

(2014) 12 CAL CK 0035

Calcutta High Court

Case No: C.R.R. No. 2315 of 2014

Sirichai Sasanarakhit

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: Dec. 24, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 100, 102, 102(1), 104, 164
- Passports Act, 1967 - Section 10
- Penal Code, 1860 (IPC) - Section 120B, 379, 401

Citation: (2015) 1 CHN 411**Hon'ble Judges:** S. Chatterjee, J**Bench:** Single Bench

Advocate: Biplab Mitra, Abhijit Kumar Adhya, Amajit De, Treena Mitra, Siladitya Sanyal and Biswabrata Basu Mallick, Learned Advocates, Advocate for the Appellant; Manjit Singh, Learned Public Prosecutor and Ayan Bhattacharyya, Learned Advocate, Advocate for the Respondent

Judgement

Samapti Chatterjee, J.

Samapti Chatterjee, J. 1. The petitioner filed the instant revisional application assailing the Order dated 2nd June, 2014 passed by the Learned Chief Judicial magistrate, Howrah rejecting the petitioner's prayer for returning the passport and VISA in connection with Bally P.S. Case No. 375 of 2013 under Sections 401/ 379/ 120B of the Indian Penal Code.

2. Mr. Biplab Mitra, learned Advocate appearing for the petitioner submitted that the petitioner is a citizen of Thailand and he has come to Kolkata as a tourist.

3. Mr. Mitra further submitted that on 16th July, 2013 at about 4:25 P.M. Swami Bodhisswatananda @ Pinki Maharaj of Ramkrishna Mission Bellur, Howrah lodged a written complaint that when Maharaj Ji entered the museum then he found that Model No. E-5 was lying flat and Model Cabinet overturned inside the cabinet. Upon

enquiry he found that one of the teeth of Sree Sree Sarada Maa was missing along with Rudraksha Mala. He further found that 2 Bel Metal and 1 Bati were also missing. He immediately complained to his higher official. As a result the above Bally Police Station case was initiated against the petitioner.

4. Mr. Mitra further contended that police started investigation and warrant of arrest was also issued and the petitioner was arrested from Gorakshapur, U.P. and was produced before the Learned Chief Judicial Magistrate, Gorakshapur, U.P. and was taken to police custody for 14 days there and from U.P. he was brought to West Bengal and produced before the Learned Chief Judicial Magistrate at Howrah.

5. Mr. Mitra further urged that the petitioner was produced on 23rd December, 2013 for recording his statement under Section 164 of the Code of Criminal Procedure which he declined. But the Passport and VISA of the petitioner were seized by the police. Thereafter on 6th February, 2014 petitioner was granted bail with surety of 10,000/- each, one of whom must be cash surety, on condition that without informing and without prior permission the petitioner shall not leave the jurisdiction of the Court permanently and shall furnish a local address to the Investigating Officer, he shall also cooperate in the interest of investigation and shall not cause any endeavour of tampering the prosecution's case.

6. Mr. Mitra further submitted that the wife of the petitioner Mrs. Phatthara Wadee Kethlaysang aged about 49 years was diagnosed cancer in the left breast since 10th May, 2013. Therefore, the petitioner made a prayer before the Learned Chief Judicial Magistrate at Howrah for return of his Passport and VISA which was rejected by the impugned Order dated 2nd June, 2014.

7. Mr. Mitra further vehemently argued that Learned Magistrate failed to appreciate that it was absolutely absurd and impossible that in presence of high security guard, public and also in presence of close circuit camera valuable antique goods like Rudraksh Mala, 2 Bel Metal and 1 Bati, and one teeth of Sree Sree Sarada Maa could be stolen from the museum.

8. Mr. Mitra also contended that Learned Magistrate should have considered that the petitioner's wife has been suffering from cancer since 10th May, 2013, therefore, he should be allowed to go to Thailand.

9. Mr. Mitra further contended that rejection of prayer of the petitioner for return of his Passport and VISA by the Learned Magistrate is contrary to the Section 10 Sub Section 3 (e) of the Passport Act, 1967 (hereinafter referred to as the Act) which is set out hereunder :-

(3) 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,"

10. Mr. Mitra further vehemently contended that impounding of the Passport under Section 104 of the Cr.P.C. by the Learned Magistrate is illegal and clearly barred by Section 10 Sub Section 3 (e) of the Passport Act.

11. Mr. Mitra further submitted that Passport can be impounded only by the Passport Authority under Section 10 Sub Section 3 (e) of the Passport Act.

In support of his contention Mr. Mitra relied on a Supreme Court decision reported in (2008) 3 Supreme Court Cases Page-674 (Suresh Nanda vs. Central Bureau of Investigation) and also relied on a Supreme Court decision reported in [Gian Singh Vs. State of Rajasthan](#).

12. Mr. Mitra further vehemently argued that the Passport of any citizen can be impounded only under the Passport Act which is a Special Act and therefore Passport of any citizen can not be impounded under Section 104 of Cr.P.C. as the Passport of any citizen is governed by the Special Act.

13. Mr. Mitra finally concluded his submission by pointing out that the Hon"ble Court should allow the petitioner's prayer for return of his Passport and VISA after setting aside the impugned order dated 2nd June, 2014 passed by the Learned Chief Judicial Magistrate, Howrah.

