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Crl.R.C.No.630 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.R.C.NO.630 OF 2023

Karnam Sai Dileep

... Petitioner

Vs.

State Rep. By
Inspector of Police
Forgery Investigation Wing
Central Crime Branch – I
Chennai.
(Crime No.110 / 2022)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 31.01.2023 in Crl.M.P.No.2719 of 2023 in Crime No.110 of 2022 on the file of the learned Chief Metropolitan Magistrate Court, Egmore.

For Petitioner : Mr.T.Sai Krishnan
For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.Side)

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Crl.R.C.No.630 of 2023

ORDER

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The petitioner has filed the present Criminal Revision seeking to set aside the order dated 31.01.2023 passed in Crl.M.P.No.2719 of 2023 in Crime No.110 of 2022, by the learned Chief Metropolitan Magistrate Court, Egmore.

2. The learned counsel for the petitioner submitted that the respondent police registered a case against the petitioner in Crime No.110 of 2022 for the offences under Sections 465, 468 and 471 IPC, upon a complaint given by the Assistant Regional Security Officer–Investigator, U.S.Consulate General, Chennai, for producing fake certificate to show that the petitioner had studied and got degree from Anna University. On verification, it was found that the said certificate is a fake one. Hence, the said official lodged a complaint to the respondent police. After registering a case in crime No.110 of 2022, the respondent police seized the following documents from the petitioner:



(i) Petitioner's Secondary School Certificate bearing No. LL0835499 issued by the Board of Secondary Education, Andhra Pradesh.

(ii) Intermediate Pass Certificate cum Memorandum of Marks bearing Certificate No.N312983 issued by the Board of Intermediate Education, Andhra Pradesh.

(iii) Passport of the Petitioner bearing No.T8364425 issued by the Ministry of External Affairs of India.

(iv) PAN Card of the petitioner bearing No.FYXPS2005F

The petitioner, while approaching the Trial Court for return of all the documents, the Trial Court ordered to return all the above said documents, except the passport of the petitioner bearing No.T8364425 issued by the Ministry of External Affairs of India.



Crl.R.C.No.630 of 2023

3. The learned counsel for the petitioner contended that retaining a passport is not permitted in law by the Government of India. Retention of passport is indirectly impounding the same and for that, the respondent police has no power. The Court also cannot impound a document under the Criminal Procedure Code, since there is a specific provision contemplated under Section 10(3) of the Passport Act and therefore, it has to be returned to the petitioner. However, the Trial Court has failed to consider the said aspect and dismissed the petition with respect to return of passport alone.

4. In support of his contention, the learned counsel for the petitioner relied on the following judgments of this Court:-

***(a) N.SELVARAJ VS. STATE REP. BY THE
INSPECTOR OF POLICE [2017 SCC ONLINE
MAD 5184]***

***(b) SUBASH VS. STATE REP. BY THE
INSPECTOR OF POLICE [2019 SCC ONLINE
MAD 29639]***



Crl.R.C.No.630 of 2023

5. The learned Government Advocate (Criminal Side) appearing for the respondent submitted that the petitioner has attempted to get VISA by producing fake certificate of Anna University. On verification, it was found that the said certificate is fake. Subsequently, the Assistant Regional Security Officer–Investigator, U.S. Consulate General, Chennai, gave a complaint to the respondent police and in pursuance of the same, the respondent police registered a case in Crime No.110 of 2022 for the offences punishable under Sections 465, 468 and 471 IPC. At the time of arresting the petitioner, the respondent police seized the Passport of the petitioner along with other documents. Though the Trial Court has ordered to return all the documents, it dismissed the petition with respect to return of Passport alone for the reason that he may use the Passport to evade from appearing before the Trial Court. Hence, he pleaded to dismiss the present petition.

6. Heard the submissions made on either side and perused the materials available on record.



Crl.R.C.No.630 of 2023

7. On perusal of the facts, it reveals that the respondent police registered a case against the petitioner in Crime No.110 of 2022 for the offences under Sections 465, 468 and 471 IPC, upon a complaint given by the Assistant Regional Security Officer–Investigator, U.S. Consulate General, Chennai, for producing fake certificate to show that the petitioner had studied and got degree from Anna University. On verification, it was found that it is bogus one. After registering a case in crime No.110 of 2022, the respondent police seized certain documents from the petitioner along with his Passport bearing No.T8364425 issued by the Ministry of External Affairs of India. The petitioner, while approaching the Trial Court for return of all documents seized from him, the Trial Court ordered to return all the documents except the Passport of the petitioner bearing No.T8364425.

