

(2016) 08 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4370 of 2015.

**K. Sowmya - Petitioner @HASH The Regional Passport Officer,
Secunderabad**

Date of Decision : 16-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Passports Act, 1967 — Section 10(3)(b)

Citation : (2017) 1 AICLR 858 : (2016) 6 ALT 327 : (2016) 2 AndhLDCriminal 998

Hon'ble Judges : Sri. A. Rajasheker Reddy, J.

Bench : Single Bench

Advocate : Smt. K. Sowmya, Party-in-Person, for the Petitioner; Sri B. Narayana Reddy, Assistant Solicitor General, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Sri. A. Rajasheker Reddy, J. - Heard Party-in-Person and learned Assistant Solicitor General on behalf of the 1st respondent.

2. This Court, by orders dated 20.06.2016 in WPMP No.23782 of 2016, ordered for impleadment of 2nd respondent, who is the husband of the petitioner.

3. It is the case of the petitioner that she filed Domestic Violence Case No.9 of 2012 against her husband/2nd respondent on the file of XI Metropolitan Magistrate Court, L.B. Nagar, R.R. District. The Court below, after considering the oral and documentary evidence adduced on either side, awarded an amount of Rs. 20,00,000/- towards compensation to the petitioner and Rs. 30,000/- per month towards maintenance against the husband/2nd respondent, by an order dated 09.12.2013. Aggrieved by the same, the husband/2nd respondent filed appeal before the Additional Metropolitan Sessions Judge-cum-II Additional District and Sessions Judge, along with stay petition. Upon which, the II Additional Metropolitan Sessions Court partly allowed the appeal by staying the execution of the order for realisation of compensation of Rs. 20,00,000/- upon furnishing third party security, within a period of two weeks thereafter. As

regards the maintenance and costs are concerned, no stay was granted by the appellate Court. However, the 2nd respondent failed to pay the same. When the 2nd respondent had not attended the Court proceedings and failed to comply the orders dated 09.12.2013, Non Bailable Warrant was issued against the 2nd respondent by the XI Metropolitan Magistrate on 14.03.2014 in CrI.M.P. No.502 of 2014 in DVC No.9 of 2012. Thereafter, the petitioner filed petition in SR No.5624 under Section 10 (3) (h) of the Passports Act for revocation/impounding the passport of the 2nd respondent. But the said petition was returned on the ground that the said petition is not maintainable as Passports Act, 1967 (for short "the Act of 1967") has no application to the domestic violence cases under DVC Act. Thereafter, the petitioner approached the 1st respondent for impounding the passport of the 2nd respondent bearing No. E 1293712 through letter dated 02.09.2014. The petitioner received letter dated 20.10.2014 from the Passport Office stating that Section 10(3) of the Passports Act, 1967 is an enabling provision and not a mandatory one and requested the petitioner to obtain orders from the competent court to impound the passport of the 2nd respondent. Aggrieved by the same, present writ petition is filed.

4. On 20.06.2016, personal notice was ordered on the 2nd respondent and the Party-in-person filed memo dated 01.07.2016 stating that notice was taken to the address given by the 2nd respondent in the appeal i.e., CrI. M.P. No. 64 of 2014 in CrI. Appeal No.71 of 2014 filed by him before the Additional Metropolitan Sessions Judge-cum-II Additional District & Sessions Judge, Ranga Reddy District at L.B. Nagar. The petitioner also filed proof of service stating that delivery of the notice on the 2nd respondent was attempted and that the addressee/2nd respondent has P.O box.

5. Section 27 of the General Clauses Act, 1897 reads as follows:

27 Meaning of service by post. -Where any 49 [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

6. As per Section 27 of the General Clauses Act, 1897, notice is deemed to be served on the 2nd respondent.

7. Party-in-person submits that when Non Bailable Warrant was issued on 14.03.2014 and same is pending, the 1st respondent, instead of revoking the passport of the 2nd respondent under Section 10(3)(h) of the Act of 1967 asked her to obtain orders from the competent Court of law for impounding the same.

8. Sri B. Narayan Reddy, learned Assistant Solicitor General, produced written instructions dated 23.04.2015 stating that the petitioner was asked to obtain

orders from the competent Court for impounding the passport of the 2nd respondent and relied on the judgment of this Court in w.P.No.32985 of 2012 stating that Section 10(3) of the Act of 1967 is only an enabling provision and that the petitioner has to approach the jurisdictional Magistrate.

9. In *Suresh Nanda v. Central Bureau of Investigation*, (2008) 3 SCC 674 the Hon"ble Supreme Court while dealing with the power of the Police Officer in seizing a passport under Section 102 Cr.P.C, it is held as follows:

"Thus, the word "impounding" really means retention of possession of a good or a document which has been seized.

16. Hence, while the police may have power to seize a passport under Section 102 Cr.P.C. if it is permissible within the authority given under Section 102 of Cr.P.C., it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 Cr.P.C.), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter the passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party vide *State of Orissa v. Binapani Dei* (AIR 1967 SC 1269).

