

Cho Nam Gil Vs The Chief Immigration Officer and Others

Court: Madras High Court

Date of Decision: Sept. 13, 2010

Acts Referred: Constitution of India, 1950 " Article 226

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

Penal Code, 1860 (IPC) " Section 406, 420, 506, 506(1)

Citation: (2011) CriLJ 1594

Hon'ble Judges: S. Manikumar, J

Bench: Single Bench

Advocate: R. Prabhakaran, for the Appellant; J. Ravindran, Asst. Solicitor General of India and K. Gandhi Kumar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Manikumar, J.

A foreigner, involved in two criminal cases in Cr. No. 57 of 2009 on the file of the District Crime Branch,

Kancheepuram, for offences under Sections 406, 420 and 506(i). IPC and Cr. No. 818 of 2009 on the file of the Inspector of Police.

Poonamallee for an offence u/s 420, IPC. has sought for" a writ of Mandamus, directing the Chief Immigration Officer. Chennai. 1st Respondent

herein, to grant him permission to travel to Korea.

2. One Mr. Sivakumar, who had taken a work order from the Petitioner. Managing Director of ""IL Sung Construction Private Limited"" , Chennai,

has filed M.P. No. 2 of 2010, to implead himself as party Respondent in the writ petition, stating that the writ Petitioner had defrauded him. The

proposed party has further contended that Cr. No. 818 of 2009, has been registered at his instance on the file of the Inspector of Police,

Poonamallee and if the Petitioner is allowed to leave India, his interests would be affected and that therefore, he should be impleaded as party

Respondent. Though the lis is between the Petitioner and the official Respondents and that this Court is of the view that there is need to implead the

proposed de facto complainant in the criminal Court as party Respondent in this writ petition, for adjudication of the issue. There is no counter-

affidavit, opposing the impleading petition, having regard to the submissions of the proposed party, as to who he was allegedly defrauded by the

writ Petitioner in the business transaction. M.P. No. 2 of 2010 is ordered and Registry is directed to carry out the necessary amendment in the

main writ petition as well as in the miscellaneous petition.

3. In support of the relief of mandamus. Mr. R. Prabhakaran, learned Counsel for the writ Petitioner submitted that the Petitioner is a foreign

national and the Managing Director of the abovesaid Company, registered under the Companies Act. 1956 and presently, staying in India on the

basis of a business visa, which was valid upto 10th May, 2010. He further submitted that the abovesaid criminal cases, which have been

registered, are purely civil in nature and that there is no fraudulent/dishonest intention on the part of the Petitioner to deceive the de facto

complainants. He further submitted that only with a mala fide intention to harass and humiliate the Petitioner and also to extort illegal money, using

such coercive method, the de facto complainants have falsely implicated the Petitioner in the above criminal cases, resulting in the issuance of

lookout circular by the first Respondent, restraining the Petitioner from leaving India. He submitted that the lookout circular itself is illegal.

4. Learned Counsel for the Petitioner further submitted that as per the visa policies formulated by the Government of India, the Petitioner with his

business visa, cannot stay in India for a long time, without valid employment visa, issued by the Government. According to him, a foreign national

staying in India for execution of any project or business, would be granted a business visa and that it would be allowed to be converted into an

employment visa only on leaving the country. Therefore, without leaving the country, it is not at all possible for a foreign national to get its visa

converted and in the absence of any extension of visa, overstay within the territory of this country would also be an offence.

5. Learned Counsel for the Petitioner further submitted that the presence of the Petitioner at Korea is required to evolve a strategic plan and also

to carry out a report of the development of existing ongoing projects carried on in India, which attracts lot of foreign investment and therefore,

unless appropriate directions are given, the Petitioner would be seriously prejudiced.

6. Learned Counsel for the Petitioner further submitted that the Petitioner has been implicated in the above said criminal cases only in the capacity

of the Managing Director of the Company and when the Company is a registered company, incorporated under the Companies Act, along with

other Directors and Korean Nationals employed in India, he has no intention to flee the country and he wants only permission to go to Korea and

would return to this country, after a short sojourn may be around 15 to 20 days and that he is willing to abide by any conditions that may be

imposed by this Court.

