

(1989) 08 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 8100 of 1989

M. Jamaluddin

APPELLANT

Vs

The Deputy Director, Enforcement Directorate

RESPONDENT

Date of Decision : 14-08-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Foreign Exchange Regulation Act, 1973 — Section 30, 33, 34, 35, 36

Passports Act, 1967 — Section 10

Citation : (1990) 26 ECC 145

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bakthavatsalam. J.

1. The prayer in the Writ Petition is as follows:

...to issue a Writ of Mandamus or any other Writ in the nature of Writ of mandamus directing the respondent or any other officer acting under or

on behalf of him to return the Petitioner's passport No: C 519543 seized by the Respondent's Officers on 19-5-1989, to the petitioners and

pass....

2. The Petitioner is a native of Adiramapatinam in Tanjore District and got a job in Dubai and he has been working there. It seems that he came to

India on 20th February 1989 and he left his native place on 17.5.1989. The allegation in the affidavit is that when certain people visited the

Petitioner's house to see him off, they handed over certain envelopes to be carried to Dubai. With these envelopes, the Petitioner reached Madras

Airport and the allegation is that he was enquired by the Enforcement Officer and

was detained till 6.00 p.m. The Petitioner states that though he had nothing to do with the letters and envelopes or other documents, a search was made on him and that the said envelopes, letters and documents were seized and his passport was also taken away from him. The allegation is that the seizure of the passport and the detention of the same is illegal, as the respondents have no power to seize or take away the passport either under the Passport Act or under the Foreign Exchange Regulation Act. The further allegation is that the seizure of the passport was not entered into the Mahazar and even assuming that the Officer has power to seize the passport, still the seizure is illegal inasmuch as the officer has not complied with the provisions of Section 34(8) of the Foreign Exchange Regulation Act.

3. Notice of motion has been ordered by this Court on 26.6.1989. The respondents have filed the counter affidavit. It is stated in the counter affidavit that on 18.5.1989 the petitioner was apprehended by the officers of the respondent at the Departure Hall, International Airport, Meenambakkam, Madras and his person and the Petitioner's suit case was searched u/s 34 of the Foreign Exchange Regulation Act, 1973 in the presence of the two independent witnesses. After the search, certain envelopes and documents were recovered from the suit case of the Petitioner and they were seized under a mahazar, a copy of which was given to the petitioner. The Petitioner came voluntarily to the office of the respondent and gave a statement in English in his own hand writing on 19.6.1980 before the Chief Enforcement Officer, Madras. It seems in the statement, the Petitioner has admitted having received Rs.26,75,000/- from various persons in India and having made payments to the extent of Rs.25,43,400/- to various persons in India as per the instructions of one A.S. Ahamed Jalal of Dubai, a person resident outside India. The Petitioner's Indian passport was issued at Dubai on 9.7.1987 and it was taken under a receipt on 19.5.1989 by the Chief Enforcement Officer, Madras under the Foreign Exchange Regulation Act, 1973.

4. It seems that the Petitioner was arrested u/s 35 of the Foreign Exchange Regulation Act, 1973 and on 19.5.1989 he was released on bail. It is also stated in the counter that on 20.5.1989, he retracted from his original statement and appeared on 22.5.1989 as per the condition of bail and

gave a further statement After giving statements on various occasions and after a retraction of the same, the Petitioner finally through his counsel

addressed a letter on 8.6.1989 alleging that all the statements were obtained from him by force and the Petitioner also requested for the return of

the passport. The Petitioner's request was refused on the ground that the matter was under investigation and the passport could not be returned to

him at that stage.

5. It is further stated in the counter affidavit that the passport was not seized from the Petitioner as alleged by him. It is further stated that the

passport was only received from him, no entry as such was made in the mahazar and that though the seizure of the envelopes, letters and

documents etc., was on 18.5.1989, the passport was received from the Petitioner under a receipt dt. 19.5.1989 for further investigation. It is also

stated that the Officer has complied with the provisions of Section 34(5) of the Foreign Exchange Regulation Act, 1973, at the time of the search.

