

**Niyas Vs. the State of Kerala, Represented by the Public Prosecutor and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/947052](http://sooperkanoon.com/947052)

**Court :** Kerala

**Decided On :** Aug-11-2011

**Judge :** S.S. Satheesachandran

**Appeal No. :** Crl.Rev.Pet. No. 1753 of 2011

**Appellant :** Niyas

**Respondent :** The State of Kerala, Represented by the Public Prosecutor and Others

**Judgement :**

The accused in Crime No.210 of 2011 of Karippur police station has filed this revision challenging the order passed by the learned Chief Judicial Magistrate Court, Manjeri dismissing his application Crl.M.P.No.2169 of 2011 for returning his passport seized by the police.

2. The aforesaid crime was registered against the petitioner on the allegation that on 22.5.2011, he went over to the Emigration Department at Karippur International Airport to proceed to Dubai, producing a forget tourist visa. The Emigration Wing detected his forget travel document and, subsequently, he was arrested and the crime was registered for the offences punishable under Sections 420, 468 and 471 of the Indian Penal Code read with 12(1)(b) of the Passport Act, for short, the 'Act'.

Petitioner was subsequently released on bail. His passport and visa were seized by the police in connection with the investigation. Petitioner, thereafter, moved the aforesaid Crl.M.P. for release of his passport and visa. The investigating agency objected to the release contending that the forged documents are necessary for a fair and proper investigation of the crime. Accepting the objections raised by the investigating agency, the learned Magistrate dismissed the application of the petitioner, and feeling aggrieved, he has preferred this revision.

3. I heard the learned counsel for the petitioner and also the learned Public Prosecutor. The learned counsel for the petitioner, placing reliance on Suresh Nanda V. Central Bureau of Investigation ((2008) 3 SCC 674), has contended that only the passport authorities can pass an order for impounding the passport, and neither the police nor the court has authority to do so when such statutory power is conferred on the passport authority under the provisions of the Act, subject to the procedure to be followed for the purpose of impounding the passport. Even retention of the passport after production before the court by the police would amount to impounding of the documents, is the submission of the counsel relying on the aforesaid decision of the Apex Court. The facts involved in the present case, it is seen, have no parallel with the case covered by the decision cited by the counsel. In the reported decision, pursuant to a crime registered with respect to a sting operation carried out by a news portal, the passport of the petitioner (appellant) in that case with other documents were seized by the police. The reported case does not disclose that any offence was done in relation to the passport, which was seized into custody. Where the passport or the travel document itself forms the basis of the offence impugned against a person, it cannot be stated that the investigating agency cannot retain such document for the purpose of fair investigation of the crime. In the context, it is also appropriate to take note of the imputation leveled against the petitioner for registering the crime, producing of a forged visa before the Emigration Department in an International Airport, for traveling to a foreign country. Not only the forged visa, but also the passport of the petitioner had close nexus with the offences imputed against him, and in such a case, whether he is liable to be prosecuted for the offences under Section 12(1) (b) of the Act is something which can be decided only after having the investigation of the crime.

4. In the context, it is to be noted that clause (7) of Section 10 of the aforesaid Act empowers the court on conviction of a person for any offence under the Act or the rules thereunder, to revoke his passport or travel document. Impounding of the passport can be done only by the authority empowered to do so, under the Act. However, where an offence has been committed under the Act or the rules thereunder, as indicated above, the court has the power of revocation. The reported decision of the Apex Court, referred to by the counsel, on a close reading, as already stated, does not disclose that any offence under the Passport Act was involved in that case. Where the offence relates to a passport or of a travel document, in respect of which a forgery had been committed, and the use of such forged document as genuine, the investigating agency has to be provided an opportunity to have examination of such documents with the assistance of the forensic expert to establish the forgery, if any, committed over such document. So much so, having regard to the nature of allegations raised, the offences imputed against the petitioner/accused and also the objections raised by the investigating agency in releasing the documents, passport and forged visa of which, the latter is stated to be a forged document and, thus, form the substratum of the case imputed against him, I find the learned Magistrate was fully justified in dismissing the application for release of the documents.

Revision is dismissed.

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