

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.24591 of 2018
and W.M.P.(MD).No.22299 of 2018

Gideon Jacob

.. Petitioner

Vs.

- 1.The Foreigners's Regional Registration Officer (FRRO),
No.26, Sasthri Bhavan Annexe Building
Haddows Road,
Nungabakkam,
Chennai – 600 006.
 - 2.The Assitatnt Foreigners' Regional
Registration Officer (AFRRO),
Bureau of Immigration Impounding,
Chennai International Airport,
Chennai – 600 027.
 - 3.The Regional Passport Officer,
Regional Passport Office,
Tiruchirappalli – 620 002.
 - 4.The State of Tamil Nadu,
Rep. by its Inspector of Police,
Central Bureau of Investigation (CBI),
Special Crime Branch (SCB),
Chennai.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, Certiorarified Mandamus, calling for the records in relating to the impugned letter, dated 13.06.2018 issued by the 2nd respondent Assistant Foreigners's Regional Registration Officer,

quash the same and further directing the respondents herein to handover the petitioner's Indian Passport bearing No.Z4212230 to the petitioner.

For Petitioner : Mr.Isaac Mohammed for Mr.K.Samidurai

For Respondents : Mr.V.Kathirvelu,
Assistant Solicitor General, assisted by
M/s.S.Raghaventhre, Central Government
Standing Counsel for R1 to R3
Mr.N.Nagendran, Special Public Prosecutor for
CBI, for R4

ORDER

This writ petition is filed for issuing a writ of Certiorarified Mandamus to quash the impugned order, dated 13.06.2018, issued by the second respondent, Assistant Foreigners' Regional Registration Officer and to direct the respondents to hand over the petitioner's Indian Passport to the petitioner.

2.The brief facts that are necessary for the disposal of this writ petition are as follows:

The petitioner is an Indian citizen and it is stated that he has citizenship in Germany as well (NRI). The petitioner states that he is the senior Pastor of a Congregation known as "Good Shepherd Evangelical Mission Private Limited", which is also registered under the Companies Act in the year 1974. It is stated by the petitioner that the main object of the petitioner's organization was to save and protect

female babies. It is stated that a case has been registered by the Inspector of Police, K.K.Nagar Police Station, for non registration of the home running by the petitioner. The case was taken on file and pending in S.C.No.125 of 2015 before the Sessions Court, Trichy. Subsequently, a case was registered by the C.B.I. against the petitioner. Though a final report is filed and it is taken on file, the learned Senior counsel for the petitioner states that the cognizance of the offence cannot be done without sanction.

3.The learned Assistant Solicitor General appearing for respondents No.1 to 3 submitted that without taking cognizance, the P.R.C. Number will not be given to the case. Since the case has now been assigned P.R.C.No.19/2020 and the committal procedure is also over, it is submitted that the case is ready for trial. The learned Senior Counsel appearing for the petitioner stated that the petitioner has filed a petition to quash the proceedings pending in P.R.C.No.19 of 2020 and that this Court has passed an order of Status quo.

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4.Be that as it may, the grievance of the petitioner in the present case is that the passport was never impounded by the third respondent in exercise of its power under the Indian Passport Act. When the petitioner wanted to travel abroad (Germany), on 13.06.2018, it is stated that the

second respondent seized his passport saying that the 'DRILS' status of his passport was marked as 'impounded'. The learned Assistant Solicitor General also admits that the passport related informations which are registered in a book shows a wrong information as if the passport is impounded. He fairly concedes that the passport was never impounded by the Regional Passport Officer by exercising his power under Indian Passport Act.

5. In paragraphs 5 and 6 of the counter, the third respondent has stated as follows:

"5. I submit that the Central Bureau of Investigation, Special Crime Branch, Besant Nagar, Chennai vide their letter No.DPMS12018/C1/S/RC/1(S)2016/159, dated 25.01.2018 had informed this office that a case has been registered vide FIR No.RC1(S)2016,CBI, SCB, Chennai and has requested this office to impound his passport. This office had in turn requested the Consulate General of India, Hamburg (Germany) to take necessary action to impound the Z4212230 dated 09.06.2017 since the passport has been issued by the CGI/Hamburg(Germany) in continuation of passport No.Z1754619 issued to S.Gideon Jacob due to criminal case registered and arrested. The impounding circular was generated by the Consulate General of India, Hamburg (Germany) vide

impounding circular (Ref#ICR/306934503/18, dated 07.04.2018. The system, therefore, automatically notified the passport No.Z4212230 for impounding. In the meantime, since the applicant was not available at Germany, Consulate General of India, Hamburg (Germany) had intimated that "it is not possible for us to impound his passport; through we made an entry with respect to impounding his passport in the PRIDE, (Passport Related Information Data Exchange) inadvertently". The CGI writing separately to Strategic Control Team, Passport Seva Project, Ministry of External Affairs to Undo their inadvertent entry w.r.t. Impounding. Since the impounding entry of passport was already made in the system by Consulate General of India, Hamburg (Germany) inadvertently and the same was pending to be rectified the system was depicted the impound status of the passport. In the meantime when the petitioner tried to travel abroad the passport was seized and forward to this office.

6.I further submit that the CBI has been requested to submit the present status of the case so that this office could take a decision as to whether the passport may be released to the applicant. However a reply in this regard is still awaited."

6.From the facts narrated by the petitioner and the stand taken by the third respondent in the counter affidavit, this Court is of the view

that the passport of the petitioner has not been impounded by order and therefore the question is whether the respondent can withhold the passport.

