IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.179 OF 2008
[ARISING OUT OF S.L.P (CRL) 3408 OF 2007]

SURESH NANDA: APPELLANT
VERSUS
C.B.I.:RESPONDENT

ORDER

1. Leave granted.

2. The appellant claims to be a non- resident Indian settled in United Kingdom for the last 2 3 years. The passport of the appellant as well as other documents were seized by the respondent from 4, P rithviraj Road, New Delhi in a search conducted on 1 0. 1 0 . 2 0 0 6 when the appellant was on a visit to India. The said search and seizure was pursuant to an F.I. R . dated 9.1 0 . 2 0 0 6 registered on the basis of a sting operation carried out by a news portal in the year 2 0 0 1 . The passport seized during the search was retained by the C.B.I. officials. An application was moved by the appellant before the Special Judge, C.B.I., P ati al a House Courts, New Delhi praying for release of his passport so that he can travel abroad to London and Dubai for a period of 1 5 days. The learned Special Judge, by order dated 1 5. 1 . 2 0 0 7 , directed the release of the passport to the appellant by imposing upon him certain conditions. Aggrieved against the order passed by the learned Special Judge, C.B.I., the respondent preferred a Criminal Revision before the High Court. The High Court, by order dated 5.2. 2 0 0 7 , reversed the order of the learned Special Judge and refused to release the passport to the appellant. Aggrieved against the order of the High Court, present appeal, by special leave, has been preferred by the appellant.

3. Learned senior counsel appearing for the appellant submitted that the power and jurisdiction to impound the passport of any individual has to be exercised under the P a s sports Act, 196 7(hereinafter referred to as "The Act"). He specifically referred to sub-section (3)(e) of Section 1 0 of the Act which reads as under:"(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:

> "Reference was also made to Section 1 0 A of the Act which has been introduced by Act 1 7 / 2 0 0 2 w.e.f. 1 7. 1 0 . 2 0 0 1 .

4. Learned senior counsel for the appellant also placed reliance on the decision of 5- Judge Bench of this Court in Satwant Singh SawhneyVs. D. Ra m a r a th n a m, Asstt. P a s sport Officer (19 6 7) 3 SCR 525wherein in para 3 1, it was held as under:

> "3 1 : For the reasons mentioned above, we would accept the view of Ker al a , Bombay and Mysore High Courts in preference to that expressed by the Delhi High Court. It follows that under Article 2 1 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. It is not disputed that no law was made by the State regulating or depriving persons of such a right."

5. A similar view is reiterated in the decision rendered by 7- Judge Bench of this Court in Maneka Gandhi Vs. Union of India and another(19 7 8) 1 SCC 2 4 8 wherein at page 2 8 0 , it was held as under:

"....Now, it has been held by this Court in Satwant Singh'scase (supra) that 'personal liberty' within the meaning ofArticle 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior to the enactment of the P a s sports Act, 1 9 6 7 , there was no law regulating the right of a person to go abroad and that was the reason why the order of the P a s sport Officer refusing to issue passport to the petitioner in Satwant Singh's case (supra) was struck down as invalid. It will be seen at once from the language of Article 2 1 that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which isnot supported by law; and law here means 'enacted law' or 'State law' (Vide A.K. Gopalan's case). Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure....."

6. On the other hand, learned Additional Solicitor General appearing for the respondent submitted that the passport was seized and impounded by exercising the powers under Section 1 0 2 read with Sections 1 6 5 and 1 0 4 of Code of Criminal Procedure (hereinafter referred to as "the Cr.P .C."). He further contended that the power to retain and impound the passport has been rightly exercised by the respondent as there is an order dated 3.1 1 . 2 0 0 6 passed by the learned Special Judge for C.B.I. exercising the power under Section 1 0 4 of Cr. P.C.

7. 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. Thus, the Passport Authority has the power to impound the passport under the Act. Section 1 0 2 of Cr.P .C. 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 circumstances which create suspicion of the commission of any offence. Sub- section (5) of Section 1 6 5 of Cr. P.C. 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 whereas Section 1 0 4 of Cr. P.C. authorizes the court to impound any document or thing produced before it under the Code. Section 165 of Cr.P .C. doesn't speak about the passport, which has been searched and seized as in the present case. It does not speak about the documents found in search, but copies of the records prepared under sub- section (1) and sub- section (3). "Impound" means to keep in custody of the law. There must be some distinct action which will show that documents or things have been impounded. According to the Oxford Dictionary "impound" means to take legal or formal possession. In the present case, the passport of the appellant is in possession of CBI right from the date it has been seized by the CBI. When we read Section 1 0 4 ofCr. P.C. and Section 1 0 of the Act together, under Cr.P .C., the Court is empowered to impound any document or thing produced before it whereas the Act speaks specifically of impounding of the passport.

