

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
(SINGLE BENCH : HON. Mr. JUSTICE JARAT KUMAR JAIN)

M.Cr.C. NO.1803 of 2015

Dipika D/o. Dinesh Solanki.

... Applicant

Vs.

**State of Madhya Pradesh
Through Police Station Mahila Thana,
Ujjain and another.**

**.. Non-Applicants
Respondents.**

-x-x-x-x-x-x-x-x-x-x-x-

Shri Sanjay Sharma, Advocate for applicant.

Shri M. Parwal, Govt. Advocate for respondent State.

**Shri A.S. Kutumbale, Sr. Advocate with Shri A. Purohit, Advocate
for respondent No.2.**

-x-x-x-x-x-x-x-x-x-x-x-

ORDER

(Passed on 4th May, 2016)

This petition u/s. 482 of the Cr.P.C. is filed against the order dated 19.2.2015 passed by 3rd Additional Sessions Judge (ASJ), Ujjain in Cr. Revision No. 17/2015, whereby learned ASJ reversed the order dated 5.1.2015 passed by the Judicial Magistrate First Class, Ujjain in Cr. Case No.11090/2014.

2. Brief facts of this case are that the applicant wife lodged a report at Mahila Thana, Ujjain against the respondent No.2 husband and her in-laws. On that basis, offence u/s. 498-A and 506 of the IPC was registered. After investigation, final report has been filed against the respondent No.2 and other co-accused. Respondent No.2 is residing at USA and he was

granted bail with condition that he will not leave India without permission of the Court. He was also directed to surrender his passport and visa in the trial Court. Respondent No.2 filed an application for grant of permission to go to USA and for return of his passport and visa. Learned Magistrate rejected the application on 5.1.2015. Against that order, respondent No.2 preferred revision. Learned revisional Court by the impugned order allowed the revision and directed that the applicant shall file a F.D. of Rs.3.00 Lakhs for a period of 3 years in addition to the bail amount. It was directed that on submitting the F.D. the passport and visa shall be returned to the respondent No.2 and he be permitted to travel outside India. Being aggrieved, applicant wife has filed this petition.

3. Learned counsel for the applicant submits that the respondent No.2 preferred the revision without impleading the applicant as party, therefore, the applicant could not get opportunity of hearing. Hence, the order passed behind the back of the applicant is liable to be set aside. It is also contended that presence of respondent No.2 is required during trial and in the event of end of trial into conviction it would be difficult to bring the respondent No.2 back to India from USA for serving out the sentence. In such circumstances, the order of granting permission to go to USA is not justified and, therefore, it be set aside.

4. On the other hand, learned counsel appearing for the respondents supports the impugned order.

5. Learned Senior Advocate appearing for respondent No.2 submits that the offence is not against the society and the trial will take considerable time. Hence, the Court below has considered all the aspects of the matter and passed a reasoned order. It is further submitted that Hon'ble Apex Court in the case of **Suresh Nanda Vs. CBI : 2008 AIR SCW 898** held that the provisions of Passport Act prevail over the Criminal Procedure Code and even a Court cannot impound the passport. In such circumstances, there is no illegality in the order, hence the petition be dismissed.

6. After hearing learned counsel for the parties, I have perused the record.

7. In the present case, Police has filed the final report against the respondent No.2 and other co-accused. After dismissal of the application for permission to go to USA, respondent No.2 preferred the revision. It was not required for the respondent No.2 to make the applicant as party to the revision, therefore, the objection of the applicant that opportunity of hearing was not given to her before the revisional Court has no merit.

8. The respondent No.2 is facing trial for the offence u/s. 498A of the I.P.C., in which, maximum punishment provided is 3 years of imprisonment and fine. At the time of grant of bail it was directed that the respondent No.2 shall surrender his passport and visa in the trial Court and without

permission of the Court he cannot leave India. Hence, respondent No.2 applied for grant of permission to leave India. Though the permission was declined by the Magistrate, but learned ASJ has allowed the application and granted permission to respondent No.2 to go to USA. Hon'ble Apex Court in the case of Suresh Nanda (Supra) has held that there is a difference between seizing 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, the seizure is done at a particular moment of time. However, if after seizing of a property or document, said property or document is retained for some period of time, then such retention amounts impounding of property/or document. Hon'ble Apex Court also held that even the Court cannot impound a passport though no doubt, Section 104 of Cr.P.C. states that the Court may, if it thinks fit, impound the document or thing produced before it. This provision will only enable the Court to impound any document or thing other than a passport. The Passport Act is a special law while Criminal Procedure Code is a general law. It is well settled that special law prevails over the general law. Hence, impounding of passport cannot be done by the Court u/s. 104 of the Cr.P.C. though it can impound other documents or thing.

9. Keeping in view the principle laid down by the Hon'ble Apex Court, learned revisional Court has rightly allowed the application of respondent No.2 and granted permission to go outside India and also directed to return the

passport and visa and imposed reasonable conditions while granting permission.

10. With the aforesaid, I am of the view that there is no merit and substance in this petition. This M.Cr.C. is accordingly dismissed.

**(JARAT KUMAR JAIN)
JUDGE.**

Alok/