7.The Passport Act does not contemplate impounding a passport without following the procedure prescribed under the Act. No other statutory provision is shown before this Court for the position that the authorities can withhold or impound the passport for any other reason than by following the procedure prescribed under the Indian Passport Act.

8.In the said circumstances, the learned counsel for the petitioner relied upon the judgment of Honourable Supreme Court in **Suresh Nanda Vs. Central Bureau of Investigation** reported in **(2008) 3 Supreme Court Cases 674**. The facts of the case dealt with by the Honourable Supreme Court appears to be similar to the present case. The appellant claims to be a non resident Indian, settled in United Kingdom. The passport of the appellant was seized along with other document in a search conducted on 10.10.2006, when the appellant was on visit to India. The passport then seized was retained by C.B.I. officials. When the appellant filed an application for release of his passport, so that he can travel abroad for a period of fifteen days, the Special Judge, directed the release of passport to the appellant subject to certain

conditions. The respondent preferred a Criminal Revision before the High Court and the High Court reversed the order of Special Judge and refused to release the passport to the appellant. Aggrieved by the same, the appellant preferred the appeal before the Honourable Supreme Court. The Honourable Supreme Court considered the provisions of Indian Passport Act and other provisions of Criminal Procedure Code and considered the legal issue whether the passport can be retained or with hold by any officials other than the Passport Authority exercising the power under Section 10(3) of the Passport Act. The Honourable Supreme Court has held as follows:

9. "Impound" means to keep in custody of the law. There must be some distinct action which will show that documents or things have been impounded. According to the Oxford Dictionary "impound" means to take legal or formal possession. In the present case, the passport of the appellant is in possession of CBI right from the date it has been seized by the CBI. When we read Section 104 of Cr.P.C. and Section 10 of the Act together, under Cr.P.C., the Court is empowered to impound any document or thing produced before it whereas the Act speaks specifically of impounding of the passport.

10. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 of the Cr.P.C. authorizes the Court to impound document or thing produced before it. Where there is a special Act dealing

with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special act, the rule that "general provision should yield to the specific provision" is to be applied. See : Damji Valaji Shah & another Vs. L.I.C. of India & others [AIR 1966 SC 135]; Gobind Sugar Mills Ltd. Vs. State of Bihar & others [1999(7) SCC 76]; and Belsund Sugar Co. Ltd. Vs. State of Bihar and others [AIR 1999 SC 3125].

11. The Act being a specific Act whereas Section 104 of Cr.P.C. is a general provision for impounding any document or thing, it shall prevail over that Section in the Cr.P.C. as regards the passport. Thus, by necessary implication, the power of Court to impound any document or thing produced before it would exclude passport.

12. In the present case, no steps have been taken under Section 10 of the Act which provides for variation, impounding and revocation of the passports and travel documents. Section 10A of the Act which provides for an order to suspend with immediate effect any passport or travel document; such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks, if the Central Government or any designated officer on its satisfaction holds that it is necessary in public interest to do without prejudice to the generality of the provisions contained in Section 10 by approaching the

Central Government or any designated officer. Therefore, it appears that the passport of the appellant cannot be impounded except by the Passport Authority in accordance with law. The retention of the passport by the respondent (CBI) has not been done in conformity with the provisions of law as there is no order of the passport authorities under Section 10(3) (e) or by the Central Government or any designated officer under Section 10A of the Act to impound the passport by the respondent exercising the powers vested under the Act.

13. The Learned Additional Solicitor General has submitted that the police has power to seize a passport in view of Section 102(1) of the Cr.P.C. which states:

"102. Power of police officer to seize certain property: (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence".

14. In our opinion, while the police may have the power to seize a passport under Section 102(1) Cr.P.C, it does not have the power to impound the same. Impounding of a passport can only be done by the Passport Authority under Section 10(3) of the Passports Act, 1967.

15. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment

when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document. In the Law Lexicon by P. Ramanatha Aiyar (2nd Edition), the word "impound" has been defined to mean "to take possession of a document or thing for being held in custody in accordance with law". 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 Vs. 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."

9. From the admitted facts and the judgment of the Honourable Supreme Court, this Court is of the view that no proceedings has been initiated so far under Section 10(3)(e) of the Indian Passport Act. Neither, the Investigation Agency nor the Court has power to impound the passport on its own. It is stated that the Investigation Agency made a request to the Passport Authority for taking action, but the Passport Authority has not passed any order on the request of the Investigation Agency to impound the document. When no order impounding the passport is passed, it may not be proper for the Passport Authority or the Investigation Agency to with hold the passport. Since it is admitted that no order has been passed under Section 10(3)(e) of the Indian Passport Act, the impugned order stating that the 'DRILS' status of the Passport showing as impounded and that therefore the Passport of the petitioner

was seized and sent to FRRO Office at Chennai for further action is unsustainable.

10.Hence, this writ petition is allowed and the impugned letter, dated 13.06.2018, issued by the 2nd respondent Assistant Foreigners's Regional Registration Officer is quashed and the third respondent is directed to hand over the petitioner's Indian Passport bearing No.Z4212203 to the petitioner within a period of two weeks from the date of receipt of a copy of this order. It is open to the respondent to approach the Passport Authorities under Section 10(3)(e) and the third respondent can pass appropriate orders under Section 10(3)(e) of the Act for impounding the Passport after following the procedure and issue notice to the petitioner in the manner known to law. No order as to costs. Consequently, connected miscellaneous petition is closed.

11.02.2020

Index : Yes / No
Internet: yes / No

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To

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No.26, Sastri Bhavan Annexe Building, Haddows Road,
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