



Judgment

336 wp877.24

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL WRIT PETITION NO.877 OF 2024

Mr.Sandeep s/o Harish Kewlani,
aged about- , occupation business,
r/o plot No.24, Gokulpeth,
Canal Road, Nagpur.

..... **Petitioner.**

:: VERSUS ::

State of Maharashtra,
through its officer,
Economic Offences Wing of CBI,
Mumbai.

..... **Respondent.**

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Shri A.S.Kesari, Counsel for the Petitioner.

Shri P.Sathianathan, Counsel for the Respondent.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 02/01/2025

PRONOUNCED ON : 08/01/2025

JUDGMENT

1. By this petition, the petitioner seeks following reliefs:

1. To issue an appropriate writ/order/direction to quash and set aside impugned order dated 11.3.2024 passed by learned Additional Sessions

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Judge on Exhibit-273 in Special Case No.3/2017 as being arbitrary, illegal, capricious, and against settled principles of law, and

2. To issue an appropriate writ/order/direction to hold and declare that the respondent authority cannot seize Passport invoking provisions of Section 102 of the Code of Criminal Procedure and the act of the respondent authority of seizing the Passport is arbitrary, illegal, and capricious and direct the respondent authority to release and hand over the Passport to the petitioner.

2. Heard learned counsel Shri A.S.Kesari for the petitioner and learned counsel Shri P.Sathianathan for the respondent authority. By consent of learned counsel appearing for parties, the petition is taken up for final hearing.

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3. Learned counsel for the petitioner submitted that the petitioner is engaged in film industry as Writer and Director in Bollywood and also a Businessman. First Information Report was lodged against him under Sections 420 and 120(b) of the Indian Penal Code and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The crime was registered on the basis of a written complaint dated 2.6.2017 by the Deputy General Manager of Bank of Baroda, Regional Office, Nagpur against him and other accused persons on an allegation that accused persons along with other co-accused persons duped the bank during period 2013-2016. As per the prosecution case, accused No.1 being Proprietor of S.K.Traders along with other co-accused persons approached the Bank of Baroda and obtained Cash Credit Facility to the tune of Rs.300 lacs for his business purpose. Subsequently, loan account was converted into Non-performing Assets on 30.6.2016. It revealed to the investigating agency that accused persons fraudulently and dishonestly diverted the Cash Credit Facility

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and caused a wrongful loss to the bank. During course of the investigation, Passport of the petitioner was seized. As per contentions of the petitioner, for his business purpose, he has to travel various countries. The respondent authority unauthorizedly seized the said Passport. In fact, the respondent authority has no right to seize and impound the said Passport by invoking provisions under Section 102 of the Code of Criminal Procedure. Section 10(3)(e) of the Passports Act, 1967 is a special provision and impounding of Passport can only be done by the Passport authority under the said Section and, therefore, seizing and impounding of the Passport is illegal activity and as such the same is liable to be quashed and set aside. The application moved by the petitioner for directing the Central Bureau of Investigation to release the Passport is illegally rejected by learned Judge below and, therefore, the said order requires to be quashed and set aside.

4. In support of his contentions, learned counsel for the petitioner has placed reliance on the decision of the Karnataka

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High Court in the case of **Praveen Surendran vs. State of Karnataka and anr¹**.

5. Learned counsel for the respondent authority strongly opposed the petition and submitted that learned Judge below has already permitted the petitioner to travel abroad. As far as further permission to travel abroad is concerned, the petitioner can approach the authority and the authority can reconsider the same. As such, the petition becomes infructuous and the same is liable to be disposed of. It is further contended that by invoking provisions under Section 102 of the Code, police have powers to seize the Passport.

6. The first and foremost contention of learned counsel for the petitioner is that the respondent authority does not have powers to seize the Passport in connection with the crime registered against the petitioner. The powers to seize Passports are only vested with the Passport authorities under the Passports Act and the same being special enactment, the

¹ 2022 SCC OnLine Kar 1661

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seizure of the Passport by the respondent authority and retaining the same is contrary to provisions of the Passports Act depriving the petitioner from travelling abroad freely and thereby affecting his fundamental rights.

