

(2014) 09 MAD CK 0015

In the Madras High Court

Case No : Writ Petition Nos. 18637 of 2014 and 22205 of 2014 and MP. Nos. 1, 1 and 2 of 2014

Arockia Jeyabalan

APPELLANT

Vs

Regional Passport Officer, Mount Road, Chennai

RESPONDENT

Date of Decision : 15-09-2014

Acts Referred:

Citation : (2016) 2 MadWNCri 299

Hon'ble Judges : Mr. V. Ramasubramanian, J.

Bench : Single Bench

Advocate : Mr. J. Pothiraj, Advocate, for the Petitioner; Mrs. R. Maheswari, SCGSC for Mr. R. Vijayakumar, AGP for Mr. Haja Mohideen Gisthi, CGSC and Mrs. C. Shyamala, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. V. Ramasubramanian, J.—The petitioner, who holds an Indian passport, but who works in Singapore for the past about ten years, has come up with the first writ petition, seeking the issue of a Writ of Mandamus to direct the third respondent to return his passport bearing No. J3497386 seized from him by the Inspector of Police. He has come up with the second writ petition, challenging a Look Out Notice issued by the Police to the Chief Immigration Officer of the Bureau of Immigration.

2. I have heard Mr. J. Pothiraj, learned counsel for the petitioner, Mr. Haja Mohideen Gisthi, learned Central Government Standing Counsel for the Passport Officer, Mrs. R. Maheswari, learned Senior Central Government Standing Counsel appearing for the Department of Immigration, Mr. R. Vijayakumar, learned Additional Government Pleader appearing for the State and Mrs. C. Shyamala, learned counsel appearing for the writ petitioner's wife, who is the fourth respondent in the first writ petition.

3. The petitioner married the fourth respondent at Paramakkudi on 9.7.2009.

Thereafter, both of them left for Singapore where the petitioner is employed. The petitioner's wife returned to India, for the delivery of her baby in August 2010. It appears that differences and disputes arose between the petitioner and his wife leading to the petitioner filing of a petition in I.D.O.P. No. 8 of 2012 on the file of the Family Court at Ramanathapuram, seeking divorce on the ground of desertion and cruelty.

4. It appears that the petitioner's wife filed a transfer petition in Tr. C.M.P. No.7 of 2013 on the file of the Madurai Bench of this Court for the transfer of the said petition. She also lodged a complaint with the Paramakkudi Police.

5. Subsequently, the petitioner's wife again lodged a complaint with the All Women Police Station, Thousand Lights, Chennai in Cr. No.1 of 2014 for alleged offences under Sections 494, 498A and 506(i) of the Indian Penal Code. When the petitioner was about to leave for Singapore, he was detained by the Immigration Authorities at the Bangalore Airport, on the basis of a Look Out Notice issued by the Deputy Commissioner of Police, Triplicane. The petitioner was also arrested on 1.2.2014 and his passport was seized by the respondent Police.

6. The petitioner secured bail from the XIV Metropolitan Magistrate, Egmore on 5.2.2014, on condition that the petitioner should report before the third respondent Police for 30 days. After his release on bail, the petitioner moved an application before the Magistrate Court for the return of the properties seized from him, including a mobile phone and the passport. But, the application for return of the passport was not entertained on the ground that it is not maintainable. Therefore, the petitioner first filed a writ petition in W.P. No.6697 of 2014. In the said writ petition, it was informed that the Immigration Authorities, who seized the passport, handed over the same to the Police and that the Police, in turn, handed over the passport to the Regional Passport Officer.

7. Therefore, the petitioner withdrew the said writ petition and approached the Regional Passport Officer. Since nothing was forthcoming, the petitioner filed a criminal revision petition before this Court. The revision in CrI. R.C. No.400 of 2014 was disposed of by an order dated 22.4.2014 directing the Regional Passport Officer to pass suitable orders in accordance with law. But, the Regional Passport Officer did not take any steps. Therefore, the petitioner came up with the first writ petition W.P. No.18637 of 2014 for a Mandamus to direct the Regional Passport Officer to return the passport. Subsequently, the petitioner filed the second writ petition challenging the Look Out Notice issued by the third respondent - Police.

8. The second writ petition challenging the Look Out Notice is capable of being disposed of without much ado. Therefore, I shall take it up first.

9. Mrs. R. Maheswari, learned Senior Central Government Standing Counsel produced a letter sent to her by the Bureau of Immigration. In the letter, it is stated as follows :

"As per our record check, the petitioner Arokia Jayabalan Thomas (a) Arokia Jayabalan is figuring in Look Out Circular (LOC) originated by the Deputy Commissioner of Police, Triplicane. We do not have any objection in granting Arrival/departure clearance to the petitioner, if the DCP, Triplicane relaxes/deletes the LOC conditions."

