

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

CRIMINAL PETITION No.447 OF 2020

ORDER:-

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") is filed seeking quash of the Order of the learned Judicial Magistrate of First Class-cum-Principal Junior Civil Judge, Jaggaiahpet, in CrI.M.P.No.634 of 2019 in C.C.No.23 of 2017, whereby, the petitioner was directed to surrender his Passport bearing No.R8528143 to the Court, at the time of granting bail to him.

2. The petitioner is the sole accused in C.C.No.23 of 2017 on the file of the learned Judicial Magistrate of First Class-cum-Principal Junior Civil Judge, Jaggaiahpet. He has been facing trial for the offences punishable under Sections 408 and 420 of the Indian Penal Code, 1860.

3. At the time of filing the charge sheet against the petitioner, the police have filed a memo stating that the petitioner has been absconding. Therefore, the trial Court issued a Non-Bailable Warrant (N.B.W.) against him to secure his presence in the Court. Thereafter, the said N.B.W. was executed by the police and the petitioner was arrested and he was produced before the trial Court. He was remanded to judicial custody. The petitioner filed a petition to enlarge him on bail. The trial Court allowed the said petition and ordered for release of the petitioner on bail. However, the trial Court directed the petitioner to surrender his Passport to the Court. Therefore, he has deposited the said Passport in the trial Court as directed by the

trial Court while granting bail. Subsequently, the petitioner has filed a petition for return of the said Passport. The said petition came to be dismissed.

4. Therefore, the petitioner has filed this petition assailing the said order directing the petitioner to deposit the Passport and also the Order dismissing his petition for return of his Passport.

5. Heard learned counsel for the petitioner and the learned Additional Public Prosecutor.

6. The law is now fairly well settled that the Courts have no power to direct the accused to deposit or surrender the Passport, even when a criminal case is pending against the accused in the Court of law. It is only the Passport Officer, who is the competent authority under Passports Act, to impound the Passport of any citizen of the country. If the police got any apprehension that the accused, who is facing trial in the criminal case, may leave the country and he may not be available for trial of the case, they have to approach the Passport authority concerned with a request to impound the Passport of the said person on the ground that he is facing trial in a criminal case. If the Court, before whom the accused is facing trial, is of the opinion that if the accused leaves the country and goes abroad that he may not be available for trial, the Court can issue necessary direction to the accused not to leave the country without prior permission of the Court or on a petition filed by the prosecution to that effect, the Court can pass appropriate order in this regard.

7. The legal position in this regard is not an undecided question of law and same is well settled by the Hon'ble Apex Court. The Hon'ble Apex Court in Criminal Appeal No.179 of 2008 in the case of "**Suresh Nanda vs. C.B.I.**"¹ held at Para No.15 as follows :

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

8. Therefore, in view of the dictum laid down in aforesaid Judgment of the Hon'ble Apex Court, the impugned order directing the petitioner to surrender his Passport or to deposit the same in the Court is ex-facie illegal and it is clearly unsustainable under law.

9. Therefore, this Criminal Petition is allowed at the admission stage setting aside the impugned order. Learned Judicial Magistrate of First Class-cum-Principal Junior Civil Judge, Jaggaiahpet, is directed to return the passport that is deposited by the petitioner in the Court, forthwith. However,

¹ (2008) 3 SCC 674

since the petitioner is facing trial in a criminal case, he shall not leave the country without prior permission of the trial Court.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date : 28-01-2020

Note: Issue CC by 29-01-2020

(B/o)

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