

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.12143 of 2015 (O&M)
Date of decision: October 01, 2015

Daler Singh

...Petitioner

Versus

Union of India and others

...Respondents

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Swaran Tiwana, Advocate
for the petitioner.

Mr.Indresh Goel, Advocate for
respondents No.1 to 3.

Mr.K.D.S.Sidhu, Addl.AG, Punjab
for respondent No.4.

HARINDER SINGH SIDHU, J.

By filing the present petition, Daler Singh – petitioner has sought direction to respondents No.1 and 2 to issue him a passport, which has been withheld on the complaint made by respondent No.3.

The brief facts, as put forth by the petitioner, are that he was married with one Sandeep Kaur on 2.6.2009. He has been living in Italy for the last more than seven years and had been visiting India very often. On 23.3.2015, when he came to India and informed his wife that he has come to take her and their son to Italy, an argument took place between them. Sandeep Kaur left the house of the petitioner and also took away his passport bearing No.H-0805464, which was issued to him

from Milan (Italy). She also made complaints to different police authorities as also to the NRI Wing, Phase VII, Mohali to lodge an FIR against the petitioner on general allegations of dowry. Despite best efforts on the part of the petitioner, the matter could not be resolved amicably.

The petitioner gave information to the Punjab Police about his missing passport (Annexure P-1) and also applied for re-issue of the same before respondents No.1 and 2 on 11.4.2015 (Annexure P-2). He also filed the requisite affidavit dated 7.4.2015 (Annexure P-3) regarding his missing passport, wherein, he mentioned that it was issued from Italy and has been lost in his house on 7.4.2015. He requested the authorities to re-issue the passport.

On 25.5.2015, on enquiry, the petitioner came to know that respondents No.1 and 2 have not re-issued his passport because of the application made by respondent No.3 stating that an inquiry is pending against the petitioner on the complaint of his wife.

In the reply filed on behalf of respondents No.1 to 3, it has been stated that while applying for re-issue of the passport, in the column of spouse, the petitioner has filled the name of 'Gurwinder Kaur', while marital status was filled up as 'divorcee'. It is further stated that adverse police verification report has been received from respondent No.4, wherein, it is mentioned that the petitioner is married to Sandeep Kaur and in the absence of a correct mention of the spouse name, passport facility was not recommended. The reply further states that a false explanation has been given by the petitioner that he had

been living with Sandeep Kaur, but not legally divorced from the earlier wife. The second police verification report received from respondent No.4 further revealed that court case FIR No.27.5.2015 under Sections 406, 420, 494, 498-A read with Section 34 of the Indian Penal Code, registered at Police Station NRI Patiala is pending against the petitioner. It has been stated that as and when a clear police verification report is received from respondent No. 4, the case of the petitioner would be reconsidered.

I have heard Learned counsel for the parties.

The contention on behalf of the petitioner is that merely on account of pendency of an FIR in a matrimonial dispute, the respondents are not justified to withheld his passport. Reliance has been placed on **Abhijit Sen vs. Superintendent (Administration) Regional Passport Officer, Kolkata and others, 2004(2) AICLR 893, CWP No.8902 of 2012 titled Tarsem Singh vs. Union of India and others, decided on 15.01.2014 and CWP No.24358 of 2014 titled Surinder Pal Singh vs. Union of India and others decided on 13.08.2015.**

The right to travel abroad has been recognized as a fundamental right by the Hon'ble Supreme Court. Accordingly only such restrictions can be imposed thereon as are authorized by law.

The grounds for refusal of passports and travel documents are specified in the Passports Act, 1967. The relevant Sections 6(2) and 10 (3) thereof are reproduced below:

“6. Refusal of passports, travel documents. etc.--

(2) Subject to the other provisions of this Act, the

passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

- (a) that the applicant is not a citizen of India.,
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,
- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;
- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;**
- (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;
- (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;
- (i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

10. Variation, impounding and revocation of passports and travel documents. -

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

- (a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;
- (b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf; [Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport]
- (c) if the passport authority deems it necessary so to

do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(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.

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(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 departure 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.”

Clearly, as per Section 6(2)(f) the issuance of a passport can be refused if proceedings in respect of a criminal offence alleged to have been committed by the applicant are pending before a criminal court in India.

In **Abhijit Sen's** case (supra), the passport of the appellant/petitioner (therein) had been impounded under Section 10(2)(e) of the Passport Act, 1967 on the allegation that a criminal case is pending against him before a Criminal Court in India, at the instance of his wife. The Division Bench of Calcutta High Court after taking into consideration various decisions of the Hon'ble Supreme Court and the

High Courts on the issue, held as under:-

“16. The above observations of the Apex Court makes it clear that submission of the charge sheet is a matter culminating after the investigation by the Police is over and over which the Court has no control and therefore, the presentation of a charge sheet cannot be said to initiate the criminal proceedings until cognizance is taken by the Magistrate to place the accused on trial.”

In **Venkatesh Kandasamy Vs. Government of India, Ministry of External Affairs, Chennai, 2015 AIR (Madras) 3**, the Court was concerned with the question as to when can the proceedings be said to be pending before the Criminal Court.

