

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION No.10429 of 2020

ORDER:

The present writ petition has been filed by the petitioner for grant of the following relief :

“to issue an appropriate writ, order or direction more particularly a writ in the nature of mandamus declaring the action of the official respondents, particularly the third respondent, in seizing the passport vide P IND J 8965303, dated 13. 10.2011 valid up to 20.10.2021 in connection with FIR No. 111/2019, registered under Sections 498 (A), 323, 504, 506 IPC and Section 3 and 4 of Dowry Prohibition Act, on the file of the I.T. Corridor, Cyberabad, as illegal, arbitrary, violation of provisions of Cr.P.C. and also in violation of fundamental right for free movement of citizen.”

2. Heard Sri K. Venkata Reddy, learned counsel for the petitioner and Sri A. Manoj Kumar, learned Assistant Government Pleader (Home). With the consent of both the Counsel is appearing for the parties, the Writ Petition is taken up for disposal in virtual mode through videoconferencing.

3. The brief facts of the case of the petitioner as pleaded are, that the marriage of the petitioner namely Bireddy Pradeep Kumar Reddy was solemnized with one Smt. Bireddy Keerthy, the fourth respondent in the present Writ Petition on 07.05.2017. Thereafter, the fourth respondent after about two months joined the company of the petitioner, who it is claimed at that point of time was working in Germany. It is claimed that the petitioner and the fourth respondent lived happily for sometime and during the said

period the petitioner and the fourth respondent travelled all over Europe by visiting about 11 countries.

4. It is the case of the petitioner that after some time, there has been a change in the attitude and behaviour of the fourth respondent which led to differences between the petitioner and the fourth respondent. It is claimed that eventually the fourth respondent came back to India and left the company of the petitioner in June, 2018.

5. It is also the further case of the petitioner that the fourth respondent approached the police authorities initially in August, 2018 and gave a complaint against the petitioner, who after conducting a preliminary investigation did not find anything against the petitioner. But, at the instance of the fourth respondent, the petitioner and the fourth respondent were referred to family counselling Centre in Ranga Reddy District Court at LB Nagar, Hyderabad, who gave suggestions for happy living of the petitioner and the fourth respondent. However, the fourth respondent did not adhere to the same, as a result the marriage between the petitioner and the fourth respondent had reached a point beyond reconciliation. Since, fourth respondent was not willing to lead matrimonial life with the petitioner, it is claimed that the petitioner got issued a legal notice through his Counsel on 13.07.2019 calling upon the fourth respondent to come forward for amicable settlement for a mutual consent divorce. It is further stated that since the fourth respondent did not respond to the said notice, the petitioner had filed a petition before the competent Court at Hyderabad seeking divorce from the fourth respondent.

6. The petitioner further claims that the fourth respondent having learnt about the divorce petition filed by the petitioner had approached the respondent police authorities on 01.10.2019 and made a complaint against the petitioner. Based on the said complaint made by the fourth respondent, the respondent police authorities have registered a case vide a FIR No.716 of 2019 dated 01.10.2019 under Sections 452, 352, 506 read with Section 34 IPC. It is also claimed that thereafter the fourth respondent by approaching the third respondent authority had lodged another complaint against the petitioner and his parents on 28.11.2019. Based on the subsequent complaint made by the fourth respondent on 28.11.2019, the third respondent authority registered a FIR No.111/2019 under the provisions of Sections 498 (A), 323, 504, 506 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961.

7. The learned counsel for the petitioner would further submit that while the petitioner was performing employment duties in USA, he received a call from the office of the third respondent informing the petitioner about the complaint made by the fourth respondent and the case registered against him based on the said complaint and calling upon the petitioner to appear before the third respondent authority. It is claimed by the petitioner that since, at the relevant point of time, the petitioner being in USA, informed the authorities of his proposed return to Hyderabad, India on 02.03.2020.

