

S.Narmadha Vs. the State

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Court : Chennai

Decided On : Mar-29-2012

Judge : P.R.Shivakumar, J.

Acts : Code of Criminal Procedure (CrPC), - Section 397, 401, 451, 102, 104;
Indian Penal Code (IPC) - Sections 306,; Passport Act. - Section 10-A

Appeal No. : CRL.R.C(MD)No.116 of 2012

Appellant : S.Narmadha

Respondent : The State

Judgement :

Prayer

Criminal Revision case filed under Section 397 r/w Section 401 Cr.P.C.,praying this Court to call for the records and to set aside the order of the learned Judicial Magistrate No.II,Sattur, made in Crl.M.P.No.7982 of 2011, dated 28.02.2012.

ORDER

1. Mrs.S.Prabha, learned Government Advocate(Crl.Side) has taken notice on behalf of the respondent.

2. The submissions made by Mr.C.M.Arumugam, learned counsel for the petitioner and that of the learned Government Advocate(Crl.Side) referred to above are heard. The grounds of revision and the documents produced in the form of typed-set of papers including the copy of the impugned order are also taken into consideration.

3. The petitioner figures as an accused in Cr.No.109 of 2009, on the file of Alangulam Police Station. The said case was registered for an alleged offence punishable under Section 306 IPC. During the course of investigation, the respondent/Police seized the passport of the petitioner and produced it before the learned Judicial Magistrate No.II, Sattur as a case property in the above said crime number. The revision petitioner filed a petition under Section 451 Cr.P.C., before the learned Judicial Magistrate No.II,sattur praying for the return of his passport. The learned Judicial Magistrate, by the order impugned in the present Criminal Revision Case, dismissed the said petition on 28.02.2012. The legality of the said order is challenged in the present revision case.

4. Since this revision can be disposed of on a question of law itself, this Court deems it fit to pass an order at the time of admission itself even without calling for the records from the learned Judicial Magistrate No.II, Sattur, holding that the materials placed before this Court along with the grounds of revision shall be enough for taking a decision in this revision case.

5. The question that arises for consideration in this revision is: whether the refusal to handover the passport and retention of the passport by the learned Judicial Magistrate No.II, Sattur in whose court the said passport was produced after the same was seized by the respondent/Police would amount to impounding of the passport? Whether the power of the police to seize the property under Section 102 of Cr.P.C or the power of the Court to impound the document produced before it contemplated under Section 104 Cr.P.C will include a power to impound the passport which is governed by the provisions of a special enactment, namely, the Passport Act?.

6. The same was considered by the Honourable Supreme Court in Suresh Nanda .vs. Central Bureau of Investigation reported in (2008) 2 Supreme Court

Cases(Crl) 121, wherein, their Lordships of the Supreme Court held in clear terms that the power of the police under Section 102 Cr.P.C., to seize a document could not be interpreted to include a power to impound the document. It was also held that the power of seizure contemplated under Section 102 Cr.P.C. was different from the power of the Court to impound a document under Section 104 Cr.P.C. The Honourable Supreme Court has held that though power has been conferred upon the court to impound a document under Section 104 Cr.P.C, the said power is not available in respect of a passport because impounding of the passport is governed by the provision of a special law, namely Passport Act, whereas the Code of Criminal Procedure is general law and hence the provisions of the special law will prevail over the general law. Their Lordships have also held in clear terms that though the police do have power to seize the passport, if they want to get the passport impounded after the seizure of the passport, they have to submit the passport to the Passport Authority with a requisition for impounding the same. Similar observation has been made in respect of the procedure to be followed by the Court. In either case, whether it be the Police or the Court, they cannot retain the passport and retention of the passport by the Court will amount to impounding of the document.

7. In the said case, the Honourable Supreme Court held that an order dismissing the petition for return of the passport was obnoxious and against law, set aside the said order and directed the return of passport to the holder of the passport. The Honourable Supreme Court also incidentally observed that it was open to the authorities to approach the Passport authority under Section 10 or the authorities under Section 10-A of the Act for impounding passport in accordance with law.

