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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30546-2023 (O&M)
Date of decision: 03.09.2024

Rajinder Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shantanu Bansal, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

Mr. Parvesh Malik, Advocate for
Mr. K.S. Dhaliwal, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of impugned order dated 20.04.2023 (Annexure P-6) passed by learned Judicial Magistrate 1st Class, Sangrur in the case stemming from FIR No.80 dated 23.03.2023 under Sections 406 & 498-A of the Indian Penal Code, 1860 (for short 'IPC'),



registered at Police Station Bhawanigarh, District Sangrur, Punjab, vide which the petitioner was directed to produce the original passport before learned trial Court.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner along with co-accused was named in the FIR (*supra*). She was granted anticipatory bail and was regularly appearing before learned trial Court despite being an aged lady and suffering from various ailments. Yet, vide impugned order dated 20.04.2023 (Annexure P-6), the petitioner was directed to produce her original passport before learned trial Court, which is totally illegal and beyond the jurisdiction of learned trial Court. Learned counsel further argues that learned trial Court has failed to appreciate the fact that the power and jurisdiction to impound the passport of any individual has to be exercised as per the Passport Act, 1967 (for short 'the Act'), which grants this power only to the passport authorities. Since the Act is a special statute, the procedure prescribed by it will prevail over the provisions of Cr.P.C., since Cr.P.C. is general in nature. Reliance in this regard has been placed on the judgments of the Hon'ble Supreme Court in ***Suresh Nanda Vs. C.B.I., 2008 (3) SCC 674*** and of this High Court in ***Capt. Anila Bhatia Vs. State of Haryana, 2018 (4) RCR (Criminal) 899***.

3. *Per contra*, learned State counsel, assisted by learned counsel for respondent No.2, opposes the prayer made by learned counsel for the petitioner

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on the ground that there is every possibility that the petitioner would flee from the process of law and would abscond from the prosecution. Therefore, learned trial Court rightly directed the petitioner to produce her passport. However, he could not controvert the fact that the petitioner is not involved in any other case.

4. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner was arraigned as an accused in FIR (*supra*), which was lodged due to an ongoing matrimonial dispute between son of the petitioner and respondent No.2-his wife. The petitioner has already been granted the concession of anticipatory bail by this Court vide order dated 20.06.2022 passed in CRM-M-28865-2022 (Annexure P-3) and there is nothing on record, which would remotely suggest that the petitioner would flee from justice and would not join the proceedings. A review of the impugned order reveals that the petitioner was directed to produce the original passport before learned trial Court on the next date of hearing. The said direction is devoid of any reasoning or explanation in a rather mechanical manner.

5. A study of the Act shows that the power to impound a passport has been solely devolved to the passport authority under Section 10(3) of the Act. As far as Section 104 of Cr.P.C. is concerned, no doubt, the Court has been granted the power to impound any document or thing, however, it can only be exercised with respect to a document produced before it. Further, the Act is a



special law, while the Cr.P.C. is a general statute. “*Generalia specialibus non derogant*” is a settled principle of interpretation of statutes i.e. the special law prevails over the general law. Hence, a Court cannot take recourse to Section 104 of Cr.P.C. to impound a passport, although it can impound any other document or thing produced before it.

6. A two Judge Bench of the Hon’ble Supreme Court in ***Suresh Nanda***’s case (*supra*) made the following observations:

“15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Criminal Procedure Code 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 Criminal Procedure Code 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 Criminal Procedure Code though it can impound any other document or thing.

16. For the aforesaid reasons, we set aside the impugned order of the High Court and direct the respondent to hand over the passport to the appellant within a week from today. However, it

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shall be open to the respondent to approach the Passport Authorities under Section 10 or the authorities under Section 10A of the Act for impounding the passport of the appellant in accordance with law.”

7. Moreover, the Hon'ble Supreme Court has given constitutional status to the right of travelling abroad in the landmark judgment of ***Mrs. Maneka Gandhi Vs. Union of India, AIR 1978 Supreme Court 597.*** Travelling being one of the most fundamental manifestations of liberty was brought to the fore and should not be curtailed in a cursory fashion. This principle was again reiterated in the judgement titled as ***Satish Chandra Verma Vs. Union of India and others, 2019 (2) SCT 741***, wherein highlighting that the right to travel abroad is an important basic human right, the following was observed:

"5. The right to travel abroad is an important basic human right for it nourishes independent and self- determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right. (See Mrs. Maneka Gandhi v. Union of India and Another (1978) 1 SCC 248).

In the said judgement, there is a reference to the words of Justice Douglas in Kent v. Dulles [1958] 357 US 116 which are as follows:

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"Freedom to go abroad has much social value and represents the basic human right of great significance."

8. Keeping in view the aforementioned discussion, present petition is allowed and the impugned order dated 20.04.2023 (Annexure P-6) is set aside.
9. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

03.09.2024
vishnu

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