

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

Crl.P.No.7063 of 2019

ORDER:

This application is filed under Section 482 Cr.P.C., seeking an order of quashing the proceedings of the I Additional Chief Metropolitan Magistrate, Visakhapatnam passed in Crl.MP.No.2694 of 2019 in Crime No.153 of 2019. This is a case which has undergone a number of twists and turns. The complaint is lodged under Section 498-A IPC., along with Sections 3 and 4 of the Dowry Prohibition Act against the present petitioner by his wife. Others are also added to the complaint. There were also allegations which are made against the Police Officers concerned.

This Court has heard Sri G.Rama Gopal, learned counsel for the petitioner and the learned Public Prosecutor.

The counsel for the petitioner/A.1 argues that in May, 2019, when A.1 sought bail, the Station House Officer did not accept the sureties. On the other hand, in the remand report, it is stated that the accused did not furnish the securities. Whatever transpired between the Station House Officer and the accused is not very categorically borne out by the record, but ultimately, an order dated 20.05.2019 was passed by the I Additional Chief Metropolitan Magistrate, Visakhapatnam directing the Station House Officer to accept the sureties and release him on bail. The remand report was also returned. In the said order it is recorded as follows:

“In view of the above facts and circumstances, the I.O. is directed to accept the sureties from the A.1 and release him on bail. The reasons shown in the report to remand the A.1 are not satisfactory. Hence, the Remand Report is returned.”

It is also noted as follows:

“Learned counsel for the petitioner/A.1 further submits that he is ready to furnish his passport till the filing of the charge sheet.”

Counsel for the petitioner argues that this is a part of the submission made by the counsel and is a wrong concession on a point of law. The Station House Officer has insisted on the deposit/surrender of the passport. Thereafter, an application was also filed to relax the condition imposed by the Court for deposit of the passport in terms of the order dated 20.05.2019. This application came to be dismissed by order dated 28.06.2019. Hence, the present petition filed under Section 482 Cr.P.C.

The counsel for the petitioner argued on the basis of the law on the subject that even if the contention of the Station House Officer is taken to be correct, and this condition for deposit of passport is a part and parcel of the judicial order, it is an incorrect order and is contrary to the law on the subject. He relies upon the judgment of the Hon'ble Supreme Court of

India reported in ***Suresh Nanda v. C.B.I***¹, in which the it was clearly held that neither the police nor the Court have the power to seize or impound the passport. The Hon'ble Supreme Court of India also held that while the police may have the power to seize the passport, they do not have the power to retain or impound the same. The only option left to the police, if they feel that the accused would likely to flee the country etc., is to file an application before the Passport Authorities for impounding of the passport under Section 10(3) of the Passports Act, 1967 (for short 'the Act).

Basing on this judgment, learned counsel for the petitioner submits that if the reproduced portion of the order which as mentioned above is treated as a part of the judicial order, it is contrary to the settled law. Counsel also submits that if the same is treated only as a submission made by the learned counsel, it is a submission made without being aware of the law on the subject. Even the application filed according to him for relaxation of conditions was a mistake made by the counsel without being aware of the legal position. The submission of the learned counsel is that there cannot be an estoppel against a statutory provision and that therefore, the order of the lower Court that the condition cannot be relaxed is not correct. He also points out that a reading of the affidavit which is filed for acceptance of the sureties, which is

¹ AIR 2008 SC 1414

also made a part of the material papers, would show that the only prayer is to accept the sureties and pass such other orders. He points out that in the affidavit no averment is made about the passport.

In reply to this, the learned Public Prosecutor submits that the lower Court did not commit any error in passing the impugned order. He points out that even if the initial part of the order about the deposit of the passport is not a part of the lower Courts order, still he submits that it is a submission made by the counsel that petitioner/A.1 would deposit his passport. In the alternative, the learned Public Prosecutor argues that the petitioner also filed an application to relax the condition imposed by the Hon'ble Court for deposit of his passport on 27.05.2019. The learned Public Prosecutor argues that the petitioner rightly understood the order dated 20.05.2019 as an order directing him to deposit the passport. In that view of the matter, learned Public Prosecutor submits that once he has undertaken to deposit passport and the same was included in the order passed, the lower Court did not make any error in passing the impugned order dated 28.06.2019 against the relaxation of the conditions. Therefore, learned Public Prosecutor submits that in terms of the impugned order, the petitioner should deposit his passport with the Station House Officer.

Time and again this Court is coming across many cases, wherein the deposit of passport is being ordered by the Courts at the time of granting bail etc. The Hon'ble Supreme Court of India in **Suresh Nanda's** case (1 supra) has very clearly laid down that impounding of passport is not power that is available to the police. The police have a right to merely seize the passport under Section 102 Cr.P.C., but they do not have the power to retain the passport. The Hon'ble Supreme Court of India has already clearly held that the retention of a passport for a long time also amounts to impounding of the passport. This is very clearly laid down in the judgment of **Suresh Nanda's** case (1 supra). Apart from that the Hon'ble Supreme Court of India also clearly held that after the passport is seized and if the State was of the opinion that the petitioner was likely to flee the country or that he is at a flight risk, the only option available to the State or the prosecution is to file an appropriate application before the Passport Authorities to impound the passport for the reasons mentioned in Section 10(3) of the Act. The Passport Authorities shall give a notice to the accused and after hearing the accused, they will have to pass an order. Since the cancellation of the passport is an order having severe civil consequences, the accused also has a right of being heard before the passport is impounded. The Passport Act, being a special law will prevail over the general law.

In that view of the matter, irrespective of the fact that whether in the present case the issue relates to the voluntary deposit of the passport or deposit pursuant to an order of the Court, the fact remains that neither case is supported by the law. If the counsel made a wrong concession, the same cannot be enure to the benefit of the prosecution. A party should not suffer for any mistake committed by the counsel. If the same is a part and parcel of the lower Courts order, then it is clearly opposed by the law as interpreted by the Hon'ble Supreme Court of India in **Suresh Nanda's** case (1 supra). Therefore, for both these reasons, this Court holds that the condition about the deposit of the passport cannot be imposed by a Court while granting bail or for any other reason. The only option left in such cases, when the passport is seized is to take steps under the Act for cancellation/impounding. Learned Public Prosecutor has stated that the original passport is lost and the accused has applied for a duplicate passport and has flouted the Court order. Basing on the written instructions received by him, he states that petitioner/A.1 is also liable for contempt of Court. This is also not correct and the order of the Court does not seem to suggest this. As mentioned earlier, neither the Court can impose such a condition nor can the counsel give a concession and deposit the passport. Even if the passport is deposited pursuant to the concession made by a counsel, the

same cannot be retained indefinitely by the Court or the Police till the trial is concluded.

In fact, in the decision of **Suresh Nanda** (1supra), the Hon'ble Supreme Court of India noticed that under Section 10(a) of the Act, even the Central Government can only retain the passport for four weeks. Thereafter, a further order from Passport Authorities is necessary for retention of the passport.

After clarifying the law on the subject and holding that the impugned order passed by the I Additional Chief Metropolitan Magistrate is contrary to law, this Court leaves it open to the prosecution to take such steps as are warranted by law, if they are so advised to cancel the passport of the accused.

With these observations, the criminal petition is allowed and the impugned order dated 28.06.2019 in CrI.MP.No.2694 of 2019 in Cr.No.153 of 2019 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam is set aside.

As a sequel, miscellaneous petitions, if any, shall stand closed.

Date: 06.12.2019
KLP

D.V.S.S.SOMAYAJULU, J