
(2022) 11 TEL CK 0086

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 6515 Of 2022

Venkata Sai Rakesh
Kattula

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: Nov. 24, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 389, 420, 427, 448, 463, 464, 468, 470, 472, 474, 475, 506
- Code of Criminal Procedure, 1973 - Section 200, 482
- Passport Act, 1967 - Section 10

Hon'ble Judges: K.Lakshman, J

Bench: Single Bench

Advocate: Rishikesh M, B Jithender

Judgement

1. This Writ Petition is filed to declare action of 2nd respondent in retaining passport of the petitioner bearing No.74004557 without issuing any notice,

order or letter pursuant to or prior to his surrendering passport before 2nd respondent, as illegal and consequently direct 2nd respondent to release the

passport to the petitioner.

2. Heard Sri Dheeraj, learned counsel, representing Sri M.Rishikesh Reddy, learned counsel for the petitioner and Sri B. Jitender, learned Standing

Counsel for Central Government appearing for respondent Nos.1 to 3 and Sri Bommineni Vivekananda, learned counsel appearing for respondent

No.4. Perused the record.

3. The petitioner is holder of passport bearing No. R 5548391, dated 10.08.2017 issued by 3rd respondent and in continuation of it, a new passport

bearing No.T4004557, dated 18.12.2020 was issued by 2nd respondent at Atlanta, USA. At present petitioner is in USA.

4. 4th respondent had filed a complaint under Section 200 of Cr.P.C dated 14.07.2017 before the IX Additional Metropolitan Magistrate, Hyderabad

(hereinafter referred to as "Magistrate"), and the same was referred to Narayanaguda Police Station, who registered the same as a case in

Cr.No.258 of 2017 against the petitioner for the offences under Sections 420, 463, 464, 468, 470, 472, 474 and 475 of IPC. 4th respondent also filed

another complaint under Section 200 Cr.P.C before the same Court, the same was also referred to the same Police Station, who registered the same

as a case in Cr.No.276 of 2018 on 08.09.2018 against the petitioner and one Smt. Kanithi Eshwaramma for the offences under Sections 389, 448, 427

and 506 read with 34 of IPC. On completion of investigation in Cr.No.276 of 2018, the Investigating Officer had laid charge sheet against the

petitioner herein and the same was taken on file vide C.C.No.18960 of 2019. In Cr.No.258 of 2017, it appears investigation is pending.

5. A Look Out Circular (LOC), was issued against the petitioner herein who is intending to come to India. According to the petitioner, 2nd respondent

has retained the aforesaid passport without following due procedure laid down under law and therefore he sought a direction to respondent Nos.1 and

2 to release the aforesaid passport to the petitioner herein to enable him to come to India.

6 It is also relevant to note that the petitioner herein had filed a petition under Section 482 of Cr.P.C. vide Cr.P.No.2157 of 2022 to quash the

proceedings in Cr.No.276 of 2018 and this Court vide order dated 09.03.2022, on consideration of the submission made by the learned counsel for the

petitioner that the petitioner intended to come to India and cooperate with the Investigating Officer in the aforesaid crime, directed the Investigating

Officer in the said crime, not to arrest the petitioner for a period of two months from the said date and the warrants if any, issued against the petitioner

herein in Cr.No.276 of 2018 (C.C.No.18960 of 2019) shall not be given effect to. This Court also directed the Police, Rajiv Gandhi International

Airport Police Station, Hyderabad not to arrest the petitioner under the guise of pendency of the warrants and issuance of LOC in Cr.No.276 of 2018.

The petitioner herein did not come to India and cooperate with the Investigating Officer in the aforesaid crimes since 2nd respondent has retained his passport.

7. According to the petitioner, the aforesaid passport was retained by 2nd respondent. According to 2nd respondent, the petitioner himself voluntarily

surrendered the aforesaid passport. Considering the said facts, vide order dated 05.09.2022, this Court directed the petitioner to file proper affidavit

stating that he is intending to come to India and cooperate with the Investigating Officer in the aforesaid crime. In compliance of the said order, the

petitioner herein had filed compliance affidavit vide USR No.85026 of 2022 dated 20.09.2022 wherein, he has specifically mentioned that he is

intending to return to India within 30 days from the date of receipt of the passport from 2nd respondent. His US visa is also due to expire in about an

year and there is difficulty in finding visa slots in India. Therefore, he is constrained to come to India within 30 days from the date of receipt of the

passport from 2nd respondent. He further states that during his stay in India, he will reside at 15/344-22, Varada Nagar, Gudur, SPSR Nellore District

524101. He is willing to cooperate with the Investigating Officer in Cr.No.276 of 2018 as undertaken by him in CrI.P.No.2157 of 2022.

8. Whereas, Sri, Bommineni, Vivekananda, learned counsel appearing for 4th respondent would submit that the petitioner herein has

cheated 4th respondent which she specifically alleged in the aforesaid two complaints. The petitioner is frequently changing his address in USA. If

passport is returned to him, he will not come to India, and he will jump to some other country in which event the trial Court in C.C.No.18960 of 2019

will not be in a position to conduct trial, the Investigating Officer in Cr.No.258 of 2017 will not be in a position to complete investigation. LOCs were

issued against the petitioner. The petitioner failed to keep up his undertaking given in Crl.P.No.2157 of 2022. His passport was impounded by following

the procedure laid down under Section 10 of the Indian Passport Act, 1967. Therefore, he has to obtain Emergency Certificate for a limited period,

come to India and cooperate with the Investigating Officer and trial Court in the aforesaid crime and case.

