set aside the orders dated 21.06.2019 made in C.M.P.No.3158 of 2019 and Crl.M.P.No.3157 of 2019 on the file of the learned Judicial Magistrate No.III, Coimbatore, and to allow the above Criminal Revisions.

IN BOTH CRL.RCs.

For Petitioners : Mr.S.N.Arun Kumar for
M/s.M.Vinoth

For Respondent :Mr.S.Sugendran
Government Advocate (Crl. Side)

COMMON ORDER

The Criminal Revision cases have been filed against the orders dated 21.06.2019 made in C.M.P.No.3158 of 2019 and Crl.M.P.No.3157 of 2019 on the file of the learned Judicial Magistrate No.III, Coimbatore.

2. The respondent police registered the case in Crime No.2 of 2018 against the petitioners on 10.01.2018 for the offences under Sections 120B, 419, 420 of IPC and 66D of Information



Technology Act, 2000 and subsequently, seized the passports of the petitioners while arresting them and produced the same before the learned Judicial Magistrate-III, Coimbatore. During the pendency of the investigation, the petitioners approached the learned Magistrate invoking the provisions under Section 451 read with 457 of Cr.P.C. for return of passports in C.M.P.No.3158 of 2019 and Crl.M.P.No.3157 of 2019 and the learned Magistrate after enquiry, dismissed the petitions and refused to return the passports. Challenging the said orders of dismissal, the petitioners have filed the present revisions before this Court.

3. The learned Counsel for the petitioners would submit that the petitioners are in need of the passports for their day to day activities other and administrative work. He would further submit that the petitioners had filed applications before the Court below in C.M.P.No.3158 of 2019 and Crl.M.P.No.3157 of 2019 under Sections 451 read with 457 of Cr.P.C. seeking for return of passports and the learned Magistrate dismissed the same without considering the legal provisions that neither the Police Officer nor the Court has power to impound the passport. The power of impounding the passport is only vested with the passport authority and that Section 10 of the Indian Passport Act, 1967 contains the provisions as to who is the authority to impound the passport and how it can be held and that the learned Magistrate failed to consider the same and dismissed the applications which warrants interference of this Court. The learned Counsel further placed reliance on the order of this Court dated 01.02.2019 in Crl.RC.No.111 of 2019 wherein, the learned Counsel for the petitioner therein has referred the order of this Court in Crl.RC.No.1201 of 2018 dated 29.11.2018 in which, this Court, after taking note of the decisions of the Hon'ble Supreme Court reported in Suresh Nanda Vs. CBI (Appeal (Crl.) No.179/08 dated 24.01.2008 that the passport can be retained only by an order of passport authority under Section 10(3) of the Passport Act and even the Court cannot impound the passport though Section 104 Cr.P.C. vests the power on the Police Officer, it shall not prevail over the Passport Act, had allowed the petition. Therefore, the order of the learned Magistrate is liable to be set aside and the learned Magistrate has to be directed to return the passports of the petitioners.

4. The learned Government Advocate (Crl. Side) would submit that the petitioners are involved in a criminal case and while searching their house, the respondent police seized some documents and that the passports are one among them and during the pendency of the investigation, the petitioners filed applications before the Court below invoking Sections 451 read with 457 Cr.P.C. for return of passports and the same were



dismissed by the learned Magistrate. He would submit that during pendency of the investigation, the return of documents to the party, is the discretionary power of the Magistrate. Further, the case has been registered against the petitioners for the offences under Sections 120B, 419, 420 of IPC and 66D of Information Technology Act, 2000 and there is a possibility of the petitioners to escape to abroad by using the passports and it would be difficult to secure them if they abscond to abroad and the investigation would be protracted without any progress. Hence, considering the above said facts, the learned Magistrate rightly dismissed the applications and there is no reasons to interfere with the orders of the learned Magistrate.

5. Heard the learned Counsel for the petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent police and perused the materials on record.

6. Admittedly, the case has been registered against the petitioners in Crime No.2 of 2018 for the offences under Sections 120B, 419, 420 of IPC and 66D of Information Technology Act, 2000 and while arresting the petitioners, the respondent police seized some of the documents and the passports are one among those documents. Thereafter, during the pendency of the investigation, the petitioners approached the learned Magistrate invoking the provisions under Section 451 read with 457 of Cr.P.C. for return of passports in C.M.P.No.3158 of 2019 and Crl.M.P.No.3157 of 2019 and the learned Magistrate after enquiry dismissed the petitions by order dated 21.06.2019. As contended by the learned Counsel for the petitioners, this Court in Crl.RC.No.111 of 2019 by referring the earlier decision of the Hon'ble Supreme Court reported in Suresh Nanda Vs. CBI (Appeal (Crl.) No.179 / 08 dated 24.01.2008) set aside the order of the Magistrate and directed the learned Magistrate to return the passport. This Case is also identical to the above case. Therefore, the relevant paragraphs of the order of this Court in Crl.RC.No.111 of 2019 dated 01.02.2019 is extracted as follows;

3. Learned counsel appearing for the petitioner, at the outset, submitted that the rejection by the Judicial Magistrate is against the law laid down by the Hon'ble Supreme court and also the legal principles laid down by this Court stating that the Court cannot impound the passport as it was entirely within the domain of the Passport Issuing Authority to impound same under the Passports Act. Learned counsel drew the attention of this Court to the judgment of the Hon'ble Supreme Court rendered on this aspect in the case of Suresh Nanda - Vs - CBI (Appeal (Crl.) No.179/08 dated 24.1.2008). Learned counsel drew specific reference to paras 14 & 15 of the judgment, which is extracted hereunder for better clarity



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7. For the above said reasons, this Court finds that the order impugned in the revision is unsustainable in law and therefore, the same is set aside and the criminal revision is allowed. The learned Judicial Magistrate No.III, Coimbatore, is directed to return the passport to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

In view of the above, learned counsel for the petitioner submits that the above issue is no longer res integra and, therefore, the petitioner is entitled to the relief of return of his passport.

7. Considering the above said legal provisions and facts and circumstances of the case and since, neither the Police Officials nor the Court has authority to impound the passport, the orders in C.M.P.No.3158 of 2019 and Crl.M.P.No.3157 of 2019 dated 21.06.2019 passed by the learned Judicial Magistrate No.III, Coimbatore, are hereby set aside. The learned Magistrate is directed to return the passport to the petitioners.

8. However, since the petitioners are involved in a criminal case for serious offences under Sections 120B, 419, 420 of IPC and 66D of Information Technology Act, 2000, if the petitioners are allowed to go abroad, further proceedings in the case would be protracted. Therefore, the petitioners are restricted to go abroad by using the said passports. In case of any emergency, the petitioners shall approach the Magistrate and obtain necessary permission for leaving the country and it is made clear that without obtaining permission from the learned Magistrate, the petitioners shall not leave the country. If the petitioners violate the above condition, the learned Magistrate shall take necessary steps to impound the passports of the petitioners in accordance with law through the Passport Authority.

9. With the above directions, the Criminal Revisions Cases are allowed.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate No.III,
Coimbatore.

2. -do-Through The Chief Judicial Magistrate,
Coimbatore.

3. The Inspector of Police
Central Crime Branch, Coimbatore

4. The Public Prosecutor
High Court, Madras

+2ccs to Mr.M.Vinoth, Advocate SR.No.2864, 2865

Criminal Revision Case Nos.1413 and 1414 of 2019

SJ(CO)
GMY(23/02/2022)