7. Per contra, the Foreign Regional Registration Officer. Bureau of Immigration. Government of India, Ministry of Home Affairs. Chennai, in his

counter-affidavit has stated that the Deputy Superintendent of Police, District Crime Record Bureau. Kancheepuram. vide Cr. No. 57/2009. dated

30-10-2009 has registered a case against the Petitioner for offences under Sections 406, 420 and 506(1). IPC. alleging that the Petitioner had

cheated one Mr. Jayammal, huge amount of Rs. 1,64,15,530/- who was working as a sub-contractor under the company of the Petitioner, located

at Irungattukottai. Kancheepuram District. When the registration of the criminal case was informed by the Deputy Superintendent of Police. District

Crime Record Bureau, Kancheepuram. with a request to issue a lookout Circular (LOC). the same was issued to all the Immigration check-posts

throughout India.

8. According to the Foreign Regional Registration Officer, Chennai. though the Petitioner intends to leave the country to convert his visa into

employment visa, allowing him to leave the country is ruled out, in view of the pending criminal cases and if he wants to leave the country, there

should be a clearance/No Objection Certificate from the police authority or Court. According to him. extension of business visa would be

considered suitably in accordance with immigration rules and regulations and subject to the approval of Ministry of Home Affairs.

9. The above said authority in his counter-affidavit, has further contended that conversion of visa. i.e. from business visa to employment visa, can

be done, subject to the approval of the Ministry of Home Affairs. Govt. of India, New Delhi, who is the deciding authority. It is also averred that

the Petitioner has already been given Entry Visa till 10th August. 2010, after converting the Business Visa into X-Visa. He has further contended

that once the Petitioner, a foreigner, is allowed to leave the country, without completing the trial or the police case, it is not guaranteed that he

would come back to India and attend the trial/police case. In these circumstances, he has prayed for dismissal of the writ petition.

10. The third Respondent, who has been impleaded in his affidavit has contended that in January. 2008. he got a work order from the Petitioner.

Managing Director of "1L Sung Construction Pvt. Ltd." and out of Rs. 3,11,16,961/-. the Petitioner has paid a sum of Rs. 2,00,17,500/- and for

the balance amount Rs. 1,10,99,461/-. he has issued two cheques, for a sum of Rs. 13,22,455/- and another one for a sum of Rs. 16,00,000/-

and for the remaining balance amount, the accused/Petitioner gave an assurance that it would be paid within a week. When the third Respondent

presented the above said cheques for collections, the cheques were dishonored on the ground of ""insufficient funds"". When he approached the

Petitioner for the balance, amount, he was threatened with dire consequences and therefore, he gave a complaint to Sriperumbudur Police Station.

As there was no action by the Police, he filed a direction petition in CrI. O.P. No. 23200/2009 to register a case and based on the order of this

Court, an FIR was registered against the Petitioner in Cr. No. 818/2009 on 7-11-2009 for an alleged offence u/s 420, IPC by the Inspector of

Police. Poonamalee. It is to be noted that the amount involved in this crime is Rs. 1,10,99,000/-.

11. The third Respondent has further submitted that during the course of investigation, it came to light that the Petitioner was involved in yet another

Crime No. 57 of 2009 on the file of the District Crime Branch, Kancheepuram for alleged offences under Sections 406, 420 and 506(i) of IPC,

based on the complaint given by one Mr. Jayamal and the amount involved in that case was Rs. 1,64,15,530/-. He has further submitted that if the

Petitioner is allowed to leave the country, the investigation in the criminal case would be hampered and consequently, affect the interest of the

complainant.

12. Referring to Section 10(e) and (h) of the Passports Act, 1967, learned Counsel for the third Respondent also submitted that the Passport

Authority is empowered to impound the passport on account of involvement of the Petitioner in the above two criminal cases, involving huge

amount. For the above said reasons, he submitted that the Petitioner should not be given any permission to leave the country, as it would seriously

prejudice the criminal case.

