

(1987) 03 DEL CK 0084

In the Delhi High Court

Case No : Civil Writ Appeal No. 1127 of 1986

J. Joseph

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 10-03-1987

Acts Referred:

Citation : AIR 1988 Delhi 173 : (1987) 31 DLT 59 : (1990) 26 ECC 282

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Advocate : C.V. Francis and Rajender Dutt, for the Appellant;

Judgement

Mahinder Narain, J.

(1) This writ petition has been filed by the petitioner, seeking writ of mandamus or any other appropriate writ, directing the release of the petitioner's passport No. B-311527, issued by the Embassy of India, Riyadh on 3rd March, 1986.

(2) The case of the respondents as made out in the counter affidavit, is that the said passport which was issued on 3rd March, 1986 by the Embassy of India, Riyadh, is case property. The prosecution was launched against the petitioner u/s 56 of the Foreign Exchange Regulation Act, 1973 on 26th June, 1986, and the same is pending in the court of the Additional Chief Metropolitan Magistrate, New Delhi.

(3) The petitioner says that he was called for investigation/ examination by the authorities under the Foreign Exchange Regulation Act, who had directed him to appear before them along with the current passport and other documents. The passport was taken possession of by the Investigating Officer under the Foreign Exchange Regulation Act, 1973 when the petitioner visited the officer concerned. This was on 11th April, 1986. The petitioner further says that the passport has not been returned, and has been kept back by the authorities concerned. The contention of the respondents as already noted above, namely, that the passport which was taken hold of from the petitioner, is the case property in connection

with the aforementioned case.

(4) Mr. Rajinder Dutt, counsel for the respondents, relies upon the provisions of Section 34 and Section 38 of the Foreign Exchange Regulation Act, 1973 for the proposition that the passport could be retained by the Investigating Officer under the Foreign Exchange Regulation Act, 1973. The said provisions read as under :-

"34. Power to search suspected persons and to seize documents :- (1) If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any person has secreted about his person or in anything under his possession, ownership or control any documents which will be useful for, or relevant to, any investigation or proceeding under this Act, he may search that person or such thing and seize such documents. (2) When any officer of Enforcement is about to search any person under the provisions of this section, the officer of Enforcement shall, if such person so requires, take such person without unnecessary delay to the nearest gazetted officer of Enforcement superior in rank to him or a magistrate. (3) If such requisition is made, the officer of Enforcement may detain the person making it until he can bring him before the gazetted officer of Enforcement or the magistrate referred to in sub-section (2). (4) The gazetted officer of Enforcement or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made. (5) Before making a search under the provisions of this section, the officer of Enforcement shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in the presence of such persons and a list of all documents seized in the course of such search shall be prepared by such officer and signed by such witnesses. (6) No female shall be searched by any one excepting a female." * * * * 38. Power to seize documents, etc.-Without prejudice to the provisions of section 34 or section 36 or section 37, if any officer of Enforcement authorised in this behalf by the Central Government, by general or special order has reason to believe that any document or thing will be useful for, or relevant to any investigation or proceeding under this Act or in respect of which a contravention of any of the provisions of this Act or of any rule; direction or order made there under has taken place, he may seize such document or thing."

(5) A perusal of the said provisions would show that the investigating authorities under the Foreign Exchange Regulation Act, were entitled to take possession of such documents as may be useful or relevant for the purposes of the matter being investigated.

(6) The petitioner has filed the various show cause notices that have been issued to him by the investigating authorities under the Foreign Exchange Regulation Act. These are five in numbers.

(7) It is not disputed before me that the alleged offences covered by these show

cause notices, took place latest in the year 1985. None of these offences relative to the year 1986.

(8) It is asserted by the petitioner before me that the passport issued to him, being passport No. B-311527 by the Embassy of India at Riyadh, Saudi Arabia, having been issued on 3rd March, 1986, cannot be relevant to, or useful in connection with the offences which had taken place prior to the date of its issue. I agree with the submissions of the counsel for the petitioner that the said passport No. B-311527 dated 3rd March, 1986 cannot be useful or relevant to committal of offence in the year 1985. or be relevant to commission of any offence in the year 1985 simply because the same did not even exist on the date when the alleged offences are said to have taken place.

(9) Counsel for the petitioner has said that in case the passport of the petitioner is required by the Investigating Officer, he is ready and willing to give the passport relative to the year 1985, to the authorities concerned. That is for the authorities to decide. As far as I am concerned, it is sufficient to say that for the purposes of Sections 34 and 38 of the Foreign Exchange Regulation Act, passport No. B-311527 which was issued at Riyadh on 3rd March, 1986 by the Embassy of India, cannot have any bearing for the offences with which the petitioner is charged in the aforementioned case which is pending. In the circumstances, in my view, the petitioner is entitled to have the aforesaid passport back.

(10) As the passport has been filed in the aforesaid court in connection with the aforesaid case, it will be open to the petitioner to make an application to that court for the return of the passport to him.

(11) In the circumstances the instant writ petition succeeds, and I direct that the passport be returned to the petitioner upon proper procedure being adopted by him for the return of the same. Parties are left to bear their own costs.