

## Koneru Rajendra Prasad Vs State-CBI

**Court:** Andhra Pradesh High Court

**Date of Decision:** Aug. 5, 2013

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 439, 482  
Penal Code, 1860 (IPC) â€” Section 409, 420, 477A

**Citation:** (2013) 2 ALD(Cri) 453 : (2013) 3 ALT(Cri) 201

**Hon'ble Judges:** B. Chandra Kumar, J

**Bench:** Single Bench

**Advocate:** V. Pattabhi, for the Appellant; P. Keshav Rao, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

B. Chandra Kumar, J.

""This Criminal miscellaneous petition has been filed under sections 439 & 482 Cr.P.C. seeking to relax the

condition of surrendering the passport of the petitioner before the Court below as ordered by this Court in Cri. P. No. 5966 of 2012 on

02.08.2012 and further to permit him to retain the passport to enable him to travel to Indonesia for a period of four weeks. The petitioner is A-6 in

C.C. No. 6 of 2012 along with 14 other accused. It is alleged that the petitioner is the perpetrator of the crime and he, in conspiracy with other

accused persons, misappropriated an amount of Rs. 96 crores collected from the Villa plot buyers and thereby cheated the Government of Andhra

Pradesh and thereby committed offences punishable under Sections 120-15 r/w 409, 420 & 477-A IPC. The petitioner was granted bail by this

Court in Criminal Petition No. 5966 of 2012 on 02.08.2012 subject to his executing a personal bond for Rs. 5,00,000/- together with two sureties

for the said amount each and on further conditions that the petitioner should surrender his Indian Passport before the lower Court and to stay in the

state of Andhra Pradesh only. Subsequently, by order dated 18.09.2012 in Criminal M.P. No. 6634 of 2012, this Court modified the condition to

the effect that the petitioner shall remain in the state of Tamilnadu until further orders except on the date of attending the Court at Hyderabad.

2. Subsequently, the petitioner filed Criminal M.P. No. 154 of 2013 seeking to relax the condition imposed on him to stay in Tamilnadu only and

further sought permission to go to Dubai for a period of four weeks. Subsequently, he has not pressed the second relief, i.e., with regard to travel

to Dubai for the time being. The said petition was allowed relaxing the condition imposed on him with regard to the stay in Tamilnadu. Then the

petitioner filed Criminal M.P. No. 3987 of 2013 and sought further relaxation of condition to go to Dubai for a period of four weeks. He had also

sought permission to go to Indonesia. However, he has not pressed the request to permit him to go over to Indonesia. This Court allowed the

petition and permitted the petitioner to go to Dubai, but however, imposed a specific condition that the petitioner shall surrender his passport to the

lower Court within two days after his return to India.

3. It is the case of the petitioner that he had been to Dubai on 02.07.2013, but returned to India on 09.07.2013 as he was unable to fix up

meetings with the concerned local banks in Dubai due to onset of the month of Ramadan. The further case of the petitioner is that his family owns a

business concern in the name and style of M/s. Trimex Sands Private Limited (for short, "the Trimex") and the said company had entered into

Memorandum of Understanding with the Government of Indonesia for setting up a Titanium Industrial Complex. It is also his case that as he was

summoned by the CBI and had been appearing before the CBI offices, the present work undertaken by his family was unable to take off. It is also

his case that the Indonesian Chamber of Commerce and Industries, Jakarta, Indonesia communicated to him by letter dated 12.06.2013 asking

him to confirm the progress of the project under the MOU and for a meeting with him in the month of July/August, 2013, as they have to submit

the reports to the Government of Indonesia on the said project. It is also his case that he received another letter on 19.07.2013 from Indonesia

that there is urgency in the matter and that he should go there and finalise the project. It is also his case that it is a purely business trip and that the

project undertaken by Trimex is a prestigious project and that the said project was based on the talks and discussions between the petitioner and

his business group with the President of Indonesia. It is also his case that he has heavy business interest in India and his entire family stays in India

and that his family has got residence at Chennai as well as at Hyderabad and that he will return to India after his business work is over and there is

no chance of his absconding or evading the process of law. The petitioner had also specifically averred that he assures the Court that he would

come back to India within the said period and report before the Court below and surrender his passport before the lower Court as per the

directions of this Court.