8. It is not disputed that the Passport has been seized by the respondent police in pursuance of the above said case and the petitioner tried to get VISA by using the alleged fake certificate in the name of Anna University. But there is no allegation about the genuineness of the Passport. Further, retaining the Passport in any of the way is also amounting to impounding the Passport.



Crl.R.C.No.630 of 2023

9. In this regard, it is relevant to refer the judgment of this Court, relied on by the learned counsel for the petitioner in ***N.SELVARAJ VS. STATE REP. BY THE INSPECTOR OF POLICE [2017 SCC ONLINE MADE 5184]*** wherein it is observed and held as follows:-

“ 7. As rightly contended by the learned counsel for the petitioner under Section 10(3) of the Passports Act, the passport authorities only have the power to impound the passport and the respondent police has no power to impound the passport, after seizure, if the passport is retained by the police, such retention amounts to impounding the passport, for which the respondent police has no power.

8. In a judgment reported in a case in Suresh Nanda /vs/ C.B.I. in 2008(5) CTC 277, the Hon'ble Supreme Court has held that the police and the court has no power to impound the passport and held as follows:

“ 12. 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 the Law Lexicon by P.Ramanatha Aiyar (2nd Edition), the word "impound" has been defined to mean "to take possession of a document or thing for being held in custody in accordance with law". Thus, the word "impounding" really means retention of possession of a good or a document which has been seized."

"15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104, Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "Passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P.Singh's Principles of



WEB COPY



Crl.R.C.No.630 of 2023

Statutory Interpretation 9th Edition pg.133). This principle is expressed in the maxim "Generalia specialibus non derogant". Hence, impounding of a passport cannot be done by the court under Section 104, Cr.P.C. though it can impound any other document or thing"

9. Apart from that for more than 9 years, the respondent police yet to complete the investigation and file a final report. Hence, no useful purpose will be served by keeping the passport in the court.

10. In the result, the criminal revision case is allowed and the order passed by the court below is set aside and the learned XIV Metropolitan Magistrate, Egmore, Chennai, is directed to return the passport to the petitioner forthwith."

10. Likewise, in the judgment of this Court in ***SUBASH VS. STATE REP. BY THE INSPECTOR OF POLICE [2019 SCC ONLINE MAD 29639]*** it is observed and held as follows:-



WEB COPY



Crl.R.C.No.630 of 2023

“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 :-

“14. In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal. Under Section 10A of the Act retention by the Central



Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport authority under Section 10 (3).

15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a passport is provided for in Section 10 (3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P.Singh's Principles of Statutory Interpretation (9th Edition. Pg. 133). This principle is expressed in the maxim Generalia Specialibus non derogant. Hence, the impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing.?

4. Learned counsel for the petitioner also drew the attention of this Court to a recent order passed by this Court in the case of Malaisamy Vs. The State (Crl. R.C.



WEB COPY



Crl.R.C.No.630 of 2023

No.1201/18 - Dated 29.11.2018). This Court, after taking note of the judgment of the Supreme Court in Suresh Nanda's case (supra) has allowed a revision petition on similar grounds. The findings of this Court, which is evident from paras 3 to 6 and the final conclusion, as is evident from para-7 of the said order are extracted hereunder for reference :-

“3.The learned counsel would also draw the attention of this Court to a recent order passed by the learned Judge of this Court on 12.05.2017 in Crl.O.P.No.5521 of 2017. The learned Judge, following the above order of the Hon'ble Supreme Court, has held that the Passport Act overrides the provision of Cr.P.C. for the purpose of impounding the passport. The operative portion of the order of the learned judge as found in para nos. 7 to 9 are extracted hereunder:

“ 7. The objections raised by the learned Special Public Prosecutor for CBI Cases may not be of much relevance since what would be pertinent to decide in the present petition is the powers of police to retain the passport of the petitioner. The Passport Act which is a special law will prevail over the provisions of the Cr.P.C., the General law.



