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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

ABHAY S. OKA; J., RAJESH BINDAL; J.

Criminal Appeal Nos.1601–1602 of 2023; July 25, 2023

Chennupati Kranthi Kumar *versus* The State of Andhra Pradesh & Ors.

Passports Act, 1967; Section 10 - Without impounding of the passport, the Passport Authority cannot unauthorisedly retain a passport handed over by the Police in the name of a pending criminal case. (Para 11)

Code of Criminal Procedure, 1973; Section 102, 104 - the power under Section 104 of Cr.P.C. cannot be invoked to impound a passport. The reason is that the provisions of the PP Act which deal with the specific subject of impounding passports shall prevail over Section 104 of Cr.P.C. Moreover, under Section 102 (1) of Cr.P.C., the Police have the power to seize the passport but there is no power to impound the same. Even if the power of seizure of a passport is exercised under Section 102, the Police cannot withhold the said document and the same must be forwarded to the Passport Authority. It is, thereafter, for the Passport Authority to decide whether the passport needs to be impounded. (Para 8, Relied on Suresh Nanda v. Central Bureau of Investigation, (2008) 3 SCC 674)

Matrimonial Dispute - Power to impound passport - the Police took custody of the appellant's passport in the exercise of powers under Section 91 of Cr.P.C. and handed over the same to the Regional Passport Office. We fail to understand why the passport of the appellant was required for the purpose of the pending criminal case. Therefore, the exercise of calling upon the appellant to submit his passport was not legal. Thereafter, the passport was never impounded in exercise of power under Section 10 of the PP Act. There is nothing on record to show that the passport was seized under Section 102 of Cr.P.C. As there was neither a seizure of the passport nor impounding thereof, the appellant was entitled to return of the passport. As there was neither a seizure nor impounding of the passport, it was unauthorisedly retained by the Regional Passport Office. (Para 9, 10)

Matrimonial Dispute – The appellant was aggrieved by the condition of producing the passports of his son (who is a citizen of USA) and his wife. The appellant applied for the modification of the said order insofar as it directed him to return the passports of his wife and minor son. The contention of the appellant was that the passport of his son was lost in July 2021 and that the appellant has complied with the necessary procedure to get a new passport issued. He also contended that the appellant was not in possession of the passport of his wife. The direction by the High Court to return the passports of his wife and son as a condition for the release of the appellant's passport was completely illegal. (Para 11)

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J U D G M E N T

ABHAY S. OKA, J.

1. Though the dispute involved in these appeals concerns the return of the passport of the appellant, it is an outcome of a matrimonial dispute between the appellant and 4th respondent who is his wife. With a view to understand the controversy, a brief reference to factual aspects will be necessary.

FACTUAL ASPECTS

2. The appellant is accused no.1 in a prosecution for offences punishable under Sections 498-A, 403 and 406 of the Indian Penal Code, 1860 (for short, 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (for short, 'the 1961 Act'). During the course of the investigation into the said offences, the Police issued a notice under Section 91 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') calling upon the appellant to produce his passport. Accordingly, the appellant submitted his passport to the concerned police station, which in turn, handed over the original passport to the 3rd respondent – Regional Passport Office at Hyderabad. There was a correspondence exchanged between the 3rd respondent and the appellant. The 3rd respondent issued a letter dated 11th February 2021 informing the appellant to get permission from the competent Court for the release of his passport.

3. The appellant is working in a company in USA. He came to India on a leave to perform the first death anniversary rituals of his father. While he was in India, a complaint was filed by the 4th respondent–wife against the appellant and other family members for the offences punishable under Sections 498-A, 403 and 406 of IPC and Sections 3 and 4 of the 1961 Act. Prior to that, on 19th January 2021, the 3rd respondent issued a notice to the appellant, in which it was recorded that the Police authorities have forwarded his original passport to him. In the same notice, it was alleged that the appellant was in possession of the passport of 4th respondent. The appellant was called upon to return the passport to the 4th respondent.

4. The appellant made an application to the Court of the learned II Additional Chief Metropolitan Magistrate–cum– Mahila Magistrate, Vijayawada for issuing a direction to the 3rd respondent to return the passport. The appellant pleaded that he has a fundamental right to travel abroad conferred by Article 21 of the Constitution of India. He pointed out in the application that he needs to go back to USA to attend his job. The application was opposed by the 4th respondent on various grounds. On 14th June 2022, the application was dismissed by the learned II Additional Chief Metropolitan Magistratecum-Mahila Magistrate. Being aggrieved by the said order, the appellant filed a petition under Section 482 of Cr. P.C before the High Court. By the impugned judgment and order, the High Court of Andhra Pradesh directed the 3rd respondent to return the passport of the appellant to facilitate his travel abroad, subject to the following conditions:

- a. The appellant shall deposit a sum of ₹10 lakhs by way of a Fixed Deposit Receipt in the name of the 4th respondent; and
- b. The appellant shall submit the original passports of the 4th respondent and his minor son.

The appellant was aggrieved by the condition of producing the passports of his son (who is a citizen of USA) and his wife – 4th respondent. The appellant applied for the modification of the said order insofar as it directed him to return the passports of his wife and minor son. The contention of the appellant was that the passport of his son was lost in July 2021

and that the appellant has complied with the necessary procedure to get a new passport issued. He also contended that the appellant was not in possession of the passport of the 4th respondent. He, however, agreed to comply with the condition for depositing the sum of ₹10 lakhs by way of Fixed Deposit Receipt in the name of the 4th respondent–wife. Even the said application was rejected by the High Court. Both the aforesaid orders have been challenged in these appeals.