8. It is also stated that the petitioner immediately upon return to India on 02.03.2020, approached the third respondent authority on 04.03.2020. Despite the petitioner approaching the third

respondent authority on 04.03.2020, the authorities did not respond. In the meantime, the petitioner's employer asked the petitioner to come back to USA whereupon, the petitioner was in the process of going back to USA on 16.03.2020 and since, marriage ceremony of a cousin of the petitioner was scheduled on 11.03.2020 at Bangalore, it is claimed that the petitioner proceeded to Bangalore to attend the said ceremony and thereafter choose to proceed to USA from Bangalore. Thus, on 16.03.2020 when the petitioner reached Bangalore Airport for proceeding to USA, the Airport authorities informed the petitioner about the lookout notice issued by the third respondent police authority and detained the petitioner at the Airport and handed over the petitioner to the third respondent authorities through the local police at Bengaluru. It is also claimed that after being handed over to the third respondent authority, the petitioner was served with a notice under section 41(A) Cr.P.C dated 16.03.2020 and also seized the passport bearing No.P IND J8965303 dated 13 October 2011 in connection with the FIR No.111/2090 registered on the file of the third respondent authority.

9. Learned Counsel for petitioner would submit that, though the petitioner subsequently obtained bail in the above crime, and also filed a quash petition against the crime registered, which is pending consideration, the passport of the petitioner has not been returned by the third respondent police authorities. It is claimed by the petitioner that the respondent police do not have the power to retain the passport, as such the retention of passport would amount to impounding of passport, which power is only conferred on the passport authorities specified under the Passports Act,

1967. Therefore, the petitioner seeks a direction to the third respondent authority to return the passport of the petitioner.

10. The thrust of the submission of the learned Counsel for the petitioner is that the respondent police authorities do not have the power to seize the passport in connection with the crime registered. Learned counsel for the petitioner would submit that the power to seize the passport is only vested with the passport authorities under the Passports Act, 1967 and being a special enactment, the seizure of the passport by the third respondent authority and retaining the same since, March 2020 is contrary to the provisions of the Passports Act, 1967, depriving the petitioner from travelling to foreign country freely, thereby affecting his fundamental right. In support of the above submission, the learned counsel for the petitioner has placed reliance on the judgement rendered by the Madras High Court in the case of *Arockia Jeyabalan v. The Regional Passport Officer, Chennai and others.*, dated 15.09.2014.

11. *Per Contra*, the learned Assistant Government Pleader, by placing reliance on the written instructions dated 09.07.2020, under the signature of the Inspector of Police, WPS, Gachibowli, Cyberabad Commissionerate, would strenuously submit that the crime registered against the petitioner is under the provisions of Section 498(A), and other provisions of Indian Penal Code and also under Sections 3 and 4 of the Dowry Prohibition Act. Learned Assistant Government Pleader would submit that the offences with which the petitioner is charged with, being grave in nature, the claims made by the petitioner in the writ affidavit are all self serving statements.

12. It is submitted by the learned Assistant Government Pleader that the petitioner was trying to move away from the jurisdiction of the concerned Court after being issued with notice under Section 41(A) Cr.P.C. on 10.03.2020, by trying to fly out of country by taking a flight from Bangalore Airport, while the petitioner is a resident of Hyderabad.

13. Learned Assistant Government Pleader would further submit that the respondent police authorities are vested with power under Section 102 of Cr.P.C. to seize the passport in the course of investigation since, passport is movable property. In support of the above submission, learned Assistant Government Pleader has placed reliance on the judgement of the Honourable Supreme Court in the case of *Nevada properties* wherein the Hon'ble Supreme Court has held that the sale deeds relating to immovable property can be seized under Section 102 of Cr.P.C.

14. It is also submitted by the learned Assistant Government Pleader that in normal circumstances when the respondent police authorities effect any seizure, the same would be deposited into the Court by preparing a seizure report. It is also submitted that when a seizure of any passport or similar such documents are effected, the same are deposited with the concerned Court under the seizure report within a period of four weeks from effecting the seizure, as Section 10A of the Passports Act, 1967 provides for the said time limit.

