



Citation : CDJ 2018 MHC 2580

Court : High Court of Judicature at Madras

Case No : CrI.R.C. No. 19 of 2018

Judges : THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

Parties : C. Ramesh Babu Versus State Rep. by The Inspector of Police, Central Crime Branch

Appearing Advocates : For the Petitioner: R.C. Paul Kanagaraj, Advocate. For the Respondent: G. Harihara Arun Somasankar, Government Advocate.

Date of Judgment : 26-02-2018

Head Note :

Criminal Procedure Code - Section 397 r/w Section 401 -

Comparative Citation:
2018 (2) MLJ(CrI) 227,

Judgment :

(Prayer: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by the learned CCB and CBCID Metropolitan Magistrate, Allikulam in CrI.M.P.NO.4512 of 2017 dated 28.12.2017 filed for return the passport bearing Old No.Z1758487 and New No.E8895431 seized by the respondent in Crime No.214/2015.)

1. The Petitioner has filed this criminal revision petition to set aside the Order passed by the Learned CCB and CBCID Metropolitan Magistrate, Allikulam in CrI.M.P.No.4512 of 2017 filed for return of his passport bearing old.No.Z1758487 and the new No.E8895431 seized by the respondent in Crime No.214 of 2015.

2. The case of the petitioner is that he is a doctor by profession and senior consultant in Orthopedic. He used to go various countries as he, being the senior consultant in Orthopedic to attend seminar and rendering services. While so, a criminal cases was registered against the petitioner herein by the respondent police in Cr.No.214 of 2015 for the offence under sections 406, 420, 506(ii) r/w section 34 IPC. During the course of the investigation, the respondent police had seized the passport of the petitioner bearing No.Z1758487 and was produced before the XI MM Saidapet, and the same was kept under the custody of Court. Subsequently, the above case was transferred to Metropolitan Magistrate Court, CCB, CBCID, Allikulam, Chennai. The facts remain as such the Petitioner now requires his Passport to travel abroad to meet his son at London on 29.12.2018. Therefore, he filed an application in CrI.M.P.No.4512 of 2017 under section 451 of Cr.P.C for the return of his passport. Moreover, the petitioner has given an undertaking before the trial court that he would produce his passport immediately on his return to Chennai from London.

3. The Respondent police have strongly objected the return of petitioner's passport on the ground that as against the Petitioner charge sheet is filed for his involvement of a cheating case in which a huge sum of Rs.1,74,00,000/- is involved. Further, having found prima-facie case the charge sheet was taken on file by the learned Judicial Magistrate in CC.No.9660 of 2017. Hence strong objection is made by the respondent and pray for the dismissal of the above Petition.

4. Upon considering the rival submissions, the Learned Magistrate has dismissed the above said application by an order dated 28.12.2017 and thereby rejected the petitioner's request by holding that the money involved in the above case reflects a sum of Rs Rs.1,74,00,000/-. Since, the said finding is baseless, arbitrary and aggrieved over the same, the Petitioner is before this Hon'ble Court by way of this Revision seeking to set aside the above order and consequently prays for the return of his passport.

5. The Learned counsel for the Petitioner would contend that the investigation in Cr.No.214 of 2015 was completed, charge sheet was also filed and the same is taken on file in CC.No.9660 of 2017 and therefore the question of tampering either the investigation or the prosecution does not arise.

6. Further, the Learned counsel for the petitioner has drawn the attention of this court to a Decision of this Hon'ble Court reported in 2016 (2) MWN (Cr) 299, holding that a Court cannot impound a Passport under Section 104 Cr.P.C. despite of it being an enabling provision to impound a document, whereas in case of Passports such power of impounding is exclusively vested with the Passport authorities.

7. Per contra, the learned Government Advocate (Criminal Side) appearing for the State would submit that originally the respondent police seized the Petitioner's old and new passports bearing Nos.Z1758487 and E8895431 respectively and by following due process of law, the same were produced before the Court of Law.

8. The learned Government Advocate (Criminal Side) to support his case has produced a Judgment in the case of K.Zahir Hussain v. The Inspector of Police, CBI, ACB, Chennai (Crl.R.C.No.700 of 2014).