9. Respondents Nos.1 to 3 have filed counter stating that 3rd respondent had received an unsigned complaint dated 07.07.2021 from 4th respondent

with a request to impound the passport bearing No.R5448391 issued to the petitioner and K8574468 issued to Mrs.Kanithi Eshwaramma on the ground

that both of them are accused in C.C.No.18960 of 2019 (Cr.No.276 of 2018 of P.S.Narayanaguda) pending on the file of IX Additional Chief

Metropolitan Magistrate, Hyderabad. Vide letter dated 27.07.2021, 3rd respondent requested 4th respondent to furnish certified copies of charge sheet

etc. She has forwarded the same vide letter dated 06.08.2021. The same were sent to respondent Nos.2 and 3 vide letter dated 06.09.2021. Informing

the said fact, 3rd respondent requested 4th respondent to contact 2nd respondent vide letter dated 07.09.2021. 4th respondent had furnished certified

copies of First Information Report, charge sheet and LOC etc. to 3rd respondent and the same were forwarded to 2nd respondent.

10. Thus according to respondent Nos.2 and 3, the petitioner himself voluntarily surrendered his passport with 2nd respondent. The same was not

impounded. The aforesaid passport No.R5448391 dated 10.08.2017 is valid upto dated 09.08.2027 which was issued to the petitioner at New York,

USA is in the custody of CGI Atlanta, USA. An email has been sent to CGI Atlanta, USA to confirm the same and also regarding custody of his

another passport T4004557, dated 28.12.2020 with validity upto 27.12.2030 in continuation of the aforesaid passport.

11. In view of the aforesaid rival submissions made by the petitioner as well as 4th respondent, this Court directed Sri B.Jitender, learned Standing

Counsel for Central Government appearing for respondent Nos.1 to 3, to get specific instructions with regard to the allegation made by 4th respondent

that on handing over the passport, the petitioner may jump to some other country and whether respondent Nos.1 to 3 can impose any condition so that

the petitioner will come to India only without jumping to any other country as per the undertaking given by the petitioner. On instructions, he would

submit that there is no provision either in the Indian Passport Act or in any other Act to impose such a condition. Section 10 of the Passport Act deals

with impoundment of the Passport. Admittedly, respondent Nos.1 to 3 did not invoke any procedure impounding the passport of the petitioner.

According to them, the petitioner himself voluntarily surrendered the aforesaid passport to 2nd respondent.

12. As per Schedule 1, Part-II of the Passport Rules, 1980, Emergency Certificate can be issued in the following circumstances.

i. Citizens of India abroad who have been refused passport, or whose passports have been impounded or revoked, or who have to be repatriated to

India.

ii. Persons who have produced prima facie evidence of Indian citizenship but the evidence is considered insufficient to justify the issue of a passport

without further verification.

iii. Citizens of India abroad whose passports have been lost, stolen or damaged, and to whom new passports cannot be issued without verification of

their passport particulars by reference to the offices of Issue.

iv. Persons of Indian origin abroad when allowed to come to India for settling down here.

13. Thus, the case of the petitioner is not falling in any of the above categories for obtaining Emergency Travel Certificate as contended by the

learned counsel appearing for 4th respondent. Therefore, petitioner herein cannot obtain Emergency Travel Certificate in terms of the aforesaid

provisions.

14. As discussed supra, learned counsel for respondent Nos.1 to 3 submitted that the passport of the petitioner was not impounded and he voluntarily

surrendered the aforesaid passport to 2nd respondent. The petitioner herein gave specific undertaking to this Court stating that he is intending to come

to India and he will reside in the aforesaid address, he will cooperate with the Investigating Officer in Cr.No.276 of 2018/C.C.No.18960 of 2019 and

Cr.No.258 of 2017. The Investigating Officer in Cr.No.258 of 2017 and the trial Court in C.C.No.18960 of 2019 are not in a position to proceed

further. The aforesaid case vide C.C.No.18960 of 2019 and crime vide Cr.No.258 of 2017 have to reach to its logical end either way.

15. As discussed supra, the respondent Nos.1 to 3 are not in a position to impose any condition on the petitioner so as to make the petitioner to come

down to India without jumping to any other country on receipt of the aforesaid passport.

16. In view of the aforesaid discussion, this writ petition is disposed of with the following directions:-

i. Respondent No.2 shall return the aforesaid passport bearing No.T4994557 to the petitioner within one week from the date of receipt of a copy of

this order.

ii. On receipt of the said passport, the petitioner shall come to India particularly to Hyderabad within one month thereafter.

He shall cooperate with the Investigating Officer in Cr.No.258 of 2017 pending on the file of P.S. Narayanaguda by furnishing information/documents

as sought by him in concluding investigation.

iii. He shall appear before learned IX Additional Chief Metropolitan Magistrate, Hyderabad in C.C.No.18960 of 2019 and shall also file application to

recall warrants, if any, pending against him.

iv. On filing of the aforesaid application, learned Magistrate shall consider the same and recall the said NBWs issued against the petitioner herein on

imposition of certain conditions to its satisfaction.

v. The petitioner shall deposit the aforesaid passport with the said Magistrate.

vi. If the petitioner wants to travel abroad, he shall obtain permission from the said Magistrate in C.C.No.18960 of 2019.

vii. In the event of violation of any of the aforesaid conditions by the petitioner, the same shall be viewed seriously.

viii. Liberty is granted to respondents to take steps in accordance with law in case of violation.

Consequently, miscellaneous Petitions, if any, pending, shall also stand closed.