



Crl.R.C.No.626 of 2023
and Crl.M.P.No.4726 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.626 of 2023
and Crl.M.P.No.4726 of 2023

Ransom Anselm Murray

... Petitioner

Vs.

1.State Rep. by
Inspector of Police,
Central Crime Branch,
EDF-II, Team-III,
Vepery, Chennai.

2.Prem Chand Jain

... Respondents

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to call for the records and set aside the impugned order dated 13.02.2023 made in Crl.M.P.No.42002 of 2022 in C.C.No.15341 of 2022 on the file of learned Metropolitan Magistrate Court for the Exclusive Trial of CCB Cases at Egmore.

For Petitioner : Mr.R.Prabhakaran

For R1 : Mr.R.Vinothraja, GA (Crl. Side)

For R2 : Mr.J.Selvaraja



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ORDER

Challenging the orders dated 13.02.2023 in Crl.M.P.No.42002 of 2022 in C.C.No.15341/2022 on the file of learned Metropolitan Magistrate Court for the Exclusive Trial of CCB Cases at Egmore, which was filed for return of the passport of the present revision petitioner that was seized in connection with Crime No.07/2020, the present revision has been filed.

2.The revision petitioner is the first accused in C.C.No.15341/2022 on the file of learned Metropolitan Magistrate Court for the Exclusive Trial of CCB Cases at Egmore. The second respondent/defacto complainant filed a petition before this Court in Crl.O.P.No.14898/2015 directing the Inspector of Police, St.Thomas Mount Police Station, Chennai to register an FIR on the basis of the complaint given by him against the accused 1 to 3. The said petition was allowed by this Court and the Inspector of Police, St.Thomas Mount Police Station registered FIR in Crime No.24/2016 against the present



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revision petitioner and two others for the offences punishable under Sections 406, 420 and 506(i) IPC. While the case was under investigation it was transferred to CCB, Greater Chennai Police since the amount allegedly misappropriated by the accused exceeded a sum of Rs.25,00,000/-. Thereafter, the defacto complainant filed a Crl.O.P.No.17060/2017 before this Court to transfer the case to CBCID and the said petition was allowed and thereafter, the case was transferred to CBCID, Metro Wing, Chennai and it was re-registered on 23.03.2020 in CBCID (M) Crime No.07/2020 under Sections 406, 420, 506 (i) IPC. The Central Crime Branch after completing investigation filed a positive final report before the concerned Court. During the course of investigation, a look out notice was issued to the Immigration Officer, New Delhi as against all the accused and on 03.08.2022 the present revision petitioner arrived at Bangalore Airport by Emirates Flight (EK 0568 from Dubai to Bangalore). The Immigration Officer handed over the accused to the Inspector of Police, St.Thomas Mount Police Station, Chennai and was remanded to judicial custody. Thereafter, the present revision petitioner was enlarged on bail vide orders of this Court in



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- i. The petitioner shall report before the learned Metropolitan Magistrate for exclusive trial of CCB cases and CBCID Metro Cases, Egmore, Chennai, on all working days at 10.30 a.m., until further orders;
- ii. The petitioner shall not abscond either during investigation or trial;
- iii. The petitioner shall not tamper with evidence or witness either during investigation or trial;
- iv. On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate / Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005)AIRSCW5560)];
- v. If the accused thereafter abscond, a fresh FIR can be registered under Section 229 A IPC.
- vi. It is made clear that in the event of petitioner filing any application before any Court seeking for return of passport, the defacto complainant shall be put on notice.



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3. The present revision petitioner filed a petition under Section 451 Cr.P.C. in Crl.M.P.No.42002/2022 before the learned Metropolitan Magistrate Court for the Exclusive Trial of CCB Cases at Egmore for return of his passport bearing No.517061539 which was seized by the police at the time when he was remanded to judicial custody. The said petition was dismissed by the trial Court vide orders dated 13.02.2023 on the ground that if the passport is given to the present petitioner he would not appear before the Court and would abscond.

4. Aggrieved over the said orders, the present revision is filed.

5. Heard, Mr.R.Prabhakaran, learned counsel for the revision petitioner, Mr.R.Vinothraja, learned Government Advocate (Crl. Side) for the first respondent and Mr.J.Selvaraja, learned counsel for the second respondent.



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6. Mr.R.Prabhakaran, learned counsel for the revision petitioner contended that the revision petitioner is ready to file an affidavit before the trial Court that he would not go out of India and prayed that his passport may be returned to him.

7. In the instant case, at the time of arresting the present revision petitioner the Inspector of Police, St.Thomas Mount Police Station seems to have seized the passport and produced the same before the concerned jurisdictional magistrate. The passport authority did not pass any order of impounding the passport. It was only the police who has retained possession of the passport and such practice adopted by the police was deprecated by the Hon'ble Supreme Court time and again.

8. In the decision in ***Suresh Nanda Vs Central Bureau of Investigation*** reported in ***(2008) 3 SCC 674*** it was held thus :

"14. In our opinion, while the police may have the power to seize a passport under Section 102(1) CrPC, it does not have the power to impound the same. Impounding of a passport



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can only be done by the Passport Authority under Section 10(3) of the Passports Act, 1967.

15.It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property or document. In Law Lexicon by P. Ramanatha Aiyar (2nd Edn.), the word “impound” has been defined to mean,

“to take possession of a document or the like for being held in custody in accordance with law”.

Thus, the word “impounding” really means retention of possession of goods or a document which has been seized.

16.Hence, while the police may have power to seize a passport under Section 102 CrPC if it is permissible within the authority given under Section 102 CrPC, it does not have power to retain or impound the same, because that can only be done by the Passport Authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 CrPC), thereafter the police must send it along with a letter to the Passport Authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter for the Passport Authority to decide whether to impound the passport or not."



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9. In the instant case, it is not the case of the police that they sent a letter to the passport authority along with the passport stating that seized passport deserves to be impounded under Section 10(3) of Passport Act. In such circumstances, the order passed by the learned Metropolitan Magistrate Court for the Exclusive Trial of CCB Cases, Egmore, Chennai, is set aside. The revision petitioner is directed to file an affidavit before the learned Metropolitan Magistrate Court for the Exclusive Trial of CCB Cases, Egmore stating that he would not leave India and on receipt of such an affidavit, the concerned Court shall return the passport to the present revision petitioner.

10. With the above observations, the Criminal Revision is disposed of. Consequently, connected Criminal Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

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To

1.State Rep. by
Inspector of Police,
Central Crime Branch,
EDF-II, Team-III,
Vepery, Chennai.

2.The Metropolitan Magistrate Court for the Exclusive Trial of CCB
Cases at Egmore.

3.The Section Officer, Criminal Section, High Court, Madras.



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R. HEMALATHA, J.
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