9. In pursuant of the detailed investigation, the respondent police filed the above charge sheet against the Petitioner and others for the offence under sections 406, 420, 506(i) and 120(B) IPC and now the same was taken on file in CC.No.9660 of 2017 on 13.12.2017. Apart from that as son of the Petitioner is residing and pursuing his education in London, every possibility is there that the Petitioner would get absconded himself and the same would cause hamper in the disposal of the aforesaid case.

10. I heard Mr.R.C.Paul Kanagaraj, learned counsel for the petitioner and Mr.G.Harihara Arun Somasankar, learned Government Advocate (Criminal Side) for the respondent and perused the records.

11. A perusal of the impugned order of the Learned Magistrate denotes that the Learned Magistrate has made the impugned order by taking into account of the Face Value of the Sum said to have been involved in the above case. In fact, if the Learned Magistrate has decided to set the Face value of the money involved in the case as the deciding factor to impound or release the Passport, the Learned Magistrate at the first instance ought to have asked the petitioner to produce surety for the value of such sum and could further proceed. However, that opportunity was not given to the petitioner to get redressed.

12. It is relevant to states that as per Section 10(3) of the Passports Act, 1967, the Passport Authority may impound or cause to be impounded a Passport under certain circumstances. Section 10(3) of the

Act reads as follows:

“The Passport Authority may impound or cause to be impounded or revoke a Passport or travel document:

(a) if the Passport Authority is satisfied that the holder of the Passport or travel document is in wrongful possession thereof;

(b) if the Passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the Passport or travel document or any other person on his behalf;

[Provided that if the holder of such Passport obtains another Passport, the Passport Authority shall also impound or cause to be impounded or revoke such other Passport.]

(c) if the Passport Authority deems it necessary so to do 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;

(d) if the holder of the Passport or travel document has, at any time after the issue of the Passport or travel document, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(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) if any of the conditions of the Passport or travel document has been contravened;

(g) if the holder of the Passport or travel document has failed to comply with a notice under subsection (1), requiring him to deliver up the same;

(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.”

13. At this juncture, it is for this court to weigh power and the scope of impounding of a Passport by a Court of law in the light of the catena of decisions of this court as well as the Hon'ble Supreme Court. Further, at this context it would be relevant to look into para 25 & 30 of the above decision holding as following that

“25. After taking note of the provisions of Section 10(3)(e) of the Passports Act, 1967 and after taking note of the decisions of two Constitution Benches, one in Satwant Singh Sawhney Vs. D.Ramarathnam, Assistant Passport Officer [1967 (3) SCR 525] and Menaka Gandhi Vs. Union of India and another [1978 (1) SCC 248], the Supreme Court held that the Passports Act, 1967 being a Special Act, the provisions contained therein would prevail over Section 104 of the Criminal Procedure Code, which confers general power upon the Court to impound any document. The Court also pointed out the distinction between the mere seizure of a passport and the impounding of the same. A seizure is made at a particular moment, when somebody takes into possession of some property. However, if the seized property is retained for some period of time, the retention amounts to impounding. Therefore, the Supreme Court pointed out that while the Police may have the power to

seize a passport under Section 102 of the Code, if it is permissible within the authority given therein, it does not have the power to retain or impound the same. The Court also indicated that the moment the Police seizes a passport under Section 102 of the Criminal Procedure Code, they must send it along with a letter to the Passport Authority clearly stating that the seized passport deserves to be impounded for any of the reasons mentioned in Section 10(3). It is thereafter for the Passport Authority to decide what to do. Even while taking a decision, the Passport Authority is to give an opportunity of hearing. What is important in the aforesaid decision is that in paragraph 15, the Court indicated that even the Court cannot impound a passport despite the enabling provision in Section 104 of the Code.”

“30. The apprehension of the fourth respondent - wife that the petitioner may never return to India, is just an illusion or delusion. In the event of a charge sheet being filed before the Criminal Court and in the event of non appearance of the petitioner or in the event of conviction of the petitioner by the Criminal Court, the Regional Passport Officer can always impound the passport, wherever the petitioner is. There is no bar for the Regional Passport Officer to impound the passport, if the holder is outside India. Physical seizure of a passport may not be possible, if a person is outside India. But, impounding is certainly possible. Once the passport is impounded, the continued stay of the petitioner in Singapore will be unlawful, as he will be without a valid travel document to stay in Singapore at that time. In other words, the fourth respondent - wife will not be left without a remedy, even if the passport is returned and the petitioner leaves for Singapore.”

