

THE HON'BLE Dr. JUSTICE G. RADHA RANI

WRIT PETITION No.1155 OF 2021

ORDER:

This petition is filed by the petitioners challenging the proceedings of the 3rd respondent – Regional Passport Officer, Hyderabad, in impounding the passports of the petitioners vide order dated 06.03.2020, as illegal, arbitrary and contrary to the provisions of Section 10 of the Passports Act, 1967 (for short 'the Act') and consequently to set aside the same.

2. Heard the learned counsel for the petitioners and the learned Assistant Solicitor General of India for respondents 1 to 3.

3. The learned counsel for the petitioners submitted that the petitioners were allegedly involved in a case for the offence punishable under Section 138 of the Negotiable Instruments Act vide CC Nos.244 of 2013 and 245 of 2013 pending before the Special Magistrate Court-II, Visakhapatnam wherein their sister Smt. Leburu Latha instituted a complaint against the petitioners and arrayed them as Accused Nos.1 and 3. The petitioners were contesting the matter by engaging an Advocate. While the matter stood thus, the 3rd respondent issued a show cause notice to the petitioners on 05.09.2019

and directed them to furnish explanation regarding the pendency of criminal cases against them and to surrender the passports within 15 days from the date of receipt of the notice. Accordingly, the petitioners submitted their explanations on 18.09.2019 through an Advocate admitting that they were involved in CC Nos.244 and 245 of 2013 for the offence under Section 138 of the NI Act, but it was a summons case and was not a police case and no charge sheet was filed against them. The offence was compoundable and could be settled at any moment. They also admitted that they had taken an amount of Rs.15,00,000/- as hand-loan from the complainant and that they were ready to repay the said amount, but the complainant misrepresented before the court and obtained Non Bailable Warrants against them. The petitioners went to Qatar for livelihood and there was no ill-intention to abscond and escape from the liability.

3.1 Learned counsel for the petitioners further submitted that without considering the explanation submitted by the petitioners, the 3rd respondent again issued another show cause notice dated 06.01.2020 and directed the petitioners to submit their explanation and to surrender their passports otherwise he would initiate proceedings

under Section 10(3)(e) and (h) of the Act. The petitioners once again submitted their explanations on 24.01.2020 and 25.01.2020, respectively, requesting to drop the show cause notice. The 3rd respondent, without considering the explanations submitted by the petitioners on 18.09.2019, 24.01.2020 and 25.01.2020 passed the impugned orders dated 06.03.2020 impounding the petitioners' passports. The same was illegal, arbitrary and contrary to the provisions of Section 10 of the Act. He relied upon the judgments of the High Court of AP in **K. Sowmya v. The Regional Passport Officer and another**¹ and of the High Court of Delhi in **Ashok Khanna v. Central Bureau of Investigation**².

4. Learned Assistant Solicitor General of India submitted that the 3rd respondent received legal notice from the Advocate of Smt. Leburu Latha (complainant in CC No.244 of 2013 and CC No.245 of 2013 on the file of the First Special Magistrate Court, Visakhapantam) on 26.08.2019 requesting to impound the passports of the petitioners. The 3rd respondent issued show cause notices dated 05.09.2019 to both the petitioners and directed them to submit their explanation

¹ WP No.4370 of 2015, dated 16.08.2016

² CrI.M.A. No.4784/2019 in CrI.A.No.686 of 2018, dt.07.11.2019

regarding pending court cases against them and surrender their passports within 15 days. The 3rd respondent received another letter dated 23.12.2019 from the same counsel requesting to impound the passports of the petitioners by enclosing warrants of arrest dated 07.10.2016 & 17.10.2017 against the petitioners, respectively, in CC No.244 of 2013 and warrant of arrest dated 01.02.2017 against the 2nd petitioner in CC No.245 of 2013 on the file of First Special Magistrate Court at Visakhapatnam. As such, the 3rd respondent once again issued letter dated 06.01.2020 to the petitioners directing them to furnish explanation regarding pending court cases and to surrender their passports within 15 days. The 3rd respondent received the explanations of the petitioners sent through their counsel on 24.01.2020 and 25.01.2020, respectively. The petitioners admitted about the pendency of criminal cases against them but did not surrender their passports. In view of pendency of criminal cases vide CC Nos.244 and 245 of 2013 on the file of First Special Magistrate Court at Visakhapatnam against the petitioners, and as NBWs were issued against them by the said Magistrate and they were valid, the 3rd respondent impounded the passports of the petitioners on 06.03.2020