15. Learned Assistant Government Pleader by drawing attention to the order passed by this Court in I.A. No.1 of 2019 in W.P. No. 22956 of 2019, would submit that this Court has considered the

scope of Section 10A of the Passports Act, 1967 in detail and held that once the seizure is reported to the concerned Magistrate, the police authority becomes functus officio, even if the passport is retained in the custody of the authority. However, in the facts of the present case, since the seizure was effected on 16.03.2020, and with the sudden onslaught of pandemic Covid-19 and the National lock down announced since 20.03.2020, for nearly two months, the entire State was thrown out of gear and the petitioner is only trying to take advantage of such lock down to claim expiry of four week period as provided under Section 10(A) of the Passports Act, 1967.

16. It is also stated that, though the investigation in the crime is completed and charge sheet is ready for filing, the same could not be filed due to the above supervening circumstances beyond the control of the authority. By the written instructions, it is also stated that looking at the conduct of the petitioner on earlier occasion, in trying to fly away from Bengaluru, if the passport is released, the petitioner may go abroad thereby making it difficult to apprehend.

17. It is further submitted that no material has been placed before this Court to show the genuineness of the claim being made by the petitioner with regard to the employer calling the petitioner back to USA. Thus, the learned Assistant Government Pleader would submit that the petitioner is a flight risk case and no indulgence by this court is called for.

18. Having given due consideration to the submissions made as above and also taking note of the precedents on which reliance is

placed by the learned Counsel appearing for the parties, it is to be seen that retaining of passport by the police authorities after the same is seized beyond a period of four weeks would amount to impounding by the police authority, which power the said authority lacks, as has been held by the Hon'ble Supreme Court in *Suresh Nanda V. C.B.I. (2008) 3 SCC 674*. Further, this court having regard to the law laid down by the Apex Court and the provisions of the Cr.P.C. including Section 457 Cr.P.C., has by its order in I.A. No.1 of 2019 in W.P. No.22956 of 2019 held that retaining the seized property by the police after being reported to the Magistrate, would have to be considered only as a custodian and such retaining cannot be considered as impounding by the police authorities and passport holder has to make an application to the concerned Court for release of the passport.

19. However, in the facts of the present case as fairly stated by the learned Assistant Government Pleader, that the 3rd respondent authority could not take steps to deposit the passport into Court after seizing the same due to Covid-19 and also on account of work, particularly in criminal courts being suspended. Though, in normal circumstances, once the passport is retained beyond the period of four weeks, it would have to be construed as impounding, not permitted by law, but Pandemic Covid-19 virus is the intervening circumstance, whereby the entire country was effected, needs to be factored in for considering the period of four weeks. Since, the period of four weeks as permitted under Section 10A of the Passports Act, 1967 in the facts of the case commenced from 16.03.2020, and applying the principles deduced from the various orders passed by the Hon'ble Supreme Court from time to time in

the case of *In Re : Cognizance for Extension of Limitation*, in particular the order dated 10.07.2020, whereby the Apex Court has also extended the time to perform a particular act, and the judgment rendered by the Supreme Court in the case of *Sagufa Ahmed & ors v. Upper Assam Plywood Product Pvt. Ltd. & ors.*, dated 18.09.2020, wherein the Hon'ble supreme Court had clarified the order passed on 23.03.2020 in *Suo Motu Writ Petition (Civil) No. 3 of 2020*, would only be applicable for extending the period of limitation w.e.f 15.03.2020 till further order/s, but not for the period of delay to be condoned, it is to be held that the period of four weeks for the respondent authorities to take action with regard to deposit of passport in the Court stands extended, till such time the functioning of the Court commenced / commences. However, even after commencement of functioning of Courts, if the respondent police authority has failed or fails to take steps in depositing the passport within a period of four weeks, the same would amount to impounding, which power the authorities are not conferred with.