14. Mr. Manjit Singh, learned Public Prosecutor appearing for the Opposite Party/State vehemently opposed the prayer of the petitioner and submitted that the Passport was seized and impounded by exercising the power vested under Section 102, 165 and 104 of the Code of Criminal Procedure. Sections 102, 165 and 104 of the Cr.P.C. are set out herein below :-

Section 102:-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.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court for where there is difficulty in seizing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Section 104: Power to impound document, etc, produced.-Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

Section 165: Search by police officer.-(1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

15. Mr. Singh further contended that the power to detain and impound the Passport of the petitioner has been rightly exercised by the prosecution as per the power vested under Section 104 of Cr.P.C.

16. Mr. Singh further contended that the petitioner citing a lame excuse of illness of his wife is actually trying to flee away from the country with the intention to frustrate the trial.

17. Mr. Singh further submitted that the charges are very grievous in nature as the valuable antique articles of Sree Sree Sarada Maa were stolen from the museum of Bellurmath at Bally, Howrah.

18. Mr. Singh pointed out that the sentiment of entire nation is also involved in this proceedings.

19. Mr. Singh further vehemently urged that the petitioner's wife has been suffering since 10th May, 2013 but the petitioner filed this application for return of his Passport only on 2nd June, 2014 which was rejected by the Learned Chief Judicial magistrate.

20. Mr. Singh further pointed out that again on 23rd July, 2014 the petitioner made application for return of his Passport which was also rejected by Learned Chief Judicial Magistrate, Howrah.

21. Mr. Singh strongly argued that the petitioner very cleverly in one hand is praying before the Court for return of his Passport to travel to Thailand to visit his ailing wife and on the other hand is enjoying his life lavishly in Kolkata by staying at different 7th Star, 5th Star hotels situated in Kolkata and also in other States within India which would be evident from different hotel bills attached to Case Diary.

22. Mr. Singh further vehemently urged that one of the conditions imposed by the Learned Chief Judicial Magistrate, Howrah at the time of allowing the bail petition on the ground of expiry of statutory 60 days of detention that the petitioner shall not leave the jurisdiction of the Court without informing and without prior permission of the Court.

In support of his contention Mr. Singh relied on a Supreme Court decision reported in [Rajesh Talwar Vs. Central Bureau of Investigation and Others](#), [Jignesh @ Bansi Lal Navin Chandra Desai Vs. State of Gujarat](#), and also relied on [Harish Kumar and Another Vs. State of Uttarakhand and Another](#),

23. Mr. Singh also submitted that the prosecution made application before the Passport Authority to impound passport of the petitioner but it was turned down by the said authority with the endorsement that since the passport was issued by the Passport Authority of Thailand, therefore Passport Authority of India cannot impound that said Passport.

24. Mr. Singh concluded his argument by pointing out that considering the gravity of the offence and also considering the sentiment of the entire nation involved in the case Order dated 2nd June, 2014 was rightly passed by the Learned Chief Judicial Magistrate, Howrah rejecting the petitioner's application for return of the Passport and VISA and the same does not deserve any interference by this Hon'ble Court.

25. Mr. Siladitya Sanyal appearing for the defacto complainant after adopting the submission advanced by Mr. Manjit Singh, learned Public Prosecutor, vehemently opposed the prayer made by the petitioner.

26. Having heard the rival submissions advanced by the Counsels appearing for the parties and also perusing the records I find that the charges levelled against the

petitioner is very grievous in nature.

27. I also find that at the time of allowing the bail petition on the ground of expiry of statutory detention of 60 days Learned Court below imposed one of the conditions that without informing and without prior permission the petitioner shall not leave the jurisdiction of the Court permanently and he shall not cause any effort of tampering the prosecution's case. Therefore, upon a bare reading of the Order dated 6th February, 2014 it is crystal clear that considering the gravity of the offences Learned Judge has restrained the petitioner from leaving the jurisdiction of that Court without informing and without prior permission of the Court. It was also directed by the Learned Judge that the petitioner shall furnish a local address to the Investigating Officer and the petitioner shall cooperate in the interest of investigation and shall not cause any effort of tampering the prosecution's case.

28. I also find that Section 104 of the Cr.P.C. vested the power upon the Court to impound any document or things produced before it and under Section 102(1) of the Cr.P.C. empowered the police to seize a Passport. It is also evident from the record that the prosecution made prayer before the Passport Authority to impound the Passport of the petitioner but that was turned down with the remark that since the Passport was issued by the Thailand Passport Authority therefore Indian Passport Authority has no jurisdiction to impound the Passport of the petitioner.

29. Considering the submissions and perusing the records I am of the opinion that the Order dated 2nd June, 2014 passed by the Learned Chief Judicial Magistrate, Howrah rejecting the prayer of petitioner for return of the Passport and VISA in connection with Bally P.S. Case No. 375 of 2013 under Sections 401/ 379/ 120B of the Indian Penal Code was rightly passed and there is no illegality. Therefore the impugned order does not deserve any alteration and/or interference by this Hon'ble court.

30. Therefore, CRR 2315 of 2014 is thus, dismissed.

31. In view of dismissal of the Criminal Revision, the application for appropriate order, being CRAN No. 4119 of 2014, has become infructuous and the same is also dismissed.

32. Photostat certified copy of the order, if applied for, be given to the parties on urgent basis.