

THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.1954 of 2020

ORDER:-

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 questioning the order dated 28.02.2020 passed in CrI.M.P.No.802 of 2020 in F.I.R.No.44 passed by learned I Additional Chief Metropolitan Magistrate at Visakhapatnam.

2. The facts of the case are that the petitioner/A3 has moved an application before the Court below under Section 451 Cr.P.C. for return of passport bearing No.K2758705 so as to enable her to go to Australia. The said application was dismissed basing on the arguments advanced by Additional Public Prosecutor that there are several allegations attributed against the petitioner who instigated A1 to give divorce to the complainant and she is the main person who created problems in the matrimonial life of A1 and the complainant. If the passport is released by the Court there is no possibility to secure the presence of the petitioner, more particularly when she is permanent resident of Australia and once she goes to Australia there is no question of securing her presence. Assailing the said order, the present criminal petition is filed.

3. Heard Sri T.Ramakoteswara Rao, learned counsel for the petitioner, learned Public Prosecutor appearing for respondent No.1-state and Sri I.M. Ahmed, learned counsel for respondent No.2.

4. Learned counsel for the petitioner relied upon order dated 28.01.2020 passed in Criminal Petition No.447 of 2020 wherein

this Court has allowed the petition by setting aside the impugned order therein while directing for return of passport, by placing reliance on judgment of the Hon'ble Apex Court rendered in Criminal Appeal No.179 of 2008 in the case of "**Suresh Nanda vs. C.B.I.**" the relevant portion of which reads as under:

"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."

In view of the above finding of the Hon'ble Apex Court, directing for surrender of passport or to deposit the same in the Court is *ex-facie* illegal and it is clearly un-sustainable under Law.

5. In the light of the law laid down by the Hon'ble Apex Court, neither the Police nor the Courts have power to seize the passport or to direct the accused to deposit or surrender the passport even when a criminal case is pending in the Court of law and only the Passport Officer is the competent authority to impound the passport.

6. In view of the above discussion, this Criminal Petition is allowed setting aside the impugned order dated 28.02.2020 and

learned I Additional Chief Metropolitan Magistrate at Visakhapatnam is directed to return the passport that is seized by the Police and produced before the Court, forthwith.

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

JUSTICE LALITHA KANNEGANTI

Date: 13.10.2020

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