

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
THE HON'BLE SRI JUSTICE NINALA JAYASURYA

I.A.NO.1 of 2023 in
CRIMINAL PETITION NO.2038 of 2021

Between:-

.... Petitioners

And

1) The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Andhra Pradesh,
Amaravati.

.... Respondent No.1/State

.... Respondent No.2/
De facto complainant

Counsel for the Petitioners : Mr.K.Kiran Kumar

Counsel for the 1st Respondent : Learned Public Prosecutor

Counsel for the 2nd Respondent : Mr.K.V.S.S.Prabhakar Rao

ORDER:

Heard learned counsel for the petitioners. Also heard Learned Assistant Public Prosecutor appearing for the 1st respondent/State and learned counsel for the 2nd respondent/*de facto* complainant.

2. This is an application seeking permission to the petitioners 2 & 3 to travel to the United States of America (U.S.A.,) to visit their children, pending disposal of the main Criminal Petition.

3. The petitioner Nos.2 & 3 herein have been arrayed as Accused Nos.2 & 3 in C.C.No.765 of 2021 on the file of the Court of the Learned II Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District, registered for the offences punishable under Sections 498-A, 417 of IPC and Sections 3 & 4 of Dowry Prohibition Act. A Learned Judge of this Court, by a detailed order dated 30.03.2021, was pleased to grant interim stay of further proceedings in the said Calendar Case, including the appearance of the petitioners. An application seeking to vacate the interim orders has been filed and the same is pending. In the meanwhile, the instant application has been preferred, in the circumstances as specifically asserted in the Affidavit filed in support of the I.A.

4. The learned counsel for the petitioners, *inter alia* contends that the petitioner Nos.2 & 3 herein are Senior Citizens and as their Passports were due to expire, they sought renewal of the same, but the Regional Passport Officer, Vijayawada had not processed the Renewal Application and informed them that specific orders have to be obtained from the Court to renew the same. He submits that initially they filed W.P.No.38648 of 2022 seeking a direction to the Passport authorities to renew the Passports, but the same was withdrawn since the appropriate remedy lies before the Hon'ble Court dealing with main Criminal Petition, which has the discretion to grant permission to the concerned parties to go to abroad or NOC to leave the Country for a prescribed period. In this regard, he places reliance

on the decision of a Learned Single Judge in **Mohan C.Lazarus vs. Regional Passport Officer**¹. He submits that Right to Travel is one of the facets of Personal Liberty as enshrined under Article 21 of the Constitution of India and refers to the Judgments of the Hon'ble Supreme Court in **Satwant Singh Sawhney vs. D.Ramarathnam, Assistant Passport Officer, New Delhi and Others**² and **Maneka Gandhi vs. Union of India and Another**³.

5. The Learned Counsel further submits that the petitioner Nos.2 & 3 undertakes that as and when required by this Court or any other Court, they will appear before the same without fail and abide by any conditions this Court may deem fit to impose. He submits that in fact the offences alleged against the petitioners are not sustainable for the various reasons/grounds raised in the main Criminal Petition. Making the said submissions and referring to various orders passed by this Court in W.P.No.30802 of 2022 dated 26.09.2022, W.P.No.220 of 2022 dated 08.04.2022, W.P.No.34656 dated 19.01.2023 and W.P.No.30286 of 2021 dated 06.05.2022 he seeks to allow the Interlocutory Application as prayed for.

6. The Learned Assistant Public Prosecutor opposed the said submissions and contended that the present application is not maintainable and the petitioners, if at all, have to approach the Learned Magistrate for the relief sought for and the same is therefore liable to be dismissed.

¹ 2021 SCC Online Madras 8142

² AIR 1967 SC 1836

³ (1978) 1 SCC 248

7. The learned counsel for the 2nd respondent/*de facto* complainant strenuously contended that the present application is lacking in *bona fide* as the petitioners' visit to U.S.A., is for the purpose of performing second marriage of petitioner No.1, while the marriage with the 2nd respondent/*de facto* complainant is subsisting and to avoid cases registered against them. While referring to the provisions of the Passports Act he submits that the petitioners instead of invoking the remedies in terms of the said Act had filed the present application under misconception of Law and the same is liable to be dismissed. He also points out that the orders on which much reliance is placed by the petitioners were passed by the Writ Court, in exercise of powers under Article 226 of the Constitution of India and the same are of no aid to the petitioners' case. The learned counsel also seeks to rely on the decision of the Hon'ble Supreme Court in **Satwant Singh Sawhney vs. D.Ramarathnam** referred to supra.

8. This Court has considered the submissions made and perused the material on record. As the counsel for both sides have confined their arguments in respect of the present I.A, this Court is inclined to dispose of the same, without touching upon the merits of the main Criminal Petition.