Heard the learned Counsel for the parties and perused the materials available on record.

13. Even as per the averments made in the supporting affidavit, the Petitioner is involved in two crime numbers in Cr. No. 57 of 2009 on the file of

the District Crime Branch. Kancheepuram, for offences under Sections 406, 420 and 506(i) IPC and Cr. No. 818 of 2006 on the file of the

Inspector of Police. Poonamallee for an offence u/s 420, IPC. The quantum of amount involved in both crime numbers comes to roughly Rs.

2,75,14,530/-.

14. Perusal of the order made in CrI. O.P. Nos. 24312 and 24321 of 2009, shows that learned Government Advocate (Criminal Side), while

opposing the anticipatory bail application filed by the writ Petitioner, has submitted that the Petitioner-company has entered into contracts with the

de facto complainants for a sum of Rs. 5,69,81,662/- and that a substantial portion of the above said sum has not been paid to the de facto

complainants. While observing that custodial interrogation of the Petitioner is not necessary, this Court, by an order, 9-11-2009, has enlarged the

Petitioner on anticipatory bail, in the event of arrest or on his appearance, within a period of ten days from the date of receipt of passing of the

order, before the learned Judicial Magistrate No. 1, Thiruvallur. Thiruvallur District on condition that the Petitioner shall execute a bond for a sum

of Rs. 10,000/- with two sureties each for a like sum to the satisfaction of the arresting officer or to the satisfaction of the learned Magistrate

concerned and also imposed a further condition that the Petitioner shall appear before the Respondent-police on every Sunday at 10.00 a.m. for a

period of eight weeks and thereafter, as and when required for interrogation after his release on bail.

15. Reading of the above said order makes it clear that the grant of anticipatory bail is subject to the condition that as and when required after

release on bail, the Petitioner has to appear before the concerned Police for investigation. Averments made in the supporting affidavit do not

indicate that the investigation in both the criminal cases, has been completed or not. However, the learned Counsel for the third Respondent has

submitted that the investigation has been completed in one crime number and that charge number and that charge-sheet has also been filed by the

police.

16. Section 10 of the Passports Act. 1967 empowers the Passport Authority to vary, impound and revoke of passports and other travel

documents. As per Section 10(3)(e) and (h). the passport authority may impound or cause to be impounded or revoke a passport or travel

document,

(e) 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;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance .or a warrant for the arrest, of the holder of

the passport or travel document has been issued by a Court under any law for the time being in force or if an order prohibiting the departure¹ from

India of the holder of the passport or other travel document has been made by any such Court and the passport authority is satisfied that a warrant

or summons has been so issued or an order has been so made.

17. In the case on hand, two criminal cases, (i) Cr. No. 57 of 2009 the file of the Deputy Superintendent of Police, District Crime Record Bureau,

Kancheepuram and (ii) Cr. No. 818 of 2009 on the file of the Inspector of Police, Poonamallee are pending against the Petitioner. Look out

circular has also been issued by the Foreign Immigration Registration Officer, Government of India, Ministry of Home Affairs, Chennai, on the

request of the Deputy Superintendent of Police, District Crime Record Bureau, Kancheepuram. Issuance of the said circular cannot be found fault

with, as the police is entitled to seek for retention of an accused from leaving the country, for the purpose of completion of investigation and trial of

the cases registered against the Petitioner. Therefore, there is no illegality in the issuance of a ""Look Out"" circular by the immigration authorities.

