

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 8th December, 2015

+ W.P.(C) No.7339/2015, CM No.13483/2015 & CM No.29402/2015
(both for directions).

SIDDHARTHA ASHISH DEYPetitioner
Through: Mr. Saqib, Adv.

Versus

UNION OF INDIA & ORS.Respondents
Through: Mr. Vivek Goyal, CGSC for UOI.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the order dated 3rd July, 2015 of the Chief Passport Officer (CPO), New Delhi of dismissal of the appeal preferred by the petitioner against the order dated 19th May, 2015 of the Regional Passport Office (RPO), Raipur of impounding of the passport issued to the petitioner on 11th November, 2014.

2. Notice of the petition was issued. Though counter affidavit filed by the respondents did not come on record but the petitioner has filed a copy thereof along with CM No.29402/2015. The petitioner has filed a rejoinder thereto. The counsels have been heard.

3. It is the case of the petitioner, (i) that he was issued Passport No.H4096136 on 3rd June, 2009, valid till 2nd June, 2019; (ii) that a case under Section 498 A, 34 IPC of Police Station Mahila Thana, Raipur was lodged against him by his estranged wife; (iii) that the learned Sessions Judge, Raipur vide order dated 19th February, 2014 granted anticipatory bail to the petitioner; (iv) that the petitioner on 7th November, 2014 approached the RPO, Raipur for issuance of an additional booklet as all the pages in his passport had been exhausted due to stamping; (v) that he inadvertently omitted to mention the pendency of aforesaid case while so applying for issuance of additional booklet; (vi) on 11th November, 2014 the RPO, Raipur issued a fresh Passport No.Z2971030 to the petitioner and which was dispatched to the residence of the petitioner; (vii) that the RPO, Raipur vide notices dated 11th February, 2015, 26th February, 2015 and 8th April, 2015 asked the petitioner to show cause why his passport should not be impounded for the reason of the adverse Police verification report against him and for the reason of his failure to disclose the pending prosecution aforesaid against him while applying for issuance of a fresh booklet on 7th November, 2014; (viii) the petitioner submitted a reply dated 16th April, 2015 stating that he had inadvertently failed to mention so while applying for additional booklet and had not intentionally suppressed any

fact and more so since he had not been arrested for a single day; (ix) the petitioner on 16th April, 2015 also surrendered his passport with the RPO, Raipur, according to the petitioner, as per the advice of the official there; (x) the RPO, Raipur on 19th May, 2015 issued another show cause notice to the petitioner and to which a reply on the same day was submitted by the petitioner; (xi) the RPO, Raipur vide order of the same date i.e. 19th May, 2015 impounded the passport of the petitioner for the reason of pendency of the criminal case aforesaid against him; and, (xii) the petitioner preferred the statutory appeal thereagainst but which has also been dismissed for the reason of the petitioner having suppressed the factum of prosecution in his passport application and observing that the passport facility to the petitioner would be restored only when he is acquitted in the prosecution aforesaid.

4. It is the contention of the petitioner that the orders of impounding of his passport are contrary to the dicta of this Court in ***Manish Kumar Mittal Vs. Chief Passport Officer*** 202 (2013) DLT 317 laying down that pendency of a criminal case against a person is not *ipso facto* a ground for impounding of passport and it is only in appropriate case and for adequate and cogent reason that such an order can be passed. It is further the contention that the petitioner,

in the prosecution aforesaid, is on bail and it is not the condition of his bail that he will not travel abroad.

5. The respondents along with their counter affidavit have filed a copy of the Notification dated 25th August, 1993 of the Ministry of External Affairs, Government of India and the copies of the order dated 29th September, 2015 of the Court of Judicial Magistrate, First Class, Raipur and order dated 13th October, 2015 of the Additional Sessions Judge, Raipur in Revision thereagainst.

6. I have considered the respective contentions.

7. Section 10 of the Passports Act, 1967 empowers the Passport Authority to impound or revoke a passport *inter alia* on the grounds of the same having been obtained by suppression of ‘material’ information or on the basis of wrong information provided by the holder of the passport or if 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.

8. The petitioner in the present case had obtained the passport in the year 2009 and it is not the case of the respondents that he had practiced any misrepresentation or suppression while so applying for the passport. The ground on which the passport of the petitioner has been impounded is of suppression,

while applying on 7th November, 2014 for issuance of a fresh booklet. It is the case of the respondents that the petitioner at that stage suppressed/did not reveal the factum of the prosecution which by then was admittedly pending against him. The petitioner also admits the same but claims it to be an inadvertent error attributable to his having been granted anticipatory bail and having not been arrested for a single day in the said prosecution. He further states that none of the orders in the said criminal case place any restriction on his travel including foreign travel.

