

**Mohammed Tasnim Vs. State of Karnataka, by Udupi Town Police Station,
Represented By State Public Prosecutor and Another**

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Court : Karnataka

Decided On : Jul-07-2015

Judge : A.N. Venugopala Gowda

Appeal No. : Criminal Petition No. 7971 of 2014

Appellant : Mohammed Tasnim

Respondent : State of Karnataka, by Udupi Town Police Station, Represented By
State Public Prosecutor and Another

Judgement :

(Prayer: This Crl.P. is filed under S. 482 Cr.P.C., praying to set aside the order dated 19.08.2014 made on application filed by the petitioner U/S.451 of Cr.P.C. in Crime No.214/2013 by the court of Addl. Civil Judge and JMFC, Udupi and order dated 29.11.2014 made in Crl.R.P.No.37/2014 by the Prl. Sessions Judge, Udupi District.)

1. The petitioner is accused No.2 in Crime No.214/2013 of Udupi Town Police Station. The police have registered the FIR for the offences punishable under Ss.406, 468, 47-1, 420 read with 34 of IPC. Passport of the petitioner having been seized by the police, under PF No. 79/2014, an application was filed, under S.451 of Cr.P.C., before the learned Magistrate, for the release of the passport.

Application having been opposed by the Assistant Public Prosecutor, learned Magistrate by being of the view, that the police have made out prima facie case and since the applicant/accused is working in a foreign country, rejected the application, on the ground that, if the passport is released, definitely, the accused will flee from the jurisdiction of the Court and would not be available for proper adjudication of the case.

2. A Criminal Revision Petition filed assailing the said order was dismissed by the learned Sessions Judge, on the ground that the petitioner has not stated for what purpose the release of the passport was sought and, the investigation being not complete, the passport, if released, will affect the progress of the case, as there is likelihood of the accused fleeing from India. Assailing the said orders, this petition was filed.

3. Sri S.Vishwajith Shetty, learned advocate, firstly contended that the Police have no power to seize or impound the passport. He submitted that the impounding can only be done by the Passport Authority, under S.10(3) of the Passports Act, 1967 ('the Act' for short). Secondly, both the Courts below have not appreciated the case of the petitioner i.e., with reference to the provisions under S.10(3) of the Act and that the impugned orders being illegal, are liable to be quashed. Thirdly, the powers of police to seize the property, does not extend to impounding of passport and, that the provisions of the Act, prevail over Cr.P.C. Reliance was placed on the decision of the Apex Court, in SURESH NANDA Vs. CENTRAL BUREAU OF INVESTIGATION, (2008) 3 SCC 674.

4. Sri Visweswaraiah, learned HCGP, on the other hand, made submissions in support of the impugned orders and sought dismissal of the petition. He submitted that the investigation would be completed without any delay and the final report would be filed.

5. Perused the petition and considered the rival contentions.

6. Point for consideration is "whether the police are justified in retaining the passport of the petitioner, seized under PF No.79/2014?" f

7. In the case of SURESH NANDA (supra), the passport of the appellant, an NRI, amongst other documents, was seized by the respondent, pursuant to registration of FIR. Passport seized during search was retained by the Investigating Officer. An application was moved before the Special Judge, CBI, for release of the seized passport. Application was allowed and a direction was issued for release of the passport, subject to certain conditions. Aggrieved, CBI preferred criminal revision petition before the High Court, which reversed the order of the Special Judge and refused to release the seized passport. Aggrieved by the said order, the Apex Court was approached for relief by contending that the power to impound the passport of an individual, has to be exercised under Sub -section (3)(e) of S.10 of the Act.

8. Sub-section (3)(e) of S.10 of the Act provides for impounding of passport, if the proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document, is pending before a criminal Court in India. The Passport Authority has power to impound the passport under S.10 of the Act. S.102 of the Cr.P.C., empowers a Police Officer, to seize any property, which may be alleged or suspected i:o have been stolen, or which may be found under circumstances which create suspicion of commission of any offence. Sub-section (5) of S.165 of Cr.P.C., provides that the copies of record made under Sub-section(I) or Sub-section(3), shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, whereas, S.104 of Cr.P.C., authorizes the Court to impound any document or thing produced before it, under the Code.

9. In the present case, the passport of the petitioner is in possession of the respondent-police, right from the date it was seized under PF No.79/2014.

10. Considering the aforesaid statutory provisions of the Act and the Code, the Act being a special legislation and the Code containing general provisions, in the case of f SURESH NANDA (supra), Hon'ble Supreme Court has held as follows:

"10. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 of the Cr.P.C authorizes the Court to impound document or thing produced before it. Where there is a special Act dealing with specific subject,

resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special Act, the rule that "general provision should yield to the specific provision" is to be applied. See : Damji Valaji Shah Vs. L.I.C. of India [AIR 1966 SC 135]; Gobind Sugar Mills Ltd. Vs. State of Bihar [(1999)7 SCC 76]; and Belsund Sugar Co. Ltd. Vs. State of Bihar [AIR 1999 SC 31251

11. The Act being a specific Act whereas Section 104 of Cr.P.C. is a general provision for impounding any document or thing, it shall prevail over that section in Cr.P.C., as regards the passport. Thus, by necessary implication, the power of Court to impound any document or thing produced before it would exclude passport.

12. In the present case, no steps have been taken under Section 10 of the Act which provides for variation, impounding and revocation of the passports and travel documents. Section 10-A of the Act which provides for an order to suspend with immediate effect any passport or travel document; such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks, if the Central Government or any designated officer on its satisfaction holds that it is necessary in public interest to do without prejudice to the generality of the provisions contained in Section 10 by approaching the Central Government or any designated officer. Therefore, it appears that the passport of the appellant cannot be impounded except by the Passport Authority in accordance with law. The retention of the passport by the respondent (CBI) has not been done in conformity with the provisions of law as there is no order of the passport authorities under Section 10(3)(e) or by the Central Government or any designated officer under Section 10-A of the Act to impound the passport by the respondent exercising the powers vested under the Act.

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14. In our opinion, while the police may have the power to seize a passport under Section 102(1)Cr.P.C, it does not have the power to impound the same. Impounding of a passport 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, ii 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 Edn.), 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 goods or a document which has been seized.

16. Hence, while the police may have power to seize a passport under Section 102 Cr.P.C., if it is permissible within the authority given under Section 102 of Cr.P C., 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 Cr.P.C.), 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 the passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party (vide *State of Orissa Vs. Binapani Dei* [Air 1967 SC 1269]).

17. 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 10-A of the Act retention by the Central Government can only be for four weeks. *f*

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

18. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104Cr.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 of 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 (3th Edn. page 133). This principle is expressed in the maxim *generalia specialibus run 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. In the present case, the Passport Authority has not passed any order of impounding the passport of the petitioner. The respondent has retained the possession of the passport from the date it was seized. The retention is illegal, in terms of the decision of the Apex Court, noticed *supra*.

12. Both the Courts below, having not noticed the provisions of the Act and the aforesaid decision of the Apex Court, have committed illegality in dismissing the application and revision petition respectively. The impugned orders being contrary to law are liable to be quashed.

In the result, orders passed by the Courts below, impugned in this petition, are quashed and the respondent is directed to handover the passport to the petitioner, within a period of one week from the date a copy of this order is produced by the petitioner. However, it is open to the respondent, to approach the Passport Authority, under S.10 of the Act for impounding the passport of the petitioner, in accordance with law.