SUBMISSIONS

5. The learned counsel appearing for the appellant relied upon a decision of this Court in the case of **Suresh Nanda v. Central Bureau of Investigation**¹ by submitting that there is no power vesting in the Police to impound a passport. He further submitted that the power to impound passport vests only in the Passport Authority under the Passports Act, 1967 (for short, ‘the PP Act’). He submitted that in fact, the appellant’s passport was never impounded and therefore, it must be returned to him unconditionally.

6. The learned Additional Solicitor General appearing for the 3rd respondent – Regional Passport Office submitted that a duplicate passport cannot be issued under the provisions of the PP Act and Rules framed thereunder. However, 4th respondent can apply for the reissue of passport provided she establishes that her passport has been lost. On a query made by the Court, he accepted that there was no order of impounding the appellant’s passport made in accordance with Section 10 (3) of the PP Act.

7. The learned counsel appearing for the 4th respondent – wife submitted that the stand taken by the appellant that the passport of the 4th respondent–wife was never with him is completely false. Therefore, the direction issued by the High Court was perfectly justified. He urged that the rights of the 4th respondent cannot be allowed to be defeated. He also pointed out the conduct of the appellant which according to him was objectionable. His submission is that the appellant has indulged in the suppression of facts.

OUR VIEW

8. A relevant decision of this Court on the issue involved is in the case of **Suresh Nanda**¹. In the said decision, it was held that the power under Section 104 of Cr.P.C. cannot be invoked to impound a passport. The reason is that the provisions of the PP Act which deal with the specific subject of impounding passports shall prevail over Section 104 of Cr.P.C. Moreover, it was held that under Section 102 (1) of Cr.P.C., the Police have the power to seize the passport but there is no power to impound the same. It was held that even if the power of seizure of a passport is exercised under Section 102, the Police cannot withhold the said document and the same must be forwarded to the Passport Authority. It is, thereafter, for the Passport Authority to decide whether the passport needs to be impounded.

9. It is an accepted position that the Police took custody of the appellant’s passport in the exercise of powers under Section 91 of Cr.P.C. and handed over the same to the 3rd respondent. Sub-Section (1) of Section 91 of Cr.P.C. reads thus:

“91. Summons to produce document or other thing:-

(1) Whenever any Court or any officer incharge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose

¹ (2008) 3 SCC 674

possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2)

(3)"

We fail to understand why the passport of the appellant was required for the purpose of the pending criminal case. Therefore, the exercise of calling upon the appellant to submit his passport was not legal. Thereafter, the passport was never impounded in exercise of power under Section 10 of the PP Act. There is nothing on record to show that the passport was seized under Section 102 of Cr.P.C. As there was neither a seizure of the passport nor impounding thereof, the appellant was entitled to return of the passport.

10. Paragraph 13 of the impugned judgment and order reads thus:

“13. Therefore, in the peculiar facts and circumstances of the case and keeping in view the interest of both the parties, this Court deems it appropriate to set aside the Order under Revision and direct the release of Passport of the petitioner to facilitate his travel to abroad subject to the condition of the petitioner depositing a sum of Rs.10,00,000/- by way of F.D.R., in favour of the 4th respondent/*de facto* complainant along with the Original Passports of the 4th respondent/*de facto* complainant and her son before the learned II Additional Chief Metropolitan Magistrate-cum-Mahila Magistrate, Vijayawada, within a period of four (4) weeks from the date of receipt of a copy of this Order. Further, the petitioner shall file an Undertaking-Affidavit that he would return to India within a period of six months and cooperate for expeditious disposal of the above said C.C. In the event, the petitioner fails to return back, the F.D.R., shall stand forfeited in favour of the 4th respondent/*de facto* complainant.”

As there was neither a seizure nor impounding of the passport, it was unauthorisedly retained by the 3rd respondent. In fact, the High Court directed the return of the passport subject to a deposit of a sum of ₹10 lakhs by way of Fixed Deposit Receipt in the name of the 4th respondent. As the High Court permitted the appellant to travel abroad, this condition was imposed to ensure that the appellant comes back as per his undertaking to attend the trial. But, the direction to the appellant to return the passports of the appellant's son and wife was not supported by law. Therefore, the High Court ought to have directed the 3rd respondent to return the passport. We may note here that the appellant is not aggrieved by the direction to make a fixed deposit of ₹10 lakhs.

11. The direction to return the passports of his wife and son as a condition for the release of the appellant's passport was completely illegal. As regards the passport of the son, it is taken care of as the appellant has followed the prescribed procedure in USA regarding lost passports. The condition of returning the passport of the 4th respondent could not have been imposed at all as the act of the Passport Officer of retaining the appellant's passport was completely illegal. Therefore, the said respondent can make an application in a prescribed form to the competent regional officer for the reissue of the passport. If the validity of the passport has expired and the period provided for renewal thereof has expired, she can apply for a fresh passport. If the 4th respondent wants some documents from the appellant only for the purposes of filing an application for the reissue of the passport or for grant of a fresh passport, the appellant shall cooperate by doing the needful.

12. Accordingly, the appeals succeed and we pass the following order:

a. The condition imposed on the appellant by the impugned order of returning the passports of the 4th respondent and of the son is set aside;

- b. It will be open for the 4th respondent to apply to the concerned Regional Passport Office in prescribed format for the reissue of her passport or for grant of a fresh passport. The concerned Regional Passport Office shall process the said application on the footing that her passport has been lost. The 4th respondent shall not be called upon to produce the proof of loss of passport. Filing a report to the Police about the loss of the passport shall be sufficient. The application shall be processed as expeditiously as possible;
- c. The appellant shall render all possible cooperation to the 4th respondent for getting the passport by providing documents, if any, required as per the Passports Rules, 1980;
- d. Rest of the order stands confirmed; and
- e. The appeals are partly allowed on the above terms.

There will be no order as to costs.

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