9. On due appreciation of the rival contentions, this Court is required to adjudicate as to whether the present application is maintainable and whether the petitioner Nos.2 & 3 are entitled for the relief as prayed for?

10. It is not in dispute that the petitioner Nos.2 & 3 initially filed W.P.No.38648 of 2022, but withdrew the same to avail the appropriate remedies and in pursuance of the same, the present application is filed. In W.P.No.30286 of 2021, a Learned Judge of this Court was dealing with the matter, wherein the request of the petitioner for renewal of the Passport was refused, *inter alia*, on the ground of pendency of Criminal cases. The Learned Judge after referring to the provisions of the Passports Act, 1967 and the Rules framed there under disposed of the Writ Petition, with a direction to the petitioner to approach the concerned Criminal Courts where he is appearing as accused and seek for NOC for renewal of his Passport.

11. In **Mohan C.Lazarus vs. Regional Passport Officer** referred to supra, a Learned Judge of High Court of Madras after referring to the Notification dated 25.08.1993 issued by the Central Government for regulating the exercise of power by the Passport Authority under Section 6(2)(f) of the said Act held as follows:-

“9. This notification was interpreted by a learned Judge of this Court (The Hon’ble Mr.Justice P.N. Prakash) vide order dated 21.04.2017 in WP(MD) No.7056 of 2017 (N.Chandrababu v. The Sub Inspector of Police). The Hon’ble Judge in the said decision held that the expression ‘concerned Court’ will mean the Court before whom the person is facing the prosecution. If a petition for quashing the criminal proceedings has been filed under Section 482 Cr.P.C before the High Court and interim stay has been granted, then the ‘concerned Court’ would be not the jurisdictional criminal court where the applicant is facing trial but the High Court.”

12. It may also be noted that in the said Judgment, the Learned Judge while opining that in view of the decision in WP(MD) No.7056/2017, a specific order may have to be obtained from the High Court and a miscellaneous petition may have to be filed in the pending quash petition, however entertained the Writ Petition in the special facts of the case said case. The contentions advanced by the learned counsel for the petitioners with the aid of the cases referred to supra deserves acceptance and the contentions contra with regard to maintainability of the present application, are liable to be rejected. As the matter is pending before this Court, the application seeking permission to the petitioner Nos.2 & 3 to travel abroad is maintainable.

13. In **Ganni Bhaskara Rao vs. The Union of India and another [W.P.No.220 of 2022 dated 08.04.2022]**, a Learned Judge of this Court while taking note of the orders of the Hon'ble Supreme Court in I.A.No.52346 of 2021 in Crl.A.No.1342 of 2017 dated 27.09.2021 opined that *"if a person convicted of a crime is entitled to seek a renewal as held by the Hon'ble Supreme Court of India, this Court does not find any reason to hold that the petitioner who is only an accused cannot hold a passport"*. This Court is also of the considered opinion that pendency of the Criminal proceedings against the petitioner Nos.2 & 3 shall not come in the way of renewal of their Passports.

14. In so far as the other contention raised by the Learned Counsel for the 2nd respondent/*de facto* complainant with reference to the provisions of the Passports Act and the appellate remedy provided therein, it would appear that no order of refusal has been passed in the present case, but the petitioners were required to obtain orders from the concerned Court for renewal of Passport. Be that as it may. The Constitutional Bench of the Hon'ble Supreme Court in **Maneka Gandhi's** case categorically held that *"no person can be deprived of his right to go to 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."*

15. In view of the settled legal position, this Court is of the considered opinion that the petitioners cannot be deprived of their Right to Travel on the premise that the Criminal proceedings are pending against them. At this juncture, it may also be appropriate to refer to the contention that the petitioner Nos.2 & 3 with a view to perform the second marriage of the petitioner No.1 is intending to travel to U.S.A., and therefore the permission as sought for may be rejected, cannot be appreciated. If the petitioner No.1 contracts second marriage during the subsistence of the earlier marriage, the 2nd respondent/*de facto* complainant is entitled to avail the relevant statutory remedies and the other apprehension voiced that travel to U.S.A., is with an intention to avoid the legal proceedings pending against them also

merits no acceptance. There are ways and means to secure the presence of the petitioners, if they are avoiding the legal proceedings, initiated against them.

16. In the light of the aforementioned view of the matter, this Court is inclined to allow the application. Accordingly, permission is accorded to the petitioner Nos.2 & 3 to travel to U.S.A., However, they shall file Affidavit of undertaking that as and when required by this Court or any other Court in connection with the Criminal proceedings initiated against them pursuant to the complaint lodged by the 2nd respondent dated 19.11.2020 and the consequential proceedings, the petitioners will appear without fail. The said undertaking shall be filed before this Court within a period of one (1) week from today.

17. The Interlocutory Application is accordingly allowed. There shall be no order as to costs.

JUSTICE NINALA JAYASURYA

Date: 09.05.2023

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