

(2022) 08 TEL CK 0038
In the Telangana High Court
Case No : Writ Petition No. 12751 Of 2021

Mohammed Immad Ullah Khan And Another	APPELLANT
Vs	
Union Of India And 3 Others	RESPONDENT

Date of Decision : 08-08-2022

Acts Referred:

Indian Penal Code, 1860 — Section 406, 498A
Dowry Prohibition Act, 1961 — Section 3, 4
Passports Act, 1967 — Section 10(3), 10(3)(e), 10(3)(h), 10(5)

Citation : (2022) 08 TEL CK 0038

Hon'ble Judges : K.Lakshman, J

Bench : Single Bench

Advocate : Barkha Bhalla, Namavarapu Rajeshwar Rao

Final Decision : Disposed Of

Judgement

1. This Writ Petition is filed to declare action of 2nd respondent in insisting upon the petitioners to surrender their passports bearing Nos.N3332679 and M3832699 to him within 21 days even without considering the explanation submitted by them vide letter dated 29.04.2021 in consequence to the registration of Cr.No.184 of 2019 on the file of 3rd respondent on a complaint dated 12.04.2021 lodged by 4th respondent, as illegal and consequently set aside the same.

2. Heard Ms. S.Madhavi, learned counsel representing M/s Barkha Bhalla, learned counsel for the petitioners, Sri Namavarapu Rajeshwar Rao, Assistant Solicitor General of India and Sri Mohd.Muzaffar Ullah Khan, learned counsel appearing for 4th respondent. Perused the record.

3. Perusal of the record would reveal that the petitioners herein are accused in C.C.No.14243 of 2019 pending on the file of XIII Additional Metropolitan Magistrate, Nampally. The offences alleged against them are under Sections 498-A and 406 of IPC and Sections 3 and 4 of the Dowry Prohibition Act. The said Court has also issued Non Bailable Warrants (NBWs) against the petitioners

herein.

4. 2nd respondent/Passport Authority has received a complaint from 4th respondent with a request to impound the passports of the petitioners on the ground that they have involved in the said case. Therefore, 2nd respondent has issued a notice dated 16.03.2021 requesting the petitioners to submit their explanation within 21 days. Another notice dated 16.03.2021 was also issued. The petitioners herein have submitted their explanation. Thereafter, without passing any order under Section 10(3) of the Act, vide proceedings dated 29.04.2021, 2nd respondent has directed the petitioners to surrender the said passports to their office within 21 days and also directed to cooperate with the court proceedings by presenting themselves before the said Court. Challenging the said proceedings, the petitioner herein filed the present writ petition.

5. Section 10 of the Passports Act, 1967 (for short, 'the Act') deals with variation, impounding and revocation of passports and travel documents. Section 10(3)(h) of the Act 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.

6. It is also relevant to extract Section 10(5) of the Act which reads as follows:-

5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be 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 to furnish such a copy.

7. As discussed supra, there are disputes between the petitioners and 2nd respondent and the same are matrimonial disputes. The offences alleged against the petitioners herein in the aforesaid Calendar Case, are under Sections 498-A and 406 of IPC and Sections 3 and 4 of the Dowry Prohibition Act. The said offences are not falling in the aforesaid categories as mentioned in 10(5) of the Act. Even then, the 2nd respondent vide proceedings dated 29.04.2021 directed the petitioners to surrender their passports within 21 days. Therefore, according to this Court, 2nd respondent is not having power to pass such an order before passing any order under Section 10(3) of the Act impounding the passports of the petitioners herein.

8. During the course of arguments, the learned Assistant Solicitor General of India, has produced proceedings dated 12.04.2022 impounding the passport of the 1st petitioner under Section 10(3)(e) of the Act. He has also produced a copy of the letter, dated 12.04.2022 directing 2nd petitioner to submit explanation with documentary proof within 21 days to its show cause notice as contemplated under Section 10(3) of the Act.

9. It is submitted by the learned counsel for the petitioner that 2nd petitioner has not submitted explanation to the said show cause notice dated 12.04.2022.

10. In view of the aforesaid discussion, this writ petition is disposed of setting aside the proceedings dated 29.04.2021 issued by 2nd respondent directing the petitioners to surrender their passports. However, liberty is granted to 1st petitioner to challenge the proceedings dated 12.04.2022 issued by 2nd respondent impounding his passport under Section 10(3)(e) of the Act. Liberty is also granted to the 2nd petitioner to submit explanation to the show cause notice dated 12.04.2022 within one week from today and on submission of the said explanation, 2nd respondent shall consider pass appropriate orders in accordance with law and communicate the order to 2nd petitioner.

Miscellaneous Petitions, if any, pending, shall also stand closed.