17. In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal. Under Section 10A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport authority under Section 10(3).

18. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a passport is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide *G.P. Singh's Principles of Statutory Interpretation* (9th Edition pg. 133). This principle is expressed in the maxim *Generalia specialibus non derogant*. Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing.

19. For the aforesaid reasons, we set aside the impugned order of the High Court and direct the respondent to hand over the passport to the appellant within a week from today. However, it shall be open to the respondent to approach the Passport Authorities under Section 10 or the authorities under Section 10A of the Act for impounding the passport of the appellant in accordance with law."

10. The Hon"ble Apex Court held that Court cannot impound the passport under Section 104 Cr.P.C and directed the party therein to approach the Passport authority under Section 10 for impounding of the passport in accordance with law.

11. This Court in D. Surendernath Reddy v. The Regional Passport officer, Secunderabad, W.P. No. 524 of 2012 observed that mere pendency of criminal case is not sufficient for impounding the passport and also held that Section 10(3) of the Act of 1967 vested fair amount of discretion in the passport authority whether to impound or not to impound the passport depending upon the gravity of the offences with which the accused is charged. In the said writ petition, 1st respondent filed counter affidavit stating as follows:

"In the counter-affidavit filed by respondent No.1, it is inter alia averred that under Section 10 (3) (h) of the Passports Act, 1967 (for short "the Act"), unless a warrant or summons for the appearance or a warrant for the arrest of the holder of the passport for travel document has been issued by the 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, a passport cannot be impounded. It is further averred that since none of the above events as envisaged under Section 10 (3) (h) of the Act have taken place in the present case, the passports of respondent Nos.2 and 3 were not impounded."

12. While following the above decision, this Court observed in the order dated 20.11.2012 in W.P.No.32985 of 2012 that it is open for the petitioner to approach the jurisdictional Magistrate for impounding the passport of the 3rd respondent therein.

Section 10(3)(h) of the Passports Act, 1967 reads as follows:

"(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."

13. Section 10(3)(h) of the Act gives power to the passport authority to impound the passport if any warrant of arrest is pending against passport holder. It is for the passport authority to take appropriate action for impounding the passport of

the 2nd respondent. Passport authority-1st respondent herein should not have asked the petitioner to obtain specific orders from the competent Court for impounding the passport of the 2nd respondent. It is for the 1st respondent authority to exercise its discretion in impounding the passport of the 2nd respondent. The 1st respondent has not referred to the provisions of Section 10(3)(h) of the Act, but merely requested the petitioner to obtain necessary orders from the Court for impounding of the passport of the 2nd respondent.

14. In *Suresh Nanda v. Central Bureau of Investigation* (supra), the Hon''ble Apex Court clearly held that the Court has no power under the Passport Act, 1967 to impound the passport. No doubt, it is not obligatory on the part of the passport authority to impound the passport in each and every case, because under Clause (b) of Section 10(3) of the Act of 1967, even in cases of conviction, the passport of every convict is not liable to be impounded unless such conviction was made for any offence involving moral turpitude and the convict was sentenced in respect of imprisonment for not less than two years.

15. It is pertinent to mention that under Section 10 (7) of the Act of 1967, Court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

16. As per Section 10(8) of the Act of 1967, an order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision. But in the present case, there is no conviction against 2nd respondent. However, non-Bailable Warrant was issued against him on 14.03.2014 but still 2nd respondent is not appearing, which is a serious matter and thus evading the arrest. In the instant case, since petitioner's case falls under Section 10(3)(h) of the Act of 1967 as non-Bailable Warrant is pending against the 2nd respondent, it is for the 1st respondent to consider the case of the petitioner in terms of Section 10 (3) (h) of the Act and pass orders on the application of the petitioner. The Joint Secretary (CPV), Ministry of External Affairs issued Circular No. VI/401/1/1/2006, dated 04.06.2007 covering the issue. In the circumstances, the 1st respondent cannot direct the petitioner to obtain specific orders from the Court for impounding the passport of the 2nd respondent.

17. The 1st respondent has not properly applied his mind when serious issue was brought to his notice, abdicating his power. The counter filed by the respondent in *D. Surendernath Reddy's* case also supports the petitioner's case. However, the facts in *D. Surendernath Reddy's* case and in the present case are different. Accordingly, letter No.30(454) Pol/2014, dated 20.10.2014 issued by the 1st respondent is set aside.

18. Following the principle laid down in the aforesaid decision of the Hon''ble Apex Court, this writ petition is disposed of directing the 1st respondent

authority to reconsider the application of the petitioner for impounding the passport of the 2nd respondent by taking into account Section 10(3)(h) of the Passports Act, 1967, pass appropriate orders, in accordance with the law, and communicate the same to the petitioner.

19. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand closed.