and communicated the same to them and prayed to dismiss the petition.

5. Perused the record. The petitioners are admitting about the pendency of CC Nos.244 and 245 of 2013 against them before the Court of First Special Magistrate, Visakhapatnam, respectively. Their contention is that the said cases are only summons cases and they are compoundable and the matter could be settled at any moment. But, admittedly the matter is not settled and as they are not appearing before the said court, the court had issued warrants of arrest against them in both the cases.

6. Section 10(3) of the Act deals with impounding of passport by the passport authority. Section 10(3)(e) of the Act is relevant to the issue in hand and hence, extracted as under:

“10. Variation, impounding and revocation of passports and travel documents.—

(1) ...

(2) ...

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

(a) ...

(b) ...

(c) ...

(d) ...

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport

or travel document are pending before a criminal court in India.

(f) ...

(g) ...

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.”

As per Section 10(5) of the Act:

“(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.”

7. The contention of the learned counsel for the petitioners was that the 3rd respondent had not considered the explanations submitted by the petitioners for the show cause notices issued against them, the orders passed for impounding the passports were non-speaking orders which were in violation of Section 10 of the Act.

8. The provisions of Section 10(5) of the Act would disclose that the passport authority shall record in writing a brief statement of the reasons for making such order and furnish a copy of the same to the holder of the passport or travel document on demand. The 3rd respondent in the impugned order dated 06.03.2020 had stated the reason for making such an order as that a criminal case was pending before the Court against the petitioners. The 3rd respondent admitted in his counter affidavit about receipt of replies given by the petitioners' counsel to the show cause notices issued to the petitioners and also stated that the warrants of arrest were issued by the concerned court against the petitioners.

9. As per the explanations given by the petitioners, through their counsel, they were residing in Qatar for their livelihood. As they were not appearing before the Court before which the cases were pending against them, the Court was compelled to issue warrants of arrest against the petitioners to seek their presence before the Court. As the 3rd respondent impounded the passports of the petitioners due to pendency of criminal cases against them and as they were not appearing before the concerned court and warrants of arrest were also

issued against them, this Court does not find any illegality in the orders issued by the 3rd respondent in impounding the passports of the petitioners.

10. In the decision relied by the learned counsel for the petitioners in **K. Sowmya's** case (1 supra), by observing the judgment of the Hon'ble Apex Court in **Suresh Nanda v. Central Bureau of Investigation** (2008 (3) SCC 674), the Court held that the Court has no power under the Passports Act, 1967 to impound the passport and it was the passport authority to exercise his discretion in impounding the passport and that the passport authority had not properly applied his mind and abdicated his power and requested the petitioner therein to obtain necessary orders from the Court for impounding of the passport. As such, the above judgment is not useful to the petitioners herein.

11. The facts of the case in **Ashok Khanna's** case (2 supra), relied by the learned counsel for the petitioners, are also not applicable to the present case. It was the case for renewal of the passport, but not impounding of passport.

12. Hence, in the facts and circumstances of the case, as the petitioners are not appearing before the Court where the cases are pending against them and not prosecuting them diligently and they were residing abroad and warrants of arrest were also issued against them by the concerned court, this Court does not find any illegality in the orders of the 3rd respondent –Regional Passport Officer, Hyderabad in impounding the passports of the petitioners.

13. In the result the writ petition is dismissed. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

June 17, 2022
KTL

Dr. G. RADHA RANI, J