4. The Central Bureau of Investigation (for short, "CBI") filed a detailed counter. The specific case of the CBI is that the petitioner claimed that his

presence at Dubai was very much essential without further delay, lest he would be put to unnecessary financial hardship and that the time of moving

the said application seeking permission to go to Dubai, the petitioner was well aware of the fact that Ramadan was coming in the month of July,

2013 and was also aware of the activities of the officials during the month of Ramadan in Dubai. It is their further case that despite knowing all

these facts, the petitioner went to Dubai and claims to have come back without attending any meeting due to the onset of Ramadan at Dubai and

this conduct of the petitioner raises a question mark on the very purpose of his visiting Dubai. The further case of CBI is that as per the orders of

this Court dated 28.06.2013, the petitioner was supposed to surrender his passport before the lower Court within two days of his return from

Dubai, but he has not complied with the said condition imposed on him by this Court and filed this petition to permit him to visit Indonesia. It is the

further submission of the CBI that the petitioner had already received a letter dated 12.06.2013 from Indonesian Chamber of Commerce and

Industry, wherein, he was called to visit Jakarta, Indonesia for discussing the developments relating to the project, but for the reasons best known

to him, he did not press this request to permit him to visit Indonesia while arguing Criminal M.P. No. 154 of 2013 and this shows that there was no

urgency for the petitioner to visit Indonesia. It is further contended that after return from Dubai, the petitioner secured another letter dated

19.07.2013 and filed this instant petition on 23.07.2013 requesting to permit him to go to Indonesia and that before receiving the letter dated

19.07.2013 from Indonesian Chamber of Commerce and Industry, the petitioner was not aware that he has to visit Indonesia in the near future,

but still he retained his passport in violation of the orders of this Court dated 28.06.2013. According to the CBI. there is no urgency for the

petitioner to visit Indonesia. Their further case is that the case is adjourned for hearing in the trial Court on the discharge petition filed by various

accused including the petitioner. It is their further ease that the petitioner was influencing the Villa buyers from revealing the truth before the CBI

officials and only after his arrest, many Villa buyers came forward to reveal the truth pertaining to collection of excess money from them. It is

further alleged that the alleged offences are of serious nature and that there is every possibility that the petitioner may not return to India to face the

trial since the alleged offences are punishable with imprisonment for life. It is also averred that the case of the petitioner that he is having property in

India and that his family is residing in India may not deter him from absconding.

5. Sri V. Pattabhi, learned counsel for the petitioner submitted that the petitioner is the Chairman of group of industries and that Trimex has

technical competence and experience which the Government of Indonesia had tried, tested and trusted and thus, an MOU was entered between

the Trimex and the Government of Indonesia and that it is a prestigious project for construction of New Integrated Titanium Industrial Complex in

Indonesia involving a total investment capital of \$ 210 million and that the petitioner played a vital role in the discussions held between the

representatives of the company and the President of Indonesia in Indonesia. Learned counsel had shown me certain photographs showing the

participation of the petitioner in the meeting held with the representatives of the Government of Indonesia when MOU was entered into between

the Trimex and the Government of Indonesia. It is further submitted that the letters filed by the petitioner dated 12.06.2013 and 19.07.2013 reveal

that there is authentic need for the petitioner to visit Indonesia. It is also his submission that the petitioner returned from Dubai on 09.07.2013 and

subsequently, he appeared before the Court below on 27.07.2013 and subsequently on 31.07.2013. It is also his case that the petitioner had

handed over his passport to his counsel for depositing the same before the Court below, but due to some confusion, the passport of the petitioner

could not be deposited within the stipulated time before the Court below and that the petitioner never intended to violate the orders of this Court. It

is also his submission that the petitioner had been subjecting himself to the process of Court and that he had also appeared before the CBI as and

when summoned prior to his arrest. It is further submitted that for the purpose of finalising the project and for further discussions, the visit of the

petitioner to Indonesia is necessary.

