

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

**CWP No. 23846 of 2014 (O&M)
Date of decision: 28.01.2015**

Praveen Chugh

... Petitioner

versus

Union of India and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Puneet Bali, Senior Advocate, with
Mr. Ranjeet Saini, Advocate, for the petitioner.

Mr. Arun Gosain, Advocate, for
Mr. Chetan Mittal, Advocate, for respondent No.1.

Mr. Indresh Goel, Advocate, for respondent No.2.

Mr. Gaurav Goel, Additional Advocate General, Haryana.

Mr. Adhirath Singh, Advocate, for the intervener.

K.Kannan, J. (Oral)

The petitioner brings a challenge to the order passed by the Sessions Court where a criminal case is pending against the petitioner, for grant of No Objection Certificate for issuance of a passport. The Court has rejected it relying on view expressed by this Court by a Coordinate Bench in Criminal Miscellaneous Petition No. 5848 of 2011 dated 15.11.2011. The petitioner appears to have originally brought a challenge to the vires of the notification issued by the Ministry of External Affairs requiring permission to be sought from the Criminal Court where the proceedings are pending against an applicant. The petitioner has withdrawn his challenge and has sought permission of the Division Bench to avail of the remedy under Section 482 read with Section 226 of the Constitution. That is how the petitioner is in this Court.

Learned counsel appearing on behalf of the petitioner refers me to the text of the notification issued on 25.08.1993 in supercession of the notification made earlier that the Central Government thought it necessary to exempt citizens of India against whom proceedings were pending and who were required to obtain the orders from the Court permitting them to depart from India subject to certain conditions. The relevant portion of the notification are:

(No.289) New Delhi, Wednesday, August 25, 1993
Bhardra 3, 1915.

Ministry of External Affairs Notification, New Delhi, the
25th August, 1993

G.S.R. 570 (E)- In exercise of the powers conferred by Clause (a) of Section 22 of the Passports Act, 1967 (15 of 1967) and in supercession of the notification of the Government of India in the Ministry of External Affairs No. G.S.R. 298 (E) dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the Court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-Section 92) of Section 6 of the said Act, subject to the following conditions, namely:-

(a) the passport to be issued to every such citizen shall be issued:-

(i) for the period specified in order of the Court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not traveled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

1 any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport of specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued.

The condition includes an order of the Court giving such permission to travel abroad for a period less than one year. The petitioner has sought for such permission in terms of the notification and that has been declined purporting to rely on a decision rendered by this Court. The counsel states that the decision rendered by this Court in Criminal Miscellaneous Petition No. 5848 of 2011 dated 15.11.2011 does not advert to the notification requiring such permission. I raised a question upon the counsel appearing on behalf of the Union of India, as to whether the Union would be willing to issue a passport without No

Objection Certificate from the Court to which the counsel for the Union responds that without such permission from the Court, it will not entertain such an application. This is on the basis of rule/requirements; (1) In terms of Rule 5 of Passport Rules, an application has to be filed in this requisite form. The form stipulates the following:

17(b) Are any criminal proceedings pending against you before a Court in India? If so, give name of Court, case number and relevant Sections of law.

(c) If answer at (b) is Yes, please furnish No Objection Certificate from competent authority for grant of passport.

This incidentally answers also the particular question raised by the intervener that at whose objection before the Criminal Court the impugned order has been passed.

I cannot find the order passed by this Court in the petition mentioned above as concluding the issue of jurisdiction of the Sessions Judge for grant of No Objection Certificate since the notification was not brought to the attention of the Court. Indeed, the order passed by the learned Judge itself states “However, no provision has been brought to the notice of the Court which empowers a trial court to issue a no objection certificate”. The decision rendered by the Court, was therefore, without being apprised of the notification issued by the Government and I cannot find this judgment, therefore, to operate to exclude the jurisdiction of the Criminal Court.

The matter need not be detained any further here, since the petitioner's request has not been considered on merits. The impugned order is set aside and the matter is remitted to the Sessions Court. The intervener who is before this court shall also be heard before the decision is taken by the learned Sessions Judge.

The writ petition is disposed of with above observations.

(K.KANNAN)
JUDGE

28.01.2015
Kumud