20. Further, even after the seized material is deposited into Court under seizure report, when it comes to passport seized and deposited into Court, the Court is not empowered to impound the passport under Section 104 of Cr.P.C. upon such deposit. The power to impound a validly issued passport is specifically conferred on the passport authority under Section 10(3) of the Passports Act, 1967, being a special enactment would prevail over Cr.P.C. a general enactment. Thus, even after deposit of seized property into the Court, the respondent authority would be required to take further steps by approaching the passport

authority under the Passports Act, 1967, and seek for impounding of passport. The said situation can arise only if any one of the condition enumerated in clause (a) to (h) of sub-section (3) of Section 10 of the Passports Act, 1967 being attracted. At this stage, the judgement rendered by the Madras High Court in *Jeyabalan case (supra)* would be of aid to the case of the petitioner, wherein in para 22 it was observed that –

“The case will not come under Clause (e), since no proceedings are pending before a Criminal Court in India in respect of an offence allegedly committed by the petitioner. The Criminal complaint is only pending investigation. Till a charge sheet is filed, the proceedings cannot be said to be pending before a Criminal Court in India.”

21. It is also to be seen that for impounding of passport by the passport authority on attracting any of the conditions specified in Sub-section (3) of Section 10 of the Passports Act, 1967, having of physical custody of passport is neither mandatory nor specified. It is only the satisfaction of the passport authority that any of the conditions stipulated in (a) to (h) of Section 10(3) is attracted, the authority can impound the same, irrespective of where the passport holder is residing at. However, before passing of impounding order, the authority is required to give opportunity of hearing to the concerned. Thus, the claim of the respondent authorities that, if passport is released to the petitioner, it will be difficult to apprehend him again, does not appeal to this Court for being accepted for the aforesaid reasons and also having regard to the wide amplitude of powers, the passport authority enjoys, unless the petitioner escapes to countries with whom India does not have Extradition Treaties or Arrangements or seeks asylum in

a country so permitting. Even otherwise, the said apprehension also appears to be without any basis for the reason, the petitioner claims to be working onsite/onshore with an Indian IT company and would be on employment visa and all his details would be available with the employer as to the onsite location of working and client details and at a call of the employer, the employee can be withdrawn and deported from wherever he is.

22. Further, in the facts of the present case, if the respondent authorities have any apprehension of petitioner being a flight risk case, the authorities can approach the concerned Magistrate Court and seek for cancellation of bail or seek alteration/ modification of condition of bail granted by making an application in this regard and the Court in exercise of powers under section 437 of Cr.P.C. as condition for grant of bail can impose a condition directing the petitioner to surrender/deposit the passport to ensure his presence at the investigation, enquiry or trial of the case. In such a situation the provisions of Section 10(3) of the Passports Act, 1967 would not stand attracted.

23. In view of the conclusions arrived at by this Court as above, the Writ Petition is disposed of with the following directions:

A. In the event the 3rd respondent authority has already deposited the passport before the concerned Magistrate Court, the petitioner is free to move application before the concerned Court seeking for release of passport, which application shall be considered on its own merits ;

B. Further, if the investigation into the crime is complete and charge sheet is also filed, the respondent authority can approach the passport authority and seek for impounding of passport under Section 10(3) of the Passports Act, 1967, if the authorities so desire, since, in such a situation, it can be

claimed that proceedings are pending before a criminal court in India ;

C. In the event, if the authority has not taken any further steps after seizing the passport on 16.03.2020, either by depositing the passport into the Court, filing charge sheet in the crime and further approaching the passport authority u/s. 10(3) of the Passports Act, 1967, for impounding the passport of the petitioner within the time of four weeks as specified in Section 10A of the Passports Act, 1967, as extended to apply from the end of lock down period by applying the principle laid down by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020, the authorities in particular, the 3rd respondent authority, has no power or authority to retain the passport of the petitioner, as such retention would amount to impounding of the passport by the said authority. If such is the situation, the 3rd respondent authority is hereby directed to return the Passport bearing No. P IND J 8965303 to the petitioner forthwith.

24. However, it is made clear that this Court has neither dealt with the Look out Notice issued against the petitioner nor expressed any opinion thereon, as the challenge in the present writ petition is confined only to the respondent authorities seizing and retaining the passport of the petitioner.

25. Pending Miscellaneous applications if any, stand closed in the light this final order.

Date: 09.11.2020

T. VINOD KUMAR, J

MRKR