6. Per contra, Sri P. Keshav Rao, learned standing counsel for the CBI submitted that there are other Directors of Trimex who can participate in

discussions and that the MOU was signed by one Pradeep Koneru and that said Pradeep Koneru, who signed the MOU representing the Trimex,

may visit Indonesia for the discussions, if any. It is further submitted that on the earlier occasion, though the petitioner made a request to permit him

to visit Dubai and Indonesia basing on the letter dated 12.06.2013, but he himself not pressed the said request and that he went to Dubai and

returned back from Dubai within one week and these circumstances go to show that the presence of the petitioner is not required in Indonesia. It is

also his submission that the petitioner is very influential person and since the prosecution is apprehending that he may not return to India, it is not

desirable to relax the conditions. It is also the submission of the learned standing counsel that the since the petitioner has deliberately violated the

orders of this Court in depositing the passport before the Court below, he is not entitled for any relief.

7. I have considered the above rival contentions. The only point that arises for consideration is whether the petitioner can be permitted to go to

Indonesia.

8. It is not in dispute that the petitioner is the Chairman of group of industries and Trimex is one among them. It appears that the Trimex is being

represented by one Mr. Pradeep Koneru, one of its Directors who signed the MOU on behalf of Trimex with the Ministry of Republic of

Indonesia on 25.01.2011 for development of industrial complex. It is also not in dispute that the petitioner has been enlarged on bail subject to

certain conditions. One of the important condition is to deposit his passport before the Court below. The petitioner had deposited the said

passport, but subsequently, he had approached this Court by filing applications and this Court, from time to time, relaxed those conditions and

finally permitted him to visit Dubai. It has to be seen that there is a specific condition imposed by this Court to deposit the passport of the petitioner

within two days after his return to India from Dubai. Admittedly, the petitioner returned to India on 09.07.2013. According to the learned counsel

for the petitioner, the petitioner appeared before the Court below on 27.07.2013 and on 31.07.2013. It may be a fact that the petitioner attended

the Court below on 27.07.2013 and on 31.07.2013, but however, the fact remains that the petitioner did not surrender his passport within two

days after his return to India from Dubai on 09.07.2013. According to the learned counsel for the petitioner, the petitioner had handed over his

passport to his counsel to deposit the same before the Court below, but there was some confusion since the petitioner was granted four weeks

time to visit Dubai, his counsel was under the impression that there was still time to surrender the passport. The operative portion of the relevant

order makes it clear that the condition was imposed that the petitioner shall return to India within four weeks from the date on which he takes

possession of the passport from the trial Court and shall surrender the same in the trial Court within two days after his return to India. It appears

that the petitioner had been to Dubai on 02.07.2013. It is not clear on which date he had taken the possession of the passport from the trial Court.

Admittedly, the petitioner returned from Dubai on 09.07.2013. A cursory reading of the order on the Court below makes it clear that a condition

was imposed upon the petitioner to surrender the passport in the trial Court within two days after his return to India. So, there is no confusion.

9. Now, it has to be seen whether the petitioner had handed over his passport to his counsel to deposit the same before the Court below. It is the

case of the petitioner that he handed his passport to his advocate and due to some confusion, the passport could not be deposited before the trial

Court. This version also appears to be totally incorrect. The petitioner, in this petition, had not whispered that he handed over the passport to his

advocate after his return from Dubai and requested his counsel to deposit the same before the Court below. Moreover, in Para 16 of the affidavit

filed in support of this petition, the petitioner had specifically averred that ""The petitioner assures this Hon"ble Court that he would come back from

Indonesia within the said period and report back to the Hon"ble Lower Court and surrender his passport to the Hon"ble Lower Court as per the

directions of this Hon"ble Court."" Admittedly, this petition is signed on 23.07.2013 and filed before this Court on the same day. The above

extracted paragraph of the petition makes it crystal clear that the petitioner was conscious about the fact that he was holding the passport without

depositing the same before the Lower Court. He makes an assurance that after returning from Indonesia, he would surrender his passport. That

means, after returning from Dubai, the petitioner was planning to visit Indonesia. As rightly submitted by Sri Keshav Rao, learned standing counsel

for the CBI, as on the date when the petitioner returned from Dubai on 09.07.2013, there was no exigency for the petitioner to visit Indonesia.