8. Thus, the Act is a special Act relating to a matter of passport, whereas Section 1 0 4 of the Cr.P .C. authorizes the Court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the P a s sports Act is a special act , the rule that "general provision should yield to the specific provision" is to be applied. See : DamjiValaji Shah & another Vs. L.I.C. of India & others [AIR 1 9 6 6 SC1 3 5]; Gobind Sugar Mills Ltd. Vs. State of Biha r & others [19 9 9 (7)SCC 7 6]; and Belsund Sugar Co. Ltd. Vs. State of Biha r and others[AIR 1 9 9 9 SC 3 1 2 5] .

9. The Act being a specific Act whereas Section 1 0 4 of Cr. P.C. is a general provision for impounding any document or thing, it shall prevail over that Section in the Cr.P .C. as regards the

passport. Thus, by necessary implication, the power of Court to impound any document or thing produced before it would exclude passport.

10. In the present case, no steps have been taken under Section 1 0of the Act which provides for variation, impounding and revocation of the passports and travel documents. Section 1 0 A of the Act which provides for an order to suspend with immediate effect any passport or travel document; such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks, if the Central Government or any designated officer on its satisfaction holds that it is necessary in public interest to do without prejudice to the generality of the provisions contained in Section 1 0 by approaching the Central Government or any designated officer. Therefore, it appears that the passport of the appellant cannot be impounded except by the P a s sport Authority in accordance with law. The retention of the passport by the respondent (CBI) has not been done in conformity with the provisions of law as there is no order of the passport authorities under Section 1 0(3)(e) or by the Central Government or any designated officer under Section 1 0 A of the Act to impound the passport by the respondent exercising the powers vested under the Act.

11. Learned Additional Solicitor General has submitted that the police has power to seize a passport in view of Section 102(1) of the

Cr.P .C. which states:

> " 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 maybe found under circumstances which create suspicion of the commission of any offence".

In our opinion, while the police may have the power to seize a passport under Section 102(1) Cr. P.C, it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section 1 0(3) of the P a s sports Act, 1967 .

12. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at particular moment when a person or authority takes into his possession some property, which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of property or document the said property or document is retained foursome period of time, then such retention amounts to impounding of the property/or document. In the Law Lexicon by P. Ra m a n a th a Aiyar (2 nd Edition), the word "impound" has been defined to mean "to take possession of a document or thing for being held in custody in accordance with law".

Thus, the word "impounding" really means retention of possession of a good or a document, which has been seized.

13. Hence, while the police may have power to seize a passport under Section 102 Cr. P.C. if it is permissible within the authority given under Section 1 0 2 of Cr.P .C., it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 1 0(3) of the P a s sports Act. Hence, if the police seizes a passport (which it has power to do under Section 1 0 2 Cr.P .C.), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter the passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party vide State of Orissa Vs. Binap ani Dei[Air 1967 SC 1269] .

14. In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October,200 6. In our opinion, this was clearly illegal. Under Section 10 A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the P a s sport authority under Section 1 0(3).

15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr. P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "passport" is provided for in Section 1 0(3) of the Passports Act. The passports Act is a special law while the Cr.P .C. is a general law. It is well settled that the special law prevails over the general law vide G.P.Singh's Principles of Statutory Interpretation (9 th Edition pg. 1 3 3). This principle is expressed in the maxim "Ge n e r a l i a sp e c i a l i b u s no nde r o g a n t ". Hence, impounding of a passport cannot be done by the Court under Section 1 0 4 Cr. P.C. though it can impound any other document or thing.

16. For the aforesaid reasons, we set aside the impugned order of the High Court and direct the respondent to hand over the passport tithe appellant within a week from today. However, it shall be open to the respondent to approach the Passport Authorities under Section 10 or the authorities under Section 1 0 A of the Act for impounding the passport of the appellant in accordance with law.

17. We, however, make it clear that we are not expressing any opinion on the merits of the case and are not deciding whether the passport can be impounded as a condition for grant of bail.

18. The appeal stands disposed of accordingly.

J. [P.P . NAOLEKAR]

J. [MARKANDEY KA TJU]

NEW DELHI
JANUARY 24, 2008 .
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SUPREME COURT OF INDIA
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