

Sandeep S/O Harish Kewlani Vs Union Of India Thr. Its Officer Eow, Of CBI Mumbai

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Jan. 8, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 102, 102(1), 104, 165(5)

Indian Penal Code, 1860 " Section 120B, 420

Prevention of Corruption Act, 1988 " Section 13(1)(d), 13(2)

Passports Act, 1967 " Section 10, 10(3), 10(3)(e)

Hon'ble Judges: Urmila Joshi Phalke, J

Bench: Single Bench

Advocate: A.S.Kesari, P.Sathianathan

Final Decision: Allowed

Judgement

Urmila Joshi Phalke, J

1. By this petition, the petitioner seeks following reliefs:

1. To issue an appropriate writ/order/direction to quash and set aside impugned order dated 11.3.2024 passed by learned Additional Sessions Judge on Exhibit-273 in

Special Case No.3/2017 as being arbitrary, illegal, capricious, and against settled principles of law, and

2. To issue an appropriate writ/order/direction to hold and declare that the respondent authority cannot seize Passport invoking provisions of Section 102 of the

Code of Criminal Procedure and the act of the respondent authority of seizing the Passport is arbitrary, illegal, and capricious and direct the respondent authority to

release and hand over the Passport to the petitioner.

2. Heard learned counsel Shri A.S.Kesari for the petitioner and learned counsel Shri P.Sathianathan for the respondent authority. By consent of

learned counsel appearing for parties, the petition is taken up for final hearing.

3. Learned counsel for the petitioner submitted that the petitioner is engaged in film industry as Writer and Director in Bollywood and also a

Businessman. First Information Report was lodged against him under Sections 420 and 120(b) of the Indian Penal Code and 13(2) read with 13(1)(d)

of the Prevention of Corruption Act, 1988. The crime was registered on the basis of a written complaint dated 2.6.2017 by the Deputy General

Manager of Bank of Baroda, Regional Office, Nagpur against him and other accused persons on an allegation that accused persons along with other

co-accused persons duped the bank during period 2013-2016. As per the prosecution case, accused No.1 being Proprietor of S.K.Traders along with

other co-accused persons approached the Bank of Baroda and obtained Cash Credit Facility to the tune of Rs.300 lacs for his business purpose.

Subsequently, loan account was converted into Non-performing Assets on 30.6.2016. It revealed to the investigating agency that accused persons

fraudulently and dishonestly diverted the Cash Credit Facility and caused a wrongful loss to the bank. During course of the investigation, Passport of

the petitioner was seized. As per contentions of the petitioner, for his business purpose, he has to travel various countries. The respondent authority

unauthorizedly seized the said Passport. In fact, the respondent authority has no right to seize and impound the said Passport by invoking provisions

under Section 102 of the Code of Criminal Procedure. Section 10(3)(e) of the Passports Act, 1967 is a special provision and impounding of Passport

can only be done by the Passport authority under the said Section and, therefore, seizing and impounding of the Passport is illegal activity and as such

the same is liable to be quashed and set aside. The application moved by the petitioner for directing the Central Bureau of Investigation to release the

Passport is illegally rejected by learned Judge below and, therefore, the said order requires to be quashed and set aside.

4. In support of his contentions, learned counsel for the petitioner has placed reliance on the decision of the Karnataka High Court in the case of

Praveen Surendran vs. State of Karnataka and anr 2022 SCC OnLine Kar 1661.

5. Learned counsel for the respondent authority strongly opposed the petition and submitted that learned Judge below has already permitted the

petitioner to travel abroad. As far as further permission to travel abroad is concerned, the petitioner can approach the authority and the authority can

reconsider the same. As such, the petition becomes infructuous and the same is liable to be disposed of. It is further contended that by invoking

provisions under Section 102 of the Code, police have powers to seize the Passport.

6. The first and foremost contention of learned counsel for the petitioner is that the respondent authority does not have powers to seize the Passport in

connection with the crime registered against the petitioner. The powers to seize Passports are only vested with the Passport authorities under the

Passports Act and the same being special enactment, the seizure of the Passport by the respondent authority and retaining the same is contrary to

provisions of the Passports Act depriving the petitioner from travelling abroad freely and thereby affecting his fundamental rights.