Therefore, it is clear that there is no problem with the Immigration Authorities.

10. The Police have filed a counter affidavit to this writ petition. In the counter affidavit, it is stated by the Police that they received a complaint from the wife of the petitioner alleging harassment and torture by the petitioner as well as his parents; that after the delivery of a child on 3.8.2010, the petitioner stopped talking to her; that when the wife went to her matrimonial house at Ramanathapuram, she was driven out; that the petitioner married another woman by name Shanthi on 23.1.2013 with the aid and assistance of his parents and other family members; that on the basis of the complaint of the wife, a first information report was registered in Cr. No.1 of 2014 on 27.1.2014 for the alleged offences under Sections 494, 498A and 506(i) of the Indian Penal Code; that on 28.1.2014, the mother of Shanthi was arrested and remanded to judicial custody; that on 29.1.2014, the Inspector of Police made a request to the Deputy Director, Immigration Section, Delhi to issue a Look Out Circular; and that on the basis of the said letter, a Look Out Circular was issued on 29.1.2014, in pursuance of which, the petitioner was arrested at the Bangalore Airport on 31.1.2014 and brought to Chennai for interrogation.

11. Therefore, it is clear that the only reason for the Police making a request to the Bureau of Immigration to issue a Look Out Circular against the petitioner was the registration of a complaint against him and his non availability for interrogation. The purpose of issue of the Look Out Circular now stands served, with the interception of the petitioner at the Bangalore Airport on 31.1.2014 and his arrest and detention to judicial custody. The petitioner has now come out on bail and has also complied with the bail conditions.

12. The object of a Look Out Circular is to ensure that a person is available for interrogation or trial or enquiry. Now that the Court has released him on bail subject to certain conditions as well as sureties, the apprehension that the petitioner may not make himself available and amenable to law, has gone.

13. Therefore, W.P. No.22205 of 2014 is allowed and the Look Out Circular is quashed, in as much as the purpose of issuing the same has now been served and the petitioner has subjected himself to the long arm of the law.

14. In the writ petition praying for return of the passport, the short question that arises for consideration is as to whether the Police has the authority to seize the passport or not.

15. A categorical stand is taken by the Regional Passport Office that the Police have no right to seize the passport. But, since the respondent Police have

handed over the passport to the Regional Passport Officer and brought to his notice that a criminal case is pending investigation, the Regional Passport Officer has taken a stand that they have a right under Section 10(3) of the Passports Act, 1967 to take action for impounding.

16. The stand taken by the fourth respondent - wife is that the petitioner attempted to flee the country by going to Bangalore, after registration of a criminal complaint and that he was guilty of suppression, by making a false claim that no criminal case was registered against him. According to the fourth respondent - wife, the petitioner has sworn to a false affidavit as though no criminal case was pending against him and that once the petitioner goes to Singapore, he will never come back and submit himself to the jurisdiction of the Criminal Court, which has now granted him bail. The fourth respondent - wife also contends that since there is no Extradition Treaty between India and Singapore, it is not possible to bring back the petitioner, once he is allowed to travel.

17. The fourth respondent - wife has also filed a typed set of papers containing the photographs allegedly taken during the second marriage of the petitioner with another woman by name Shanthi. The fourth respondent - wife has also filed a compact disc containing the video clippings of the petitioner's marriage with another woman and the audio recording of a conversation that the petitioner had with the other woman.

18. Therefore, on the basis of these documents, it is contended by the fourth respondent - wife that the petitioner may flee the country once and for all, along with the other woman and settle down there deserting the fourth respondent and her small girl child.

19. However, the petitioner denies the allegations of the fourth respondent - wife and contends that since the fourth respondent's brother is working in the Police Department with the Forensic Section, he has managed to create all these records.

20. The allegations and counter allegations made by the petitioner and the fourth respondent, cannot now be tested by me, as they are the subject matter of a criminal complaint, pending investigation. Admittedly, the investigation is not yet over and no charge sheet has been filed so far. Therefore, I cannot record any opinion on the culpability of the petitioner. I have to necessarily confine myself to the question as to whether the respondents had a right to impound the passport of the petitioner or not.

21. Section 10(3) of the Passports Act, 1967 prescribes that the Passport Authority may impound or cause to be impounded a passport under certain circumstances. Section 10(3) of the Act reads as follows :

"The Passport Authority may impound or cause to be impounded or revoke a passport or travel document,

(a) if the Passport Authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf.

