

IN THE COURT OF SESSIONS AT CHENNAI

Present: Thiru.R.Selvakumar, B.A., M.L.,

Principal Sessions Judge

Wednesday, the 20<sup>th</sup> day of October, 2021.

Crl.R.C.No.85/2021

(TNCH-01-028920-2021)

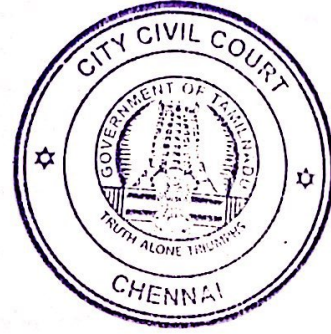
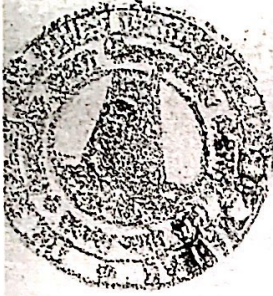
against

Crl.M.P.No.119/2020

in

C.C.No.344/2019

(On the file of the IX Metropolitan Magistrate, Saidapet, Chennai)



Leena Manimekalai

...Petitioner/Respondent/Accused

-Vs-

Susi Ganeshan

...Respondent/Petitioner/Complainant

This petition coming on 6.10.2021 before this court for hearing in the presence of M/s.V.S.Senthil Kumar, A.Kripakaran and V.Johnson Yuvaraj, Counsel for the revision petitioner and of M/s.C.Sangamithirai, D.Alexis Sudhakar, T.Anto Chrisbeen Jenitha and P.Prithivirajan, Counsel for respondent, and upon hearing both sides and upon perusing the case-records and the trial court order and having stood over for consideration till this date, this court delivered the following :-

**ORDER**

1. This revision has been preferred against the order passed by the learned IX Metropolitan Magistrate, Chennai in Crl.M.P.No.119/2020 in C.C.No.344/2019, dated 6.9.2021, thereby directing the Passport Authority to impound the passport of the petitioner.

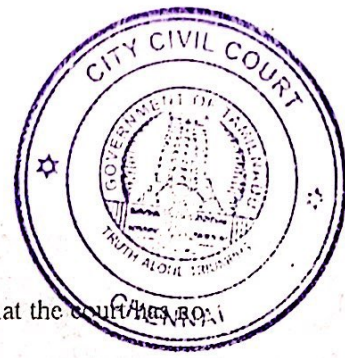
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2. The point for consideration is :

“Whether the revision petition deserves to be allowed?”

**POINT :**



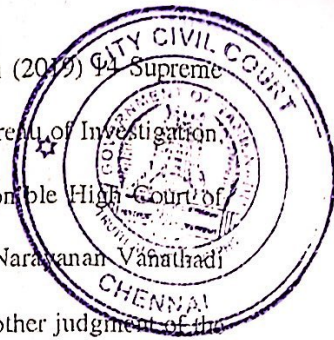
3. The learned counsel appearing for the revision petitioner submits that the court has no power to impound the passport so as to affect his or her personal liberty. The Trial Judge erroneously passed the order by reopening the CrI.M.P.No.119/2020 that has been closed on the earlier point of time and passed this erroneous order. As per Sec.104 of Cr.P.C. the document produced before the court can be impounded by the court. As far as this case is concerned, the passport of the petitioner had not been seized and produced by the police. The order is erroneous and against the dictum of the Hon'ble Supreme Court and thus, prays for setting aside the order.

4. On the other hand, the learned counsel appearing for the respondent submits that the petitioner herein is the accused in C.C.No.344/2019, which was filed by the respondent Susi Ganeshan for defamation. It is a private complaint, the case is pending for trial. P.W.1 has to be cross-examined further. Under such circumstances, this order has been passed. The petitioner / accused is wantonly protracting the proceedings. There was an order by the Hon'ble High Court to finish the case within a period of nine months on 4.8.2020 in CrI.O.P.No.11681/2020. In spite of that direction, the accused / petitioner is delaying the proceedings. Now, in order to further delay the proceedings, the accused is trying to leave the country and thus, the trial court was justified in impounding the passport and prays for dismissal of the revision.

5. The learned counsel for the petitioner during the course of arguments submitted the

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decision in Narayan Prasad - vs - State of Bihar and others, reported in (2019) 94 Supreme Court Cases 726 and another decision in Suresh Nanda - vs - Central Bureau of Investigation, reported in (2008) 3 Supreme Court Cases 674 and the order of the Hon'ble High Court of Madras Madurai Bench in W.P. (MD) No.1259/2015 between Sankara Narayanan Vanathadi Chidambaram and Regional Passport Officer Madurai and another and another judgment of the Hon'ble High Court of Kerala at Ernakulam in Cri.MC.No.2853/2010 between Srinivas Babu and State of Kerala and others and vehemently argued that passport cannot be impounded by the Magistrate Court, only the Passport Authority is competent authority to impound the passport, that too, after giving notice. In this case, a direction has been issued by the Magistrate to the Passport Authority to impound the passport u/s 10(3)(e) of the Passport Act. In fact, the court has no power. The Passport Authority has to take notice to the citizen before impounding the passport.

6. No doubt, in Suresh Nanda case, it has been held as follows :

*"Thus, the Act is a Special Act relating to a matter of passport, whereas Section 104 Cr.P.C. authorises the court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special Act, the rule that "general provision should yield to the specific provision" is to be applied."*

It has been categorically held that impounding of passport cannot be done by the court u/s 104

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of Cr.P.C. A court is competent to impound any document gathered during the investigation and produced before the court. In this case, the passport had not been produced before the court. So, invoking Sec.104 Cr.P.C. to impound the passport is not proper. Further, the Hon'ble Supreme Court in Suresh Nanda case categorically held that passport does not come u/s 104 Cr.P.C., it can be impounded by the Passport Authority after conducting proper enquiry. Under such circumstances, the trial Court appears to have erred in impounding the passport. Since because there was a direction to dispose of the case in a stipulated time, no order can be passed impounding the passport, which directly affects the personal liberty of the citizen and thus, this court is of the considered view that the revision deserves to allowed.

7. In the result, the revision petition is allowed. The order passed by the learned IX Metropolitan Magistrate, Saidapet, Chennai in CrI.M.P.No.119/2020 in C.C.No.344/2019, dated 6.9.2021 is set aside.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the open Court this the 20<sup>th</sup> day of October, 2021.

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PRINCIPAL SESSIONS JUDGE

CERTIFIED TO BE  
A TRUE COPY

12.10.2021  
Superintendent of Convict  
City Civil Court, Chennai

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