7. Having given due consideration to submissions made by learned counsel appearing for parties, it is to be seen that whether retaining Passport by the respondent authority, after the same is seized beyond period of four weeks, would amount to impounding by the police or respondent authority. The seizure of the Passport in the present case is by invoking powers under Section 102 of the Code and the Passport is retained by the court in view of Section 104 of the Code. The issuance of Passport and its impounding is under special enactment i.e. the Passports Act. Sub-section (3) of Section 10 of the Passports Act empowers the Passport authority to impound or cause to be impounded or revoke a Passport or travel document subject to conditions stipulated in Sub-section (3) of Section 10 of the Passports Act. One such condition of

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impounding of Passport is that, if the proceedings in respect of an offence alleged to have been committed by the holder of the Passport are pending before a Criminal Court in India. Therefore, the power of the Impounding Authority i.e. Competent Authority under the Act is traceable to clause (e) of sub-section (3) of Section 10 of the Act which is the only provision applicable to the present case. The Passports Act is a special enactment and it is trite that it being a special enactment would prevail over Section 102 or Section 104 of the Code which empower the Police to seize and the Court to impound any document. Sub-section (3)(e) of Section 10 of the Act provides for impounding of a Passport 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.

8. Section 102 of the Code gives powers to the police officer to seize any property which may be alleged or suspected to have been stolen or which may be found under

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circumstances which create suspicion of the commission of any offence. Section 104 of the Code authorizes the court to impound any document or thing produced before it under the Code. Sub-section (5) of Section 165 of the Code provides that the copies of record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance to the offence. Thus, the Passports Act is a special Act relating to a matter of Passport, whereas Section 104 of the Code authorizes the Court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be to that Act instead of general Act providing for the matter connected with the specific Act as the Passports Act is a special Act which would prevail.

9. “Impound” means to keep in custody. According to the “Oxford Dictionary”, “impound” means to take legal or formal possession.

10. In the present case, the Passport of the petitioner is in possession of the respondent authority.

11. Reading of Sections 104 of the Code and 10 of the Passports Act together, the court is empowered to impound any document or thing produced before it whereas the Passports Act speaks specifically of impounding of the Passport.

12. In the present case, no steps have been taken under Section 10 of the Passports Act for impounding of the Passport.

13. Section 102(1) of the Code reads as under:

“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.”

14. There is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment. Whereas, “impounding” is to take possession of a

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document or a thing for being held in custody in accordance with the law. Learned counsel for the petitioner has placed reliance on the decision in the case of **Praveen Surendran** *supra*. The said aspect was extensively dealt with by the Karnataka High Court by referring provisions under Sections 102 and 104 of the Code and 10 of the Passports Act and it is held that the Passports Act is special enactment and it is trite that it being special enactment would prevail over Section 102 or Section 104 of the Code which empowers the police to seize and the court to impound any document. Impounding of any document produced before the court cannot stretch to an extent that it can impound the Passport. Therefore, deposit of the Passport before the court or before the police both will become without authority of law.

15. This aspect is further considered by the Hon'ble Apex Court in the case of **Chennupati Kranthi Kumar vs. State of A.P.**² wherein it is held that a relevant decision of this Court on

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the issue involved is in the case of **Suresh Nanda vs. CBI**³. In the said decision, it was held that the power under Section 104 of the Code cannot be invoked to impound a Passport. The reason is that the provisions of the PP Act which deal with the specific subject of impounding Passports shall prevail over Section 104 of the Code. Moreover, it was held that under Section 102(1) of the Code, the Police have the power to seize the Passport but there is no power to impound the same. It was held that even if the power of seizure of a Passport is exercised under Section 102, the Police cannot withhold the said document and the same must be forwarded to the Passport Authority. It is, thereafter, for the Passport Authority to decide whether the Passport needs to be impounded.

16. In the light of the well settled legal position and pronouncement of the Hon'ble Apex Court, neither the police nor the criminal court under Section 102 or Section 104 of the Code can impound a Passport. Impounding of a Passport is by

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the authority vested under the Act as depicted therein. Therefore, retaining of the Passport by the respondent authority without any authority leads to allow the writ petition by issuing a writ of mandamus for release of the Passport by reserving the liberty of the respondent authority to act in accordance with the mandate of Section 10 of the Passports Act. Considering the apprehension that the petitioner is involved in an economic offence and he may abscond by travelling abroad, some conditions can be imposed upon the petitioner. As such, I proceed to pass following order:

ORDER

(1) The Writ Petition is **allowed**.

(2) Writ of mandamus is issued to the respondent authority to release the Passport of the petitioner which is held in the custody of the respondent.

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(3) The respondent authority is at liberty to take an appropriate action in accordance with the mandate of Section 10 of the Passports Act.

(4) The petitioner shall inform the respondent authority as well as the special court whenever he intends to travel abroad by furnishing details such as period of travel and return to India along with dates, local address along with the address proof where the petitioner is visiting, cell phone number which he intends to use when he is travelling abroad and after returning, he shall report to the special court.

The petition stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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