14. A conjoint reading of the above two paras would reveal that the Passports Act, 1967 being a Special Act, the provisions contained therein would prevail over Section 104 of the Criminal Procedure Code and that a Criminal Court cannot impound the passport. Further it was held that there is no bar for the Regional Passport Officer to impound the passport, if the holder is outside India and the Physical seizure of a passport may not be possible but impounding can be made and once the passport is impounded, the stay of the passport holder abroad will be unlawful and he can be prosecuted under appropriate law.

15. Further, it is to be noted here that as for as impounding of passport is concerned that involved the freedom of movement as admittedly one of the fundamental rights guaranteed in our constitution. The Hon’ble Supreme Court has already held in Kesavananda Bharati’s case (supra), “the fundamental rights themselves have no fixed content and it is also to be stated that the attempt of the Court should be to expand the reach and ambit of the fundamental rights. The constitution is required to be kept young, energetic and alive”.

16. It is needless to say that as envisaged by the Hon’ble Apex Court every citizen posses their fundamental right to travel and the same cannot be deprived on mere apprehension.

17. In the case on hand this court is able to see from the records that the petitioner is a senior consultant in Orthopedic and due to his profession he used to travel abroad. Further the petitioner’s son is also pursuing his higher studies at London. Therefore this court considers that the petitioner’s request is genuine.

18. The respondent police apprehend that if the petitioner is allowed to fly abroad he would abscond and cannot be secured in future. The said apprehension cannot be accepted in the light of the dictum laid down as above by this High Court and the Hon’ble Supreme Court, that it is always open to the passport authorities to decide as to whether the passport of the of the petitioner is to impounded or not for the reasons shown by the prosecution. However, there is no doubt that the said exercise could be done only after affording opportunity to the holder of the passport to justify his stand. In such an event, in case if the passport is impounded, then the petitioner’s stay at abroad will be illegal.

19. It is my absolute view that though the Police have empowered to seize the Passport under Section

102 of Cr.P.C., has no power to retain or impound the same. At the moment, the Passport is seized, the Police bound to send the same to the Passport Authority with requisition to impound the same for any of reasons mentioned in Section 10(3) since, the Passport Authority alone empowered to impound it after giving opportunity of hearing to the person concerned. It is made clear that even the Court cannot impound the Passport despite enabling provision under Section 104 of Cr.P.C. In this regard, the following guidelines would be helpful for the police as well as the subordinate Courts concerned in dealing with the issue in future:

(i) Though the police is entitled to seize the passport under section 104 of the Code of Criminal Procedure, they have no authority to keep the same in their custody. In turn, as soon as possible, the passport must be produced before the court concerned without any unreasonable delay;

(ii) In turn, the court has also no power to impound the passport as that of seizure by police. However, the duty of the court is to direct the passport authority to commence the proceedings for the impounding of the passport by strictly adhering the provision as envisaged under section 10(3) of the Passports Act as the same is a special enactment.

(iii) In turn the Passport authority is to initiate due process to impound the Passport after affording opportunity duly to the holder of the Passport as it involves the right to free movement as guaranteed in our Constitution as one of the fundamental rights.

(iv) After considering the necessity pertaining to the facts and circumstances of each case, the passport authority by giving detailed reasons may take any decision on either side by applying the mind.

In view of the discussion above, I have no hesitation to allow this Criminal Revision Case and accordingly it is allowed.

20. In the result:

(a) this Criminal Revision Case is allowed and the order passed by the learned CCB and CBCID Metropolitan Magistrate, Allikulam, Chennai in CrI.M.P.No.4512 of 2017, dated 28.12.2017, is hereby set aside;

(b) the learned CCB and CBCID Metropolitan Magistrate, Allikulam, Chennai, is directed to return the petitioner's passport bearing Old No.Z1758487 and New No.E8895431 by obtaining an appropriate undertaking of affidavit of the petitioner and to reproduce the passport before the Court immediately on his return to Chennai from London;

(c) on receipt of the passport, the learned CCB and CBCID Metropolitan Magistrate, Allikulam, is directed to issue appropriate direction to the concerned Passport Authority to keep custody of the petitioner's Passport till the disposal of C.C.No.9660 of 2017.