18. Though the Petitioner has contended that his presence in Korea is required for business purposes and that the fundamental rights applicable to

the Indian Citizen to travel outside India, is also applicable to a foreigner, the presence of the Petitioner is required for the purpose of investigation

of the above said crimes and for filing a final report before the Court of competent jurisdiction. The contention of the third Respondent that the

charge-sheet has been filed in one crime number, requires to be considered, for the reason that once the criminal Court has taken cognizance of the

report by the Investigating Agency, then the Petitioner has to approach only the criminal Court, where the criminal case against him is pending, for

permission to travel outside the country. Even if the Petitioner has not received any summons from the criminal Court, still it would be open to him

to approach the criminal Court for suitable orders, so as to enable him to make a request to the Respondents to issue suitable visa.

19. In view of the pendency of the criminal case against the Petitioner before the Court of competent jurisdiction, where final report has been filed

in one of the above crimes, the direction sought for by the Petitioner in this writ petition, cannot be granted in exercise of writ jurisdiction, as the

presence of the Petitioner/accused before the criminal Court is required. It is for the concerned Magistrate to decide as to whether the Petitioner

can be permitted to leave the country for any specific purposes, for a limited period or not.

20. It is also to be noted that the final report in another crime number has to be filed before the Court of competent jurisdiction and in which event,

the presence of the Petitioner may be required by the Investigating Agency for completion of investigation. It is not the case of the Petitioner that

the investigation in the above said Crime Numbers have been completed, but the third Respondent has submitted that charge-sheet has been filed

in one case. The Petitioner has not even impleaded the Investigating Agency in this writ petition, at whose instance. ""Look Out"" circular has been

issued. As rightly contended by the Immigration Officer. Chennai. the Petitioner has sought for a relief, without getting any "No Objection" from

the police or orders of the Criminal Court. As the quash petitions are stated to have been dismissed by this Court and consequently, the

Investigating Agency may have to file final report to the Criminal Court and once the summon is issued, the Petitioner may have to appear before

the Criminal Court, unless his presence is dispensed with for reasons to be recorded.

21. It is evident from the counter-affidavit filed by the Foreign Regional Registration Officer, Bureau of Immigration, Government of India, Ministry

of Home Affairs, Chennai that the extension of business visa on expiry, would be considered suitably in accordance with immigration rules and

regulations and subject to the approval of Ministry of Home Affairs. Though the Petitioner has contended that the business visa was expired on

10th May, 2010. he had already been given Entry Visa till 10th August, 2010. after converting Business Visa to X-Visa. Though the Petitioner has

contended that he requires a short sojourn may be around 15 to 20 days and would return to India, the apprehension of the first Respondent that if

the Petitioner is allowed to leave the country, without completing the trial or police case, there is no guarantee that he would come back to India to

attend the criminal case or complete the pending investigation, cannot be ignored by this Court, as it would be very difficult to secure a foreigner,

once he leaves the country. When the Immigration Officer himself makes an affirmative statement that the Petitioner's return to India is not

guaranteed, this Court is not inclined to subscribe to the contentions of the Petitioner and grant the relief, more so when his presence is required.

22. The contention of the learned Counsel for the Petitioner that the Petitioner has been arrayed as an accused only in the capacity of the Managing

Director and that when the Company and other directors, including Korean nationals are already available in India, there is no need for him, flee

the country to escape from the clutches of law. cannot be accepted for the reason that the presence of otherwise of the accused has to be decided

only by the Criminal Court and the Petitioner cannot make any distinction as to whether he was arrayed as a Managing Director or in other

capacity and the said submission has no relevance so far as his presence is concerned. For the above said reasons, the contention that the Petitioner

is also entitled to the constitutional protection, rights enjoyed by the Indian Citizens, cannot be countenanced on the facts of this case.

23. In view of the above, this Court is of the considered view that the Petitioner, being an accused in Cr. Nos. 57 of 2007 and 818 of 2009,

against whom, a look out circular has also been issued by the first Respondent to all the Immigration Centres, at the instance of the police, who has

not even been impleaded as a party Respondent in this writ petition, cannot invoke the extraordinary jurisdiction under Article 226 of the

Constitution of India and seek for a Mandamus against Respondents 1 and 2.

24. In the result, the writ petition is dismissed. No costs. Consequently, M.P. No. 1 of 2010 is also closed.