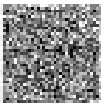


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2024:PHHC:111405



IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CRM-M-24128-2024
Date of Decision: 14.05.2024

HARVINDER KAUR
.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S. S. Momi, Advocate
for the petitioner.

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under Section 482 Cr.P.C. for setting aside the order dated 10.04.2024 passed by JMIC, Kurukshetra (Annexure P-9) vide which the application for releasing the passport of accused-respondent no.2 is allowed in FIR No. 77 dated 22.12.2018 u/s 498-A, 323, 406, 506, 34 IPC registered at P.S. Women Kurukshetra (Annexure P-1).
2. Briefly put forth, the marriage of the petitioner was solemnized with respondent no.2 on 16.11.2011 and since the inception of the marriage, the petitioner has been facing wrath of her husband which compelled the petitioner to register an FIR bearing no.77 under sections 323, 34, 406, 498-A, 506 IPC against respondent no.2 on 22.12.18 at P.S. Women Kurukshetra.

Respondent no.2 was residing in Italy and indeed never came back to India after 2018 therefore on the request of S.P, Kurukshetra LOC was issued vide order dated 19.06.2019(Annexure P-2) and in pursuance to this LOC, respondent no.2 when came to India on 25.03.2024 was nabbed by Immigration officer and handed over to P.S. Women, Kurukshetra. Respondent no.2 was thereafter released on regular bail by the trial court vide order dated 30.03.2024(Annexure P-6) and later filed an application for releasing the passport which was allowed by JMIC, Kurukshetra and was opposed by the P.S. Women by contending that passport being a case property cannot be released.

3. Counsel for the petitioner contends that the order passed by JMIC, Kurukshetra suffers from grave illegality as the order has been passed without looking into the seriousness of the instant case wherein the respondent no.2 was apprehended on 25.03.2024 i.e almost after 06 years of registering the FIR and on account of his releasing of the passport, there are higher probabilities that he will flee the country thereby violating the right of the petitioner to speedy trial under Article 21 of the Constitution of India.

4. He vehemently contends that the trial court had passed the order in haste without even imposing any condition on the respondent no. 2 that he may not leave India without prior permission of the trial court nor any condition of depositing hefty guarantee was imposed upon respondent no.2 to save the interest of the petitioner.

5. Learned state counsel who is present in the court accepts advance notice on behalf of the state and contends that the respondent no.2 had visited India on 25.03.2024 and being citizen of Italy wherein his VISA was to expire after three months. Further, the passport in question was not even a case

property which has been supported by the Apex court in ***“Chennupati Kranthi Kumar vs State of Andhra Pradesh & ors, 2023 Livelaw (SC) 565”***

wherein it has been held that *“we fail to understand as to why the passport of the appellant was required for the purpose of the pending criminal trial. Therefore, the exercise of calling upon the appellant to submit his passport was not legal. Thereafter, the Passport was never impounded in exercise of power under section 10 of the PP Act. There is nothing on record to show that the passport was seized under section 102 of Cr.P.C. As there was neither a seizure of the passport nor impounding thereof, the appellant was entitled to return of the passport”*

6. Heard learned counsel for the respective parties and gone through the record.

7. Before delving into the merits of the case, it is relevant to discuss the scope of Article 21 of the Indian Constitution which has been recognized as an inexhaustible source of other rights; likewise, the right to travel abroad has been recognized as a fundamental right by the Supreme Court underneath this article. The primary building block of this right was set up by the Apex Court in ***“Satwant Singh Sawhney vs Ramarathnam 1967 AIR 1836”*** wherein the court observed that a person cannot be denied his right to travel under Article 21 except in accordance with the procedure established by law. Furthermore, this opinion of the court was expounded in the case of ***“Maneka Gandhi vs Union of India, AIR 1978 SC 597”*** wherein the court enunciated that the right to travel abroad comes within the purview of the personal liberty under article 21, and any deprivation to travel abroad must be backed by due process of law, thereby meaning that it should be in accordance with the procedure established by law which is just and fair.

8. However, it is pertinent to note that the procedure to impound the passport has been envisaged under Section 10(3) of The Passport Act 1967 wherein it establishes certain conditions under which a person's passport can be impounded or revoked by the passport authorities:

- a) If the holder of a passport or travel document is in wrongful possession.
- b) If the passport was obtained by suppression or on the basis of wrongful information.
- c) If it is necessary to protect the sovereignty, integrity, security, friendly relations or public order in India.
- d) If the holder is convicted for an offence of not less than 2 years.
- e) If the proceedings in respect of the offence are pending before the criminal court.
- f) If any conditions of passport or travel documents are contravened.
- g) If there is a non-compliance of sub-section (1).
- h) If there is a warrant of summons for the appearance of the passport holder before the court, restricting him from travelling.

9. Further, it is apposite to mention section 102 Cr.P.C. which is reproduced herein below:-

102. Power of police officer to seize certain property.

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer-in-charge of a police station, shall forthwith report the seizure to that officer.

.(3)[Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continue retention of the property in police custody may not be considered necessary for the purpose of investigation] [Inserted by Act 45 of 1978, Section 10 (w.e.f. 18-12-1978).], he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.][Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sales.][Added by Act 25 of 2005, Section 13 (w.e.f. 23-6-2006).

10. The instant petition pertains to quashing of the order dated 10.04.2024 vide which application for releasing the passport of respondent no.2 has been allowed by JMIC, Kurukshetra. A perusal of the record in hand as well the law discussed herein above, the court finds no illegality in the order dated 10.04.2024 passed by the JMIC, Kurukshetra. It is a settled preposition of law in **“Suresh Nanda vs Central Bureau of Investigation**

(2008) 3 SCC 674” that special act pertaining to specific subject of impounding passports shall prevail over provisions of Cr.P.C. Relevant para reads as under:-

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, 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.

11. Moreover, under Section 102 (1) of Cr.P.C, the Police have the power to seize the passport but there is no power to impound the same. Even if the power of seizure of a passport is exercised under Section 102 Cr.P.C, the Police cannot withhold the said document and the same must be forwarded to the Passport Authority. It is, thereafter, for the Passport Authority to decide whether the passport needs to be impounded. Moreso, impounding can take place if Investigating Officer has shown his satisfaction that accused may abscond which may disturb the routine legal proceedings. In the absence thereof, as a routine, a passport cannot be impounded.

12. In the light of above stated discussion, the court finds no illegality in the order dated 10.04.2024(Annexure P-9) therefore upheld the same and the instant petition being devoid of merits, is hereby dismissed. However, Respondent no.2 is being directed to appear before the trial court whenever called upon by the trial court, either in person or through VC to expedite the trial.

13. Accordingly, dismissed.

14.05.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable :Yes/No