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(2010) 01 MAD CK 0143

Madras High Court

Case No: Criminal O.P. No"s. 27576 and 27704 of 2009 and M.P. No"s. 1 and 1 of 2009

Padma	APPELLANT
Vs	
State by Inspector of Police, CBCID.	RESPONDENT

Date of Decision: Jan. 12, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 437, 439, 451
- Penal Code, 1860 (IPC) - Section 120B, 323, 341, 406, 420
- Prize Chits and Money Circulation Schemes Banning Act, 1978 - Section 3, 4, 5, 6

Citation: (2010) 2 CTC 286 : (2010) 1 LW(Cri) 151

Hon'ble Judges: S. Nagamuthu, J

Bench: Single Bench

Advocate: A. Natarajan for A. Madhumathi, for the Appellant; N.R. Elango, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.
The Petitioner in both the Criminal Original Petitions is one and the same and she is an accused in Crime Nos. 293 and 454 of 2008 on the file of the Respondent police. She is facing prosecution for offences under Sections 406, 420, 120-B, 341, 323, 506(i) IPC read with Section 3, 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act.

2. During investigation, she was arrested and later on, she approached the learned v. Metropolitan Magistrate, Egmore, Chennai for bail. While granting bail to the Petitioner, among other conditions, the learned Magistrate imposed a specific condition that the Petitioner should surrender her Passport before the Lower Court. Accordingly, the

Petitioner surrendered her passport and complied with the other conditions and came out of jail.

3. Now, on completing the investigation, charge sheets have been laid. The other conditions imposed on the Petitioner have been relaxed already. In those circumstances, the Petitioner filed Crl.M.P. Nos. 1852 and 1866 of 2009 before the learned Magistrate u/s 451 Code of Criminal Procedure seeking for the return of her passport. Both the petitions were dismissed against which she has preferred Criminal R.C. Nos. 161 and 162 of 2009 before the learned Principal Sessions Judge, Chennai and they were also dismissed. Challenging the same, the Petitioner is before this Court.

4. I have heard the learned Senior Counsel appearing for the Petitioner and the learned Additional Public Prosecutor and also perused the materials available on record carefully.

5. At the outset, the question regarding maintainability of the petition before the learned Magistrate u/s 451 of Code of Criminal Procedure needs to be considered. It is submitted by the learned Senior Counsel that such a petition is maintainable before the learned Magistrate u/s 451 of Code of Criminal Procedure irrespective of the fact, whether passport was seized by the police or it was surrendered to the court in pursuance of an earlier order. The learned Senior Counsel would further submit that the learned Magistrate has no power at all to direct the accused to surrender the passport as per the provisions of the Passport Act.

6. It is needless to say that in the case on hand, the passport was submitted to the lower court only in pursuance of a condition imposed while granting bail to the Petitioner u/s 437 of Code of Criminal Procedure If the Petitioner had been aggrieved by such condition on the ground that under the Passport Act, the learned Magistrate has got no power to impose such a condition, the remedy for the Petitioner would have been to challenge the same before this Court or before the Court of Sessions by filing an appropriate petition u/s 439 of Code of Criminal Procedure for cancellation of the said condition. But the Petitioner has not done so and she has complied with the conditions, surrendered the passport and that is how, the passport is now in the hands of me learned Magistrate.

7. In such circumstances, in my opinion, when the passport has been surrendered before the court in pursuance of a condition imposed while granting bail to the Petitioner, the petition u/s 451 of Code of Criminal Procedure is not at all maintainable. A perusal of Section 451 Code of Criminal Procedure would go to show that if any document or property was seized by the police and produced before any court, then the court may make an order u/s 451 of Code of Criminal Procedure for the return of the same. Here production of the property before the court during the enquiry or trial cannot be construed to encompass into its ambit a property/a passport which was produced before the Court in pursuance of a judicial order. In the absence of such a judicial order, if the property had been produced before the Court either by the police on seizing the same or by the accused himself, it can be said that in such a situation a petition u/s 451 Code of Criminal

Procedure can be maintainable.

8. But in the case on hand, the facts are totally different. As I have already stated, the passport was surrendered before the lower court in pursuance of the judicial order and the same has not been challenged by the Petitioner in any manner known to law. He has also not chosen to seek relaxation of the condition as provided u/s 437 or 439 of Code of Criminal Procedure If that be so, I am of the considered opinion that the whole exercise in this case is not sustainable and though the learned Magistrate dismissed the petitions filed u/s 451 of Code of Criminal Procedure on certain other grounds, I am of the view that the petitions deserve to be dismissed on the ground of maintainability alone.

9. In this view of the matter, the orders passed by the learned II Metropolitan Magistrate, Egmroe, Chennai in Crl.M.P. Nos. 1852/2009 and 1866 of 2009 dated 12.10.2009 and confirmed by the learned Principal Sessions Judge, Chennai in Crl.R.C. No. 161 and 162 of 2009 dated 30.11.2009 do not require any interference. Therefore, the Criminal Original Petitions are dismissed.

Consequently, connected Miscellaneous Petitions are closed. However, liberty is given to the Petitioner to move for relaxation of the condition by filing an appropriate petition either before the learned Magistrate or before the Court of Sessions or before this Court in accordance with law.