(2007) 09 MAD CK 0045

In the Madras High Court

Case No : Criminal Original Petition No. 20275 of 2007

V. Baskaran APPELLANT

Vs

The Chief Enforcement Officer, Enforcement Directorate and The Assistant Director, Enforcement Directorate RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:
Foreign Exchange Regulation Act, 1973 — Section 33(2), 34, 36, 37, 39

Citation : (2007) 09 MAD CK 0045

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : T. Murugesan for R. Syed Mustafa, for the Appellant; R. Dhanapal Raj, Special Public Prosecutor, for the Respondent

Judgement

S. Palanivelu, J.—This petition has been filed, praying for a direction to the respondents to return the petitioner''s passport bearing No. M-

155984 so as to enable the petitioner to travel abroad.

2. The facts are thus:

2.1. Respondents conducted a search in various places during 1995-1996 on assumption of irregularities, inclusive of the premises of the

petitioner, and seized certain records along with the passport of the petitioner, bearing No. M-155984, dated 25.08.1992. Six complaints came to

be registered by the respondents against the petitioner before the Economic Offences/Additional Chief Metropolitan Court, Egmore, Chennai, in

E.O.C.C. Nos. 163 of 1996, 17 of 1997, 44 of 1998, 45 of 1998, 411 of 2002 and 459 of 2002 and the said cases are pending.

2.2. According to the petitioner, since his passport was also seized along with records, he could not undertake travel to foreign countries for his

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business purpose; the respondents have been retaining the passport, under the guise of investigation and, hence, he has come forward with this

petition, for the relief stated supra.

3. Mr. T. Murugesan, learned Senior Counsel for the petitioner, would vehemently argue that it is uncharitable on the part of the respondents to

keep back the passport of the petitioner, violating the procedure contemplated in The Foreign Exchange Regulation Act,1973, which was

applicable to the relevant period. He draws attention of this Court to Section 41 of the Act, which reads thus:

41. Custody of documents, etc. - Where in pursuance of an order made under Sub-section (2) of Section 33 or the provisions of Section 34 or

Section 36 or Section 37 or of a requisition or summons u/s 39 or Section 40, any document is furnished or seized and any officer of Enforcement

has reason to believe that the said document would be evidence of the contravention of any of the provisions of this Act or of any rule, direction or

order made thereunder, and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not

exceeding six months or if, before the expiry of the said period of six months any proceedings-

(i) u/s 51 have been commenced, until the disposal of those proceedings, including the proceedings, if any, before the Appellate Board and the

High Court, or

(ii) u/s 56 have been commenced before a Court, until the document has been filed in the Court:

Provided that the aforesaid period of six months may, for reasons to be recorded in writing, be extended by the Director of Enforcement for a

further period not exceeding six months.

4. It shall be stated, that, previously, the period for retention of document was one year and, by means of Foreign Exchange Regulation

(Amendment) Act, 1993, the said period has been amended as six months.

5. The further argument of the learned Senior Counsel for the petitioner is that within six months from the date of seizure, the respondents failed to

initiate the proceedings and, therefore, the passport has necessarily to be returned to the petitioner. In support of his contention, the learned

Counsel cites a decision of the Hon''ble Supreme Court in Miss Marie Andre

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Leclerc Vs. State (Delhi Administration) and Others, , wherein, a

direction for return of passport was issued, on humanitarian ground. The operative portion of the said ruling goes thus:

2. ...But, at the same time, we have to protect the interests of justice because the petitioner is suffering a sentence of life imprisonment for the

offence of murder in one case and there are two other cases pending against her ï¿½ one in the State of U.P. and the other in the State of

Karnataka. We would, therefore, direct that the petitioner be allowed to go to Canada on condition that she files an undertaking in the form of an

affidavit to this Court to return to India within one year from the date of her departure from this country....

6. Relying upon the observations made in the above decision, the learned Senior Counsel submits that even the request of a murder case convict,

who was suffering life imprisonment, was considered by the Supreme Court and, in the present case, the offences are not so grave as that of

murder.