Though there was a letter from Indonesia dated 12.06.2013 requesting the petitioner to make a visit to Indonesia at the time of passing orders in

Crl. M.P. No. 3987 of 2013, but admittedly, the petitioner himself had not pressed the request to visit Indonesia. That means, the petitioner came

to a conclusion that there is no need to comply with the letter dated 12.06.2013. As pointed out by the learned standing counsel for the CBI, the

petitioner kept his passport with him without depositing the same into the Court below and after receiving the letter dated 19.07.2013, he has

moved this Court by filing this petition for relaxation of condition. That means, till he received letter dated 19.07.2013, in all probabilities, there

was no need for the petitioner to plan a visit to Indonesia. In the above circumstances, retaining the passport with the petitioner himself from

09.07.2013 till he received letter dated 19.07.2013 or till 31.07.2013 cannot be said to be a bona fide act rather it appears to be a designed act

to disobey the orders of this Court. Thus, it is clear that the petitioner has violated the conditional order of this Court in depositing the passport.

10. Where allegations are serious in nature, particularly, in the cases of murder, dacoity, rape and economic offences, the Courts impose

conditions with a purpose. The purpose is to see that the accused, who have been granted liberty, should not misuse the liberty. The Courts are

conscious that while protecting the right to liberty of the accused, they have to safeguard the interest of the prosecution also. That means, the

Courts have to consider the interest of the prosecuting agencies and also the accused.

11. It is most unfortunate that in more than 70 to 80% of criminal cases, the prosecution is failing to establish the guilt of the accused in grave

crimes. The reason is that in most of the cases, material witnesses, including the victims and their family members turn hostile. The accused persons

involved in serious offences and who have money power, political power, muscle power may threaten the witnesses. When witnesses are

threatened, practically, there is no protection to the witnesses. Most of them do not even approach the police officials for protection. There is no

safety and security to the lives of the victims and to the lives of their kith and kin and to their properties. The delay in conducting the trials is another

reason by which the victims and the witnesses will be vexed. The other aspect is that the witnesses are lured and they are offered money and they

are convinced that no purpose will be served by deposing truth before the Court and by securing conviction to the accused. Many think that it is a

private affair between the victims/de facto complainant and the accused. They do not even feel that the offences are against the entire society and

society has to react according to law. Thus, for various reasons, truth will be buried and buried forever and the accused, who commit heinous

offences, will be acquitted and thereafter move freely in the society. In view of these practical problems and keeping in view the rights of the

accused and the rights of the victims and the witnesses, the Courts impose conditions. The main purpose of imposing conditions is to see that the

accused shall not abscond and will be available to the Courts and face the trial. The second purpose is to see that the accused shall not threaten the

prosecution witnesses and interfere with the process of criminal justice system. It is also our experience that once the charge-sheet is filed, the

prosecution agencies do not show interest in pursuing the case. Normally, no enquiry will be made as to whether the accused are threatening the

witnesses or whether there is any safety and security to the witnesses and whether witnesses are able to come before the Court without any fear.

Only at the time of trial and that too when the case is posted for evidence of Investigating Officer, they appear before the Court that too after

taking many adjournments. Therefore, the Government and the prosecution agencies should take appropriate steps to see that no accused

absconds and important witnesses are not threatened nor influenced and take appropriate steps and see that the criminal justice system does not

become a mockery in the view of the general public. As and when any accused violates any terms and conditions imposed by any Court, the

Investigating Officer or the prosecuting agencies should take necessary steps and approach the concerned Court for cancellation of bail. As and

when the Investigating Officer/Prosecuting agencies receive any information that the accused is planning to abscond or that the accused is

threatening the witnesses or trying to destroying the documents or any other evidence, then, they must record the statements of those witnesses and

should bring the same to the notice of the Court and see that appropriate orders are passed. Mere apprehension is not sufficient, the investigating

officers must act fairly. They must ascertain the true facts as to whether the accused threatened the witnesses or indulged in any act of tampering

evidence with a view to see that truth is not brought before the Court. They must record the statements of those witnesses, collect material such as

call data etc., or some other material. If material to substantiate the allegations of tampering with evidence is there, they must place all such material

before the Court.

12. In the instant case, since it appears that the petitioner intentionally violated the orders of this Court in depositing his passport before the trial

Court within two days after his return from Dubai and since the prosecution expressed fear that the accused may abscond or flee away from

justice, it is clear that he is not entitled for any relief and for relaxation of conditions imposed earlier by this Court and he cannot be permitted to

leave India. Accordingly, the Criminal M.P. is dismissed"".