

(1986) 03 MAD CK 0028

Madras High Court

Case No: Criminal Miscellaneous Petition No. 2504 of 1986

Thanapal

APPELLANT

Vs

Assistant Collector of C.E.

RESPONDENT

Date of Decision: March 20, 1986

Acts Referred:

- Customs Act, 1962 - Section 110, 110(3)

Citation: (1987) 13 ECC 305 : (1988) 36 ELT 421

Hon'ble Judges: David Annoussamy, J

Bench: Single Bench

Advocate: B. Kumar, for the Appellant; P. Rajamanickam, Central Government Public Prosecutor, for the Respondent

Judgement

David Annoussamy, J.

This is a petition by a citizen of Singapore praying to direct the respondent to return the passport of the petitioner to

enable him to go over to Singapore and come back to India within such time this Court may fix, subject to such terms and conditions which this

court may deem fit and proper.

2. The case of the petitioner is that his passport was seized by the customs authorities on 24-1-1985 along with other articles brought by him, that

the passport was not entered in the mahazar of seizure, that the petitioner is compelled by the requirement to undergo military training of his country

to go back immediately, that he is possessing property worth Rs. 5 lakhs in Pudukkottai in his own name, that he is assessed to Wealth Tax in

India and the assessment in the Wealth Tax shows the value of the property at Rs. 4.5 lakhs and that he has number of family links in India. He

contends that the Assistant Collector of Central Excise, Madras, has no power to seize his passport and such seizure is violative of his fundamental right to travel.

3. The respondent states that the petitioner is involved in smuggling of gold valued at Rs. 3 lakhs and of which the petitioner kept concealed on his

person and Yardley powder forms, that his passport is now in the Additional Chief Metropolitan Magistrate's Court, Economic offences, Egmore,

Madras, and that if it is returned it will not be possible to get back the petitioner for trial.

4. The only question which now arises is whether the customs officer has the right to seize the passport.

5. The contention of the respondent is that he has got such a right u/s 110 of the Customs Act. He places reliance more specifically on sub-section

(3) of Section 110, which reads as follows :-

The proper Officer may see any documents or things which, in his opinion will be useful for, or relevant to any proceeding under this Act.

He would further add that the passport would be a piece of evidence to show that the petitioner came to India on the date of offence. I am unable

to agree. Section 110(3) of the Customs Act cannot include a passport which forms part of a person as a traveller. It shows the identity of the

person, describes the permission given by the country to travel, the permission given by the host country to stay therein. He should keep it with him

as long as he is in the foreign country. It cannot be assimilated to other documents or things which would be useful or relevant to any proceedings

under the Act. The arrival of the petitioner to India on the relevant date may also be taken and certified by the competent authority before the

passport is given back to the petitioner. An undertaking may also be taken from the accused that he should produce the passport as and when

required. The learned counsel for the petitioner would also point out that the seizure of the passport was not found entered into mahazar which

discloses that the officer himself was fully aware that he had no right to seize the passport u/s 110 of the Customs Act. This factual point of non-

inclusion in the mahazar was not controverted by the learned counsel for the respondent. At any rate seizure of the passport by the Customs

Officer is not covered by Section 110 of the Customs Act and the seizure is illegal. The passport has to be returned.

6. The learned counsel for the respondent very strenuously contended that if the passport was returned to the petitioner, the petitioner would

immediately leave the country and that he would not be available for the trial since he has obtained an order from the criminal court to be released

on bail and since in the order of release there is no condition that he should not leave India. If it is so, it is open to the respondent to move the

competent Court to modify the order of bail to the extent desired by the respondent. When a person is involved in a criminal proceeding and has

been arrested his normal place is detention in prison. He can be released on bail on such condition as the Court thinks fit and that condition would

be such as to secure the accused person as and when required. Therefore, the bail order may very well stipulate that the petitioner should not leave

the country. To ensure that the condition is fulfilled, the Court may further order that he shall surrender the passport to the Court. If the passport is

surrendered, the petitioner should be issued a certificate showing that he surrendered the passport along with particulars of passport and visa and

also describing the identity of the person so that he can prove his identity whenever he is required as long as he is in India which is the foreign

country to him.

7. Another complaint of the petitioner is that though the arrest took place on 21-1-1985 the respondent has not so far filed any complaint before

the competent Court and that this amounts to violation of justice. The petitioner is at liberty to take such steps as he deems fit in respect of this

delay. We are not concerned in this petition for return of passport by that aspect of the problem.

8. In the result the passport which is seized by the respondent and which is now in the Additional Chief Metropolitan Magistrate's Court,

Economic Offences, Egmore, Madras shall be returned to the petitioner within 10 days.