8. *Section 10(3)(e) of the Passport Act specifically deals with impounding of passport whereas Section 104 Cr.P.C., allows the Court to impound the document to produce before the Court. The Passport Act overrides the provision of Cr.P.C., for the purpose of impounding passport. In the present case in hand, the order directing to surrender the passport indefinitely amounts to impounding of the passport itself.*

9. *In view of the foregoing findings, the order dated 05.11.2016 passed in CrL.M.P.No.16123 of 2016 dated 05.11.2016, insofar as the condition to surrender the petitioner's passport before the Court is illegal. Accordingly, the condition to surrender the petitioner's passport is set aside. It is also made clear that all other conditions imposed in the impugned order dated 05.11.2016 passed in CrL.M.P.No.16123 of 2016 dated 05.11.2016, by the Sessions Court, shall remain unaltered. The Criminal Original Petition is allowed to the extent mentioned above.?*

He would therefore submit that the jurisdictional Court cannot retain the passport under Section 104 of Cr.P.C. He would further submit that even otherwise, the



petitioner herein was arrayed as A13 and his culpability in the crime is questionable and therefore, his passport cannot be impounded for an indefinite period till the disposal of trial.”

4. The learned Government Advocate (Cr.L.Side) appearing for the state would object saying that there is no particular provision in the Passport Act, which excludes the application of Section 104 of Cr.P.C. He would therefore submit that impounding of passport under the said Section cannot be found fault with and in any case the learned Magistrate felt that it was not in the interest of investigation to return the passport at this stage and therefore, he would submit that no relief need be granted to the petitioner.

5. This Court is unable to appreciate the argument advanced on behalf of the respondent police. When the Hon'ble Supreme Court has clearly held that the provisions of Passport Act will prevail over the provisions of Cr.P.C., and even the learned Judge of this Court in his order, as cited supra, has held that the provisions of Passport Act will override the provisions of Cr.P.C. The law declared by



the Hon'ble Supreme Court, as per Article 141 of the Constitution of India, is binding on all the Courts in India.

6. The contention on behalf of the respondent police that there is no express provision in the Passport Act for excluding the application of Section 104 of Cr.P.C is a far-fetched argument, which cannot be countenanced in the face of the law laid down by the Hon'ble Supreme Court. When such enactment like Passport Act provides for a particular action to be taken in impounding passport, such action could be taken only under the Passport Act and not by general enactment like Cr.P.C. Even otherwise, this Court is of the view, on the basis of the materials placed for consideration that there was no overt act of accusation against the petitioner herein and in such circumstances, retaining the passport for a considerable length of time, during pendency of trial before the trial Court does not advance the cause of administration of justice, since impounding passport would result in affecting fundamental rights of the petitioner for his free movement.

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.

5. Per contra, learned Government Advocate (Crl. Side) submitted that in the earlier case also, there was an objection from the prosecution, but this Court has discountenanced such objection and allowed the revision petition.

6. After considering the rival submissions advanced by either side, this Court is in complete agreement with the submission made on behalf of the petitioner that the issue of impounding of passport by the trial court is no longer res integra and it is only the passport authority, who could impound the passport under the provisions of the Passports Act. The above has been clearly laid down by the Hon'ble



WEB COPY



Crl.R.C.No.630 of 2023

Supreme Court in Suresh Nanda's case (supra) as also by this Court in Malaisamy's case (supra).

7. In the above circumstances, this Court is unable to appreciate as to how the trial court could reject the petition u/s 451 Cr.P.C. filed by the petitioner herein for return of the passport notwithstanding the legal principle as evolved by the Hon'ble Supreme Court and followed by this Court.

8. For the reasons stated above, this revision petition is allowed and the impugned order, dated 18.12.18, rejecting return of the passport is set aside. The learned Judicial Magistrate No.III, Coimbatore, is directed to return the impounded passport back to the petitioner within a period of two weeks from the date of receipt of a copy of this order."

11. In view of the above settled legal principles and also on fact that the petitioner has not committed any offence with regard to Passport bearing No.T8364425, this Court is inclined to set aside the impugned order passed by the learned Trial Judge and accordingly, the impugned order dated 31.01.2023 passed in Crl.M.P.No.2719 of 2023 by the learned Chief



Crl.R.C.No.630 of 2023

Metropolitan Magistrate Court, Egmore, Chennai, in dismissing the petition for return of Passport is hereby set aside. The learned Chief Metropolitan Magistrate Court, Egmore, Chennai, is directed to return the Passport bearing No.T8364425 to the petitioner forthwith.

12. In the result, the Criminal Revision is allowed.

05.04.2023

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
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CrL.R.C.No.630 of 2023

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- 1.The Chief Metropolitan Magistrate Court
Egmore.
- 2.The Inspector of Police
Forgery Investigation Wing
Central Crime Branch – I
Chennai.
- 3.The Public Prosecutor
High Court of Madras
Chennai.



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Crl.R.C.No.630 of 2023

V.SIVAGNANAM, J.

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CRL.R.C.NO.630 OF 2023

05.04.2023

20/20