7. When there is a specific provision for return of passport or other records by the authority in a special statute, it must be scrupulously followed

by the authority. This proposition of law has been illuminatingly highlighted in the judgment in K.M. Amir Abdul Kader Vs. The Deputy Director,

Enforcement Directorate, Madras, , relied upon by the learned Senior Counsel. In the said decision, a learned single Judge of this Court followed

the decision of the Apex Court and concluded as such. The relevant portion of the said judgment has been culled out as follows:

5. It is seen from para 4 of the counter affidavit that the retention is sought to be justified on the basis of a judgment of a Division Bench of this

Court dt.21-9-1976 in The Enforcement Officer, Enforcement Directorate, Madras Vs. S.O. Arjunan Chettiar and Others, . Though that decision

proceeded on the footing that if steps had been taken for initiating proceedings under the Act, whether within or beyond one year, it would be

open to the officers of the Enforcement Directorate to retain the document seized, the Supreme Court in S.O. Arjuna Chettiar v. Enforcement

Officer (1977) 2 MLJ 5 disapproving such a view stated as under at p.6:

...we must express our disapproval of the action of the department in retaining the document beyond the period of one year specified in Section 41

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of the Foreign Exchange Regulation Act 1973. When the statutory provision requires that the document seized from a person should not be

retained for a period exceeding one year unless before the expiration of the said period, adjudication proceedings are commenced u/s 51, the

department must obey the law and return the document unless in the meantime it has commenced adjudication proceedings u/s 51. If it is found by

the department that the period of one year, which is specified in Section 41, is not adequate, it would be for the Legislature to amend the section in

order to provide for extension of time, but so long as the section stands as it is, it must be complied with by the department.

8. From the above said decision, as held by the Apex Court, when a special statute stipulates a specific provision as to the procedure to be

followed by an authority, the said authority is bound to follow it and any deviation or violation of it would not be tolerated. This is a special statute

and specific provisions have been incorporated, regularising the procedure to be followed by the authorities, and, hence, the Supreme Court has

not recognised the deviation from the procedure.

9. As far as the present case is concerned, on a tip-off, the office premises of M/s. Super Duper TV Pvt. Ltd., situated at 25, I Floor, Wellington

Plaza, No.90, Mount Road, Chennai, was searched on 12.07.1995 and certain documents were seized by the respondent officials.

10. In order to ascertain the right of the respondents to proceed with the petitioner as regards his passport, the dates and events in this matter are

relevant, which are furnished by the learned Senior Counsel for the petitioner as under:

Date of Search and Date of issuance of Show Corresponding C.C. Nos. to the

Seizure Cause Notice with corre- Show Cause Notice and Dates of

sponding Nos. complaints preferred before the

Economic Offences Court, Chennai.

12/07/1995 20.08.1996 14.10.1996

F. No. T-4 26-D/95 (SCN-XV) C.C. No. 163 of 1996 F. No. T-4 26-D/95(SCN-XX)

16.01.1997 29.01.1997 17.02.1997

C.C. No. 17 of 1997 F. No. T-4 26-D/95(SCN-XI) C.C. No. 44 of 1998

27.03.1998 4/12/96 27.03.1998

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F. No. T-4 168/SZ/CITY/96 C.C. No. 45 of 1998 F. No. T-4 26-D/95 (SCN-XXIX)

21.01.1999 28.05.2002 5/4/02

C.C. No. 411 of 2002 F. No. T-4 26-D/95(SCN-XXXII) C.C. No. 459 of 2002

30.05.2002

11. From the above, it is seen that the first show cause notice from the respondents, during the course of adjudication, emanated only on

20.08.1996 in F.No.T-4 26-D/95 (SCN-XV) and, with regard to other matters, the show cause notices were issued afterwards in the years

1997, 1999 and 2002. Further, the dates of the complaints lodged by the respondents are also after the lapse of statutory period, provided u/s 41.

12. As per Section 41 of the Act, adjudication proceedings should have been initiated within six months from the date of seizure and the

respondents are not empowered to retain the passport of the petitioner beyond the said period. Even though the proviso to Section 41 proceeds to

the effect that for the reasons to be recorded in writing, the period of six months, prescribed in Section 41, may be extended by the Director of

Enforcement for a period not exceeding six months, the respondents have not shown that there was any such order from the said authority. In

addition, the adjudication proceedings, in this case, were initiated after a lapse of 13 months.

Hence, the retention of passport by the respondents is not legally sustainable. Since the mandate in Section 41 and the proviso have not been

followed by the respondents, they are bound to return back the passport to the petitioner.

13. For the foregoing reasons, this petition is allowed, directing the respondents to return back the passport bearing No.M-155984 to the

petitioner, within a period of two weeks from the date of receipt of a copy of this order.

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