8. While sitting in the Principal Bench of this Court, two similar matters were considered by myself in M.Ramachandar Singh and others .vs. The State, represented by Inspector of Police, CBI/SCB made in Crl.R.C.No.1037 of 2010, reported in MANU/TN/2462/2010 and Veenitha Gupta .vs. The State, represented by Deputy Superintendent of Police, Central Bureau of Investigation, Anti-Corruption Branch,Chennai-600 006 reported in (2011) 1 MLJ(Crl) 326, wherein, the law declared by the Honourable Supreme Court in this regard was followed and the orders concerned in those cases were set aside with the direction to the

concerned court to return the passports to the petitioners therein. For the sake of elucidation, the following observations made in Veenitha Gupta .vs. The State, represented by Deputy Superintendent of Police, Central Bureau of Investigation, Anti-Corruption Branch, Chennai - 600 006 reported in (2011) 1 MLJ(Cr) 326, are reproduced hereunder:

8. In paragraph 15 of the judgment, the Honourable Supreme Court has observed that a seizure of a document is made at a particular moment when a person or authority takes into his possession some property and if the seized property or document is retained for some period of time, then such retention would amount to impounding of the property or document.

9. If the facts of the case are considered in the light of the above said observations of the Honourable Supreme Court, the impugned order passed by the trial Court, will no doubt, amount to an order impounding the passports of the petitioner and minor daughters of the petitioner, which could not have been done by the Court below. The relevant observation found in paragraph 15 of the said judgement of the Supreme Court and the same is extracted as under Suresh nanda .vs. Central Bureau of Investigation(supra) (2008) 1 MLJ(Cr) 1195 at Page 1200:

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 of a passport is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while 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 Edn P.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.

10. While arriving at the conclusion that the order passed by the learned trial Judge, which is impugned in this Criminal revision case amounts to impounding of the passports and the same would not have been legally done, this Court should

also take into account, the contention of the learned Special Public Prosecutor that the passports of the petitioner and her two minor daughters are vital documents to be exhibited in the trial in proving the charges against the accused. Whether the retention of the original document for the above said purpose is absolutely necessary is the pertinent question to be answered.

11. In this case, some of the entries found in the passports are sought to be used as evidence for the prosecution in proof of the charges levelled against the accused persons. For that purpose, the passports need not be impounded, much against the provisions of the Passports Act dealing with the impounding of passports, xerox copies or typed copies of the passports can be prepared and the same can be certified by the Court and retained in the case bundle to be used as evidence in the trial. In such an event, the petitioner, who is also figuring as an accused, cannot contend that the copies were not true copies of the passports, that too, with out producing the passports to show the dissimilarity of the original and the copy. Therefore, there won't be any impediment for the Court below to return the passports of the petitioner and her two minor daughters after getting the copies of the passports prepared and certified, which could be marked as evidence in the trial. The other course available to the prosecution is to refer the passports to the passport authorities with a request to impound them. For making such a request, it is not necessary to send the passport along with such a requisition. Keeping the passport with the Court below any more will amount to continuous impounding of the passport, which is not permissible.

9. For all the reasons stated above, this Court comes to the conclusion that the order of the learned Judicial Magistrate, which is impugned in this Criminal Revision Case cannot withstand the scrutiny of this Court and the same is to be declared as an order passed without properly considering the scope of the power under Section 104 Cr.P.C. and also either in ignorance of or in utter disregard for the earlier judgments of the Honourable Supreme Court and this Court and that hence, the said order is liable to be set aside.

10. Accordingly the criminal Revision Case is allowed and the order of the learned Judicial Magistrate No.II, Sattur, dated 26.02.2012 made in C.M.P.No.7982 of

2012 is set aside. The learned Judicial Magistrate is directed to return the passport of the revision petitioner to him within a week from this day, after getting the leaves of the passport xeroxed and certified to be true copies which shall be retained in the case bundle. It is also made clear that if the respondent/Police would still want to get the passport impounded, it can be done only by approaching the Passport Authority under Section 10 or the Authorities under Section 10-A of the Passport Act.

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