[Provided that if the holder of such passport obtains another passport, the Passport Authority shall also impound or cause to be impounded or revoke such other passport.]

(c) if the Passport Authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a Criminal Court in India;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under Sub-Section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the Passport Authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a Court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such Court and the Passport Authority is satisfied that a warrant or summons has been so issued or an order has been so made."

22. The case on hand is not covered by Clause (a), as the petitioner is not in wrongful possession of the passport. It is not covered by Clause (b), since the petitioner has not obtained the passport by suppressing any material information or by providing any wrong information (at the time of obtaining the passport). The case is not covered by Clause (c), since there are no allegations revolving around the interests of sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or the interests of the general public. The case is not covered by Clause (d), since the petitioner is not convicted by a Court in India for any offence involving moral turpitude and sentenced to imprisonment for not less than two years. 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. The case will also not be covered by Clause (f), as there is no allegation that the petitioner had violated any of the conditions of the passport. The case will also not be covered by Clauses (g) and (h).

23. As a matter of fact, Sub-Section (7) of Section 10 enables a Court convicting the holder of a passport to revoke the passport. As against the impounding or revocation of a passport under Sub-Section (3) of Section 10, an appeal would lie to the Appellate Authority. The order passed by the Appellate Authority is final. Therefore, it is clear that it is only under the provisions of the Passports Act that the revocation or impounding is possible.

24. In *Suresh Nanda v. C.B.I.* [2008 (5) CTC 277 (SC), Appeal (Crl.)No.179 of 2008 dated 24.1.2008] by the Supreme Court, the passport of a non resident Indian settled in the United Kingdom, was seized by the Police, when they conducted a search. A first information report was registered on the basis of a sting operation carried out by a news portal. The passport seized during the search was retained by the Central Bureau of Investigation. The Special Judge of the CBI Court directed the release of the passport. On a criminal revision filed by the Central Bureau of Investigation, the High Court reversed the order of the Special Court. Therefore, the individual filed a special leave petition before the Supreme Court.

25. After taking note of the provisions of Section 10(3)(e) of the Passports Act, 1967 and after taking note of the decisions of two Constitution Benches, one in *Satwant Singh Sawhney v. D. Ramarathnam*, Assistant Passport Officer [1967 (3) SCR 525] and *Menaka Gandhi v. Union of India* and another [1978 (1) SCC 248], the Supreme Court held that the Passports Act, 1967 being a Special Act, the provisions contained therein would prevail over Section 104 of the Criminal Procedure Code, which confers general power upon the Court to impound any document. The Court also pointed out the distinction between the mere seizure of a passport and the impounding of the same. A seizure is made at a particular moment, when somebody takes into possession of some property. However, if the seized property is retained for some period of time, the retention amounts to impounding. Therefore, the Supreme Court pointed out that while the Police may have the power to seize a passport under Section 102 of the Code, if it is permissible within the authority given therein, it does not have the power to retain or impound the same. The Court also indicated that the moment the Police seizes a passport under Section 102 of the Criminal Procedure Code, they must send it along with a letter to the Passport Authority clearly stating that the seized passport deserves to be impounded for any of the reasons mentioned in Section 10(3). It is thereafter for the Passport Authority to decide what to do. Even while taking a decision, the Passport Authority is to give an opportunity of hearing. What is important in the aforesaid decision is that in paragraph 15, the Court

indicated that even the Court cannot impound a passport despite the enabling provision in Section 104 of the Code.

26. In *Veenita Gupta v. State* [2011 (1) L.W. (Crl.) 253], P.R. Shivakumar, J, following the decision in *Suresh Nanda*, held that even in a case where the prosecution relied upon some of the entries found in the passport, in proof of the charges levelled against the accused, the passport cannot be impounded.

27. In *Kaja Mohaideen v. The Senior Intelligence Officer, Coimbatore* [2013 (1) L.W. 114], the question that came up for consideration is as to whether the Customs Officers can detain the passport of an accused indefinitely. After referring to various decisions of various High Courts as well as the decision of the Supreme Court in *Suresh Nanda*, M. Venugopal, J held that though under Section 14 of the Passports Act, even a Customs Officer can seize any passport, on the suspicion that the holder thereof had committed an offence punishable under Section 12 of the Passports Act, the action for impounding can be taken only by the Competent Authority. Eventually, the learned Judge held that the Customs Authority had no power to impound the passport.