It is also stated in the counter affidavit that the matter is under investigation and that the letters addressed to the Petitioner on 25.5.1989,

31.5.1989 and on 6.6.1989 were all returned undelivered with the postal remark "left without instructions". It is also stated that the order of

detention passed against the Petitioner under the COFEPOSA Act is still pending execution. In view of this, it is also stated that it is not possible to

return the passport to the Petitioner at this stage, as the order of detention is already issued under the COFEPOSA ACT.

6. Mr. Jabbar, learned Counsel for the Petitioner contends that under the Foreign Exchange Regulation Act, 1973, there cannot be a seizure of the

passport and even assuming that it could be seized, the Officer has not complied with the provisions prescribed under Sub-section (8) of Section

34 of the Foreign Exchange Regulation Act. Learned Counsel further contends that no mahazar has been prepared and that the seizure of the

passport itself is illegal and as such the Petitioner is entitled to get return of the passport. Learned Counsel further refers to Section 10 of the

Passport Act, 1967 and also points out that there is no power for the authorities to seize the passport under the said Act. Learned Counsel for the

Petitioner also refers to a reported decision in Thanapal Vs. Assistant Collector of C.E., and an unreported decision in K.KALIMUTHU v. THE

ASST. DIRECTOR (W.P. No.5808 of 1986, dt 4.7.1986). The decision reported in Thanapal Vs. Assistant Collector of C.E., is under Customs

Act, whereas under the Foreign Exchange Regulation Act, 1973, the explanation to Sub-section (2) of Section 33 is to the following effect:

Explanation: For the purposes of this section, Section 34 and Sections 36 to 41 (both inclusive), "document" includes Indian Currency, foreign exchange and books of account.

In view of the definition of "document" given, and which is inclusive too, it can very well include passport also under the Foreign Exchange Act,

1973. Hence, the contention raised by the learned Counsel for the Petitioner fails.

7. Learned Counsel appearing for the department states that since the order of detention has been passed under the COFEPOSA ACT and that it

is still pending execution, this Court should not interfere at this stage and exercise the powers under Article 226 of the Constitution of India.

Learned Counsel further points out that u/s 30 of the Foreign Exchange Regulation Act, 1973, power is conferred on the Director of Enforcement

or any other officer to require any person to produce or deliver any document relevant to the investigation or proceedings under the Act, and as

such what all has been done in this case is only under that Section and it is not the seizure u/s 34(5) of the Act, as contended by the learned

Counsel for the Petitioner. Since the matter is pending execution, learned Counsel contends that it is not possible to return the passport to the

petitioner at this point of time since the petitioner has committed gross violations of the Act, on the facts of this case.

8. After hearing the arguments of both counsel and after going through all the materials placed before me, I am of the view that this Writ Petition

has not to be entertained because:

(i) The order of detention has been issued under the COFEPOSA ACT and it has to be executed against the petitioner and if it is so, I do not think

that this Writ Petition can be entertained by this Court at this stage and issue a Writ of Mandamus as prayed for the delivery of the passport to the

Petitioner;

(ii) I am inclined to accept the contentions raised by the learned Counsel appearing for the department that the document has been received by the

department and that the same has not been seized from the Petitioner. If it has

been seized from the Petitioner, it should have been done on

19.5.1989 itself. But from the facts of this case, it is clear that it has been received by the Department from Petitioner after issuing a receipt to him

on 19.5.1989. In view of this, I am inclined to accept the statements made in the counter affidavit of the respondent that no question of seizure

arises in this case and as such it cannot be said that the provisions of the Foreign Exchange Regulation Act has been violated on the facts and

circumstances of this case;

(iii) The decisions cited by the learned Counsel for the petitioner will not be applicable to the facts of this case because before Venkataswami, J,

the admitted case of the Respondents was that the passport was not seized from the petitioner under the Provision of the Foreign Exchange

Regulation Act and the learned single Judge was convinced that the passport was not voluntarily surrendered by the Petitioner's wife in that case.

But considering the facts of this case and taking note of the fact that the detention order is passed under the COFEPOSA ACT against the

Petitioner, which is pending execution, I am of the view that this writ petition will have to be dismissed.

9. Since I am of the view that it is not a seizure under the Foreign Exchange Regulation Act, 1973, as I have already stated above in detail, I am

not able to agree with the contentions raised by the learned Counsel for the Petitioner in this case. Accordingly, this writ petition stands dismissed.