7. Having given due consideration to submissions made by learned counsel appearing for parties, it is to be seen that whether retaining Passport by the

respondent authority, after the same is seized beyond period of four weeks, would amount to impounding by the police or respondent authority. The

seizure of the Passport in the present case is by invoking powers under Section 102 of the Code and the Passport is retained by the court in view of

Section 104 of the Code. The issuance of Passport and its impounding is under special enactment i.e. the Passports Act. Sub-section (3) of Section 10

of the Passports Act empowers the Passport authority to impound or cause to be impounded or revoke a Passport or travel document subject to

conditions stipulated in Sub-section (3) of Section 10 of the Passports Act. One such condition of impounding of Passport is that, if the proceedings

in respect of an offence alleged to have been committed by the holder of the Passport are pending before a Criminal Court in India. Therefore, the

power of the Impounding Authority i.e. Competent Authority under the Act is traceable to clause (e) of sub-section (3) of Section 10 of the Act which

is the only provision applicable to the present case. The Passports Act is a special enactment and it being a special enactment would

prevail over Section 102 or Section 104 of the Code which empower the Police to seize and the Court to impound any document. Sub-section (3)(e) of

Section 10 of the Act provides for impounding of a Passport if proceedings in respect of an offence alleged to have been committed by the holder of

the Passport or travel document are pending before a criminal court in India.

8. Section 102 of the Code gives powers to the police officer to 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. Section 104 of the Code authorizes the court to impound

any document or thing produced before it under the Code. Sub-section (5) of Section 165 of the Code provides that the copies of record made under

sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance to the offence. Thus, the Passports

Act is a special Act relating to a matter of Passport, whereas Section 104 of the Code authorizes the Court to impound document or thing produced

before it. Where there is a special Act dealing with specific subject, resort should be to that Act instead of general Act providing for the matter

connected with the specific Act as the Passports Act is a special Act which would prevail.

9. "Impound" means to keep in custody. According to the "Oxford Dictionary", "impound" means to take legal or formal possession.

10. In the present case, the Passport of the petitioner is in possession of the respondent authority.

11. Reading of Sections 104 of the Code and 10 of the Passports Act together, the court is empowered to impound any document or thing produced

before it whereas the Passports Act speaks specifically of impounding of the Passport.

12. In the present case, no steps have been taken under Section 10 of the Passports Act for impounding of the Passport.

13. Section 102(1) of the Code reads as under:

“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. There is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment. Whereas,

“impounding” is to take possession of a document or a thing for being held in custody in accordance with the law. Learned counsel for the

petitioner has placed reliance on the decision in the case of Praveen Surendran supra. The said aspect was extensively dealt with by the Karnataka

High Court by referring provisions under Sections 102 and 104 of the Code and 10 of the Passports Act and it is held that the Passports Act is special

enactment and it is trite that it being special enactment would prevail over Section 102 or Section 104 of the Code which empowers the police to seize

and the court to impound any document. Impounding of any document produced before the court cannot stretch to an extent that it can impound the

Passport. Therefore, deposit of the Passport before the court or before the police both will become without authority of law.

15. This aspect is further considered by the Hon’ble Apex Court in the case of Chennupati Kranthi Kumar vs. State of A.P. AIR 2023 SC 3633

wherein it is held that a relevant decision of this Court on the issue involved is in the case of Suresh Nanda vs. CBI MANU/SC/7020/2008. In the said

decision, it was held that the power under Section 104 of the Code cannot be invoked to impound a Passport. The reason is that the provisions of the

PP Act which deal with the specific subject of impounding Passports shall prevail over Section 104 of the Code. Moreover, it was held that under

Section 102(1) of the Code, the Police have the power to seize the Passport but there is no power to impound the same. It was held that even if the

power of seizure of a Passport is exercised under Section 102, the Police cannot withhold the said document and the same must be forwarded to the

Passport Authority. It is, thereafter, for the Passport Authority to decide whether the Passport needs to be impounded.

16. In the light of the well settled legal position and pronouncement of the Hon’ble Apex Court, neither the police nor the criminal court under

Section 102 or Section 104 of the Code can impound a Passport. Impounding of a Passport is by the authority vested under the Act as depicted

therein. Therefore, retaining of the Passport by the respondent authority without any authority leads to allow the writ petition by issuing a writ of

mandamus for release of the Passport by reserving the liberty of the respondent authority to act in accordance with the mandate of Section 10 of the

Passports Act. Considering the apprehension that the petitioner is involved in an economic offence and he may abscond by travelling abroad, some

conditions can be imposed upon the petitioner. As such, I proceed to pass following order:

ORDER

(1) The Writ Petition is allowed.

(2) Writ of mandamus is issued to the respondent authority to release the Passport of the petitioner which is held in the custody of the respondent.

(3) The respondent authority is at liberty to take an appropriate action in accordance with the mandate of Section 10 of the Passports Act.

(4) The petitioner shall inform the respondent authority as well as the special court whenever he intends to travel abroad by furnishing details such as

period of travel and return to India along with dates, local address along with the address proof where the petitioner is visiting, cell phone number

which he intends to use when he is travelling abroad and after returning, he shall report to the special court.

The petition stands disposed of.