28. In *Abhijit Sen v. Superintendent* [2004 Crl. L.J. 1281], a Division Bench of the Calcutta High Court was concerned with a case where the Passport Authority impounded the passport under Section 10(2)(e), on the ground that a criminal case was pending against the passport holder. The Calcutta High Court held that there are two processes for initiation of a proceeding before a Criminal Court. While the first part is the investigation by the Police, the other part is the direction by the Court. Therefore, after pointing out the condition prescribed in Section 190 of the Criminal Procedure Code for initiation of proceedings, the Division Bench of the Calcutta High Court opined that the proceedings before a Magistrate is initiated when cognizance is taken. The Court held that no proceeding can be said to have been initiated under Clause (a) of Section 190 within the meaning of Section 10(2)(3) of the Passports Act.

29. As pointed out earlier, the case of the petitioner is not covered by anyone of the contingencies stipulated in Clauses (a) to (h) of Sub-Section (3) of Section 10. Even if his case comes under anyone of these categories, it is only for the Regional Passport Officer to take action. So far, they have not taken any action. It is up to them to decide whether they should take any action under Sub-Section (3) of Section 10 or not. Now, a period of nearly six months has passed from the date of seizure. Therefore, the respondents have no authority to continue to retain the passport.

30. The apprehension of the fourth respondent - wife that the petitioner may never return to India, is just an illusion or delusion. In the event of a charge sheet being filed before the Criminal Court and in the event of non appearance of the petitioner or in the event of conviction of the petitioner by the Criminal Court, the Regional Passport Officer can always impound the passport, wherever the petitioner is. There is no bar for the Regional Passport Officer to impound the

passport, if the holder is outside India. Physical seizure of a passport may not be possible, if a person is outside India. But, impounding is certainly possible. Once the passport is impounded, the continued stay of the petitioner in Singapore will be unlawful, as he will be without a valid travel document to stay in Singapore at that time. In other words, the fourth respondent-wife will not be left without a remedy, even if the passport is returned and the petitioner leaves for Singapore.

31. In cases of this nature, the Court has to balance equities between both parties. On high moral grounds, I can even dismiss the writ petition, as the remedy under Article 226 is equitable and the allegation of the wife is that the petitioner got married to another lady ditching her and a small girl child. But, if it is done, the petitioner, who has not gone to Singapore for the past seven months, will lose his job. Once he loses his job, the fourth respondent-wife and the only child, cannot even seek a monetary support that would she would be able to seek now from the petitioner. It appears that the petitioner is earning more than a lakh of rupees per month in Singapore. If he is made to lose the job, the quantum of compensation that the wife and the child would get, will be poor. It seems from the nature of the allegations made and from what was told to me in open court that reconciliation between the petitioner and the fourth respondent is not possible now. Therefore, not allowing the petitioner to go out of India, will at the most bring poetic justice in the form of a punishment to the petitioner for the alleged crime that he committed against the fourth respondent. This will virtually amount to punishing the petitioner before trial.

32. While I have no sympathy for the petitioner, in the light of the serious allegations made against him, I cannot lose sight of the fact that ultimately, if the petitioner is rendered jobless, the consequence of the same will automatically fall upon the fourth respondent and the child. In other words, it is not even in the interests of the fourth respondent to prevent the petitioner from joining duty in his employment.

33. The contention of the fourth respondent that there is no Extradition Treaty between India and Singapore, may be literally correct. But, a look at the website of the Central Bureau of Investigation would show that India has Extradition Treaties with 37 countries and what is known as Extradition Arrangements with eight countries, one of whom is Singapore.

34. Mr. Haja Mohideen Gisthi, learned Central Government Standing Counsel appearing for the Regional Passport Officer submitted that though the Police have no authority to seize the passport, the Regional Passport Officer can now take action for impounding or revocation of the passport under Section 10(3). Therefore, he submitted that this Court may allow the Regional Passport Officer to act in accordance with law.

35. As I have stated earlier, the case of the petitioner does not fall under any of the categories listed out in Clauses (a) to (h) of Section 10(3). To make the case fall under Clause (e), a charge sheet should have been filed. Therefore, even if I

permit the Regional Passport Officer to proceed in accordance with Section 10(3) of the Act, he has to return the passport, since the contingency for invoking Section 10(3) has not yet arisen.

36. Therefore, the writ petition W.P. No.18637 of 2014 is also allowed directing the Regional Passport Officer to return the passport to the petitioner forthwith. In the event of a charge sheet being filed, it will be open to the Regional Passport Officer to initiate proceedings under Section 10(3)(e), irrespective of the fact that the petitioner may be in Singapore at that time. In the event of the passport of the petitioner being impounded or revoked ultimately for whatever reason in accordance with law, it will always be open to the respondents to inform the Immigration Authorities and point out that the petitioner's stay in Singapore is without a valid passport or travel document. No costs. Consequently, all connected pending MPs are closed.