“19. Having taken note of the scheme of the Passports Act, if we now go back to Section 6(2)(f) of the Act, it is seen that after invoking the said provision the first requisite is that proceedings in respect of an offence should be pending before a Criminal Court in India. The question as to what tantamount to proceedings pending before the Criminal Court, had come up for consideration earlier.

*20. In **Suresh Nanda v. C.B.I. [Appeal (Crl.)No.179 of 2008 dated 24.1.2008** by the Supreme Court], the passport of a non resident Indian settled in the United Kingdom, was seized by the Police, when they conducted a search. A first information report was registered on the basis of a sting operation carried out by a news portal. The passport seized during the search was retained by the Central Bureau of Investigation. The Special Judge of the CBI Court directed the release of the passport. On a criminal revision filed by the Central Bureau of Investigation, the High Court reversed the order of the Special Court. Therefore, the individual filed a special leave petition before the Supreme Court.*

*21. After taking note of the provisions of Section 10(3)(e) of the Passports Act, 1967 and after taking note of the decisions of two Constitution Benches, one in **Satwant Singh Sawhney v. D.Ramarathnam, Assistant Passport Officer [1967 (3) SCR 525]** and **Menaka Gandhi v. Union of India and another [1978 (1) SCC 248]**, the Supreme Court held that the Passports Act, 1967 being a Special Act, the provisions therein would prevail over Section 104 of the*

Criminal Procedure Code, which confers general power upon the Court to impound any document. The Court also pointed out the distinction between the mere seizure of a passport and the impounding of the same. A seizure is made at a particular moment, when somebody takes into possession of some property. However, if the seized property is retained for some period of time, the retention amounts to impounding. Therefore, the Supreme Court pointed out that while the Police may have the power to seize a passport under Section 102 of the Code, if it is permissible within the authority given therein, it does not have the power to retain or impound the same. The Court also indicated that the moment the Police seizes a passport under Section 102 of the Criminal Procedure Code, they must send it along with a letter to the Passport Authority clearly stating that the seized passport deserves to be impounded for want of reasons mentioned in Section 10(3). It is thereafter for the Passport Authority to decide what to do. Even while taking a decision, the Passport Authority is to give an opportunity of hearing. What is important in the aforesaid decision is that in paragraph 15, the Court indicated that even the Court cannot impound a passport despite the enabling provision in Section 104 of the Code.

22. In *Abhijit Sen v. Superintendent [2004 CrI.L.J. 1281]*, a Division Bench of the Calcutta High Court was concerned with a case where the Passport Authority impounded the passport under Section 10(2)(e), on the ground that a criminal case was pending against the passport holder. The Calcutta High Court held that there are two processes for initiation of a proceeding before a Criminal Court. While the first part is the investigation by the Police, the other part is the direction by the Court. Therefore, after pointing out the condition prescribed in Section 190 of the Criminal Procedure Code for initiation of proceedings, the Division Bench of the Calcutta High Court opined that the proceedings before a Magistrate is initiated when cognizance is taken. The Court held that no proceeding can be said to have been initiated under Clause (a) of Section 190 within the meaning of Section 10(2)(3) of the Passports Act.

23. In so far as the case on hand is concerned, all the criminal complaints as against the petitioner are only at the stage of investigation. It is not a case of the Respondent that final reports have been filed in the criminal Courts in any of the criminal complaints, so as to make the case come within the four corners of Section 6(2)(f). Therefore, the impugned order is vitiated by non-application of mind and hence it is liable to be set aside.”

Thus, it has been held that proceedings can be said to be pending before a criminal court only when a cognizance has been taken by the Court.

In **Tarsem Singh's** case (supra), this Court dealt with a matter of re-issue of passport to the petitioner, who was convicted and sentenced to undergo rigorous imprisonment for 5 years by the Trial Court. Appeal against conviction and sentence filed by him was pending, wherein, his sentence was suspended. The objection of the respondent was that the petitioner had not disclosed about his conviction in a criminal case at the time of police verification. Later on, the petitioner filed affidavit mentioning these facts. In these circumstances, this Court directed the Passport Officer to issue the passport to the petitioner, subject to the conditions that the petitioner shall take necessary permission by filing application before the Court to go abroad.

In **Surinder Pal Singh's** case (supra), a case under Sections 427/506/148/149 IPC and Section 25 of the Arms Act was registered against the petitioner. Report under Section 173 CrPC had been filed and even the charge was also framed against him and the case was pending for prosecution evidence. This Court disposed of the petition granting liberty to the petitioner to apply to the concerned criminal court and seek its permission to apply for re-issuance of passport.

Coming to the facts of the case in hand, a criminal case arising out of the strained matrimonial ties has been registered against

the petitioner at the instance of his alleged wife. As per the documents available on record and the version of the parties, the Criminal Court has not taken cognizance of it and charge against the petitioner has not been framed.

In view of above, this petition is disposed of with a direction to respondent No.2 to re-issue the passport to the petitioner, if there is no other legal impediment, except the registration of the aforesaid case. However, it is directed that the manner of the use of the passport for travel outside will be subject to the orders of the appropriate criminal court of competent jurisdiction in respect of the FIR registered against the petitioner. The petitioner will himself approach the concerned Court, and seek appropriate directions to travel abroad, if he intends to use the passport for such a purpose.

The petition is disposed of with the above directions.

October 01, 2015

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**(HARINDER SINGH SIDHU)
JUDGE**