

Thanapal Vs. Assistant Collector of C.E.

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Court : Chennai

Decided On : Mar-20-1986

Reported in : 1987(13)ECC305; 1988(36)ELT421(Mad)

Judge : David Annoussamy, J.

Acts : [Customs Act, 1962](#) - Sections 110 and 110(3)

Appeal No. : Crl. Misc. Petition No. 2504 of 1986

Appellant : Thanapal

Respondent : Assistant Collector of C.E.

Advocate for Def. : P. Rajamanickam, Central Government Public Prosecutor

Advocate for Pet/Ap. : B. Kumar, Adv.

Judgement :

1. This is a petition by a citizen of Singapore praying to direct the respondent to return the passport of the petitioner to enable him to go over to Singapore and come back to India within such time this Court may fix, subject to such terms and conditions which this court may deem fit and proper.

2. The case of the petitioner is that his passport was seized by the customs authorities on 24-1-1985 along with other articles brought by him, that the passport was not entered in the mahazar of seizure, that the petitioner is compelled by the

requirement to undergo military training of his country to go back immediately, that he is possessing property worth Rs. 5 lakhs in Pudukkottai in his own name, that he is assessed to Wealth Tax in India and the assessment in the Wealth Tax shows the value of the property at Rs. 4.5 lakhs and that he has number of family links in India. He contends that the Assistant Collector of Central Excise, Madras, has no power to seize his passport and such seizure is violative of his fundamental right to travel.

3. The respondent states that the petitioner is involved in smuggling of gold valued at Rs. 3 lakhs and of which the petitioner kept concealed on his person and Yardley powder forms, that his passport is now in the Additional Chief Metropolitan Magistrate's Court, Economic offences, Egmore, Madras, and that if it is returned it will not be possible to get back the petitioner for trial.

4. The only question which now arises is whether the customs officer has the right to seize the passport.

5. The contention of the respondent is that he has got such a right under Section 110 of the Customs Act. He places reliance more specifically on sub-section (3) of Section 110, which reads as follows :-

'The proper Officer may see any documents or things which, in his opinion will be useful for, or relevant to any proceeding under this Act.'

He would further add that the passport would be a piece of evidence to show that the petitioner came to India on the date of offence. I am unable to agree. Section 110(3) of the Customs Act cannot include a passport which forms part of a person as a traveller. It shows the identity of the person, describes the permission given by the country to travel, the permission given by the host country to stay therein. He should keep it with him as long as he is in the foreign country. It cannot be assimilated to other documents or things which would be useful or relevant to any proceedings under the Act. The arrival of the petitioner to India on the relevant date may also be taken and certified by the competent authority before the passport is given back to the petitioner. An undertaking may also be taken from the accused that he should produce the passport as and when required. The

learned counsel for the petitioner would also point out that the seizure of the passport was not found entered into mahazar which discloses that the officer himself was fully aware that he had no right to seize the passport under Section 110 of the Customs Act. This factual point of non-inclusion in the mahazar was not controverted by the learned counsel for the respondent. At any rate seizure of the passport by the Customs Officer is not covered by Section 110 of the Customs Act and the seizure is illegal. The passport has to be returned.

6. The learned counsel for the respondent very strenuously contended that if the passport was returned to the petitioner, the petitioner would immediately leave the country and that he would not be available for the trial since he has obtained an order from the criminal court to be released on bail and since in the order of release there is no condition that he should not leave India. If it is so, it is open to the respondent to move the competent Court to modify the order of bail to the extent desired by the respondent. When a person is involved in a criminal proceeding and has been arrested his normal place is detention in prison. He can be released on bail on such condition as the Court thinks fit and that condition would be such as to secure the accused person as and when required. Therefore, the bail order may very well stipulate that the petitioner should not leave the country. To ensure that the condition is fulfilled, the Court may further order that he shall surrender the passport to the Court. If the passport is surrendered, the petitioner should be issued a certificate showing that he surrendered the passport along with particulars of passport and visa and also describing the identity of the person so that he can prove his identity whenever he is required as long as he is in India which is the foreign country to him.

7. Another complaint of the petitioner is that though the arrest took place on 21-1-1985 the respondent has not so far filed any complaint before the competent Court and that this amounts to violation of justice. The petitioner is at liberty to take such steps as he deems fit in respect of this delay. We are not concerned in this petition for return of passport by that aspect of the problem.

8. In the result the passport which is seized by the respondent and which is now in the Additional Chief Metropolitan Magistrate's Court, Economic Offences, Egmore,

Madras shall be returned to the petitioner within 10 days.

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