9. Unfortunately neither of the parties has placed before me the form which the petitioner was required to fill and filled up on 7th November, 2014 for issuance of a fresh booklet, for me to gauge whether the suppression was with respect to material information or not. It cannot be lost sight of that the petitioner at that stage was not applying for a fresh passport but merely for an additional booklet, though the respondents instead of an additional booklet issued a fresh passport to the petitioner. No copy of the fresh passport issued is also before me, to show whether it is till the expiry of ten years from the issuance of the passport in 2009 or for a fresh period of ten years. Be that as it may, the petitioner by calling the suppression inadvertent, admits to suppression.

10. Irrespective of that, admittedly prosecution of petitioner, which also is a ground for impounding of Passport, is pending. Pendency of a prosecution, besides being a ground for impounding of the passport under Section 10(3)(e) is also a ground for refusal of issuance of a passport under Section 6(2)(f) of the Act.

11. The petitioner, besides impugning the order of impounding of his passport by filing this petition, also applied to the Court of the Judicial Magistrate, Raipur seized of his prosecution for grant of permission for availing of passport. The said application was dismissed vide order dated 29th September, 2015 supra of the Judicial Magistrate, Raipur on the ground of an earlier application for the same relief having been dismissed. The petitioner preferred a Revision Petition thereagainst, relying on the Notification dated 25th August, 1993 supra contending that thereunder he was entitled to a passport for a period of one year at a time. However the learned Additional Sessions Judge, Raipur vide order dated 13th October, 2015 supra observed that the passport of the petitioner had not been impounded for the reason simplicitor of the pendency of the criminal case but for the reason of the petitioner having suppressed material fact from the application for Passport within the meaning of Section 6(2)(f) and thus held that the application for the Magistrate was not

maintainable. It was however clarified that the judicial record of the said prosecution does not impose any restriction regarding travel abroad or getting additional leaves issued from the Passport Authorities and it is for the Passport Authorities to decide whether the petitioner is entitled to travel abroad without being prejudiced with the fact that the said criminal case is pending against him.

12. As held by this Court in ***Manish Kumar Mittal*** supra and as also independently observed by me yesterday in order dated 7th December, 2015 in W.P.(C) No.11358/2015 titled ***Vipin Kumar Gupta Vs. Union of India***, pendency of a criminal case is not *ipso facto* a ground under Section 10(3)(e) of the Passports Act for impounding of the passport. I have in ***Vipin Kumar Gupta*** further observed that it is not in all cases that pendency of proceedings in a Criminal Court will entail impounding of a passport; the Passport Authority is expected to apply its mind whether in the facts and circumstances of the case, a case of impounding of the passport is made out or not. It was further *prima facie* observed that the occasion for the Passport Authority to impound the passport, notwithstanding the order in criminal proceedings restraining the holder thereof from travelling abroad save with the permission of the Court, may arise where notwithstanding said order, there is danger of the person absconding.

13. In the present case there is no application of mind, neither at the end of the RPO, Raipur in the order dated 19th May, 2015 nor in the appellate order dated 6th July, 2015 on the said aspect. Both appear to have proceeded on the premise that mere pendency on a criminal case was enough. The orders thus in so far as on the said ground cannot be sustained and have to be set aside.

14. As far as the other ground of suppression is concerned, again in neither of the orders there is any discussion on the aspect whether the suppression is of any material information or what wrong information has been provided by the petitioner. The Authorities also do not appear to have considered that the petitioner had not applied for obtaining a passport but only for an additional booklet for his existing passport. The same also in my opinion would have a bearing on the issue.

15. There is another aspect.

16. Though Section 6(2)(f) as aforesaid makes the pendency of a criminal prosecution a ground for refusal of the passport but Section 22 of the Act empowers the Central Government to by Notification in the Official Gazette exempt any person or class of persons from the operation of any provision of the Act. In exercise of the said power the Notification dated 25th August, 1993 supra has been issued whereby the Central Government has exempted from the

operation of Section 6(2)(f) of the Act, (i) persons who by order of the Court in which they are being prosecuted permitted to travel abroad for a particular period, for that period; as well, (ii) as persons who though have been permitted to travel abroad, but no period is specified in the order and qua which persons the Notification provides that the passport shall be issued for a period of one year at a time.

17. Though the aforesaid Notification does not refer to Section 10(3)(e) which makes pendency of prosecution a ground for rejection of Passport but in my view once persons against whom prosecution is pending are exempted from applicability of Section 6(2)(f), they would also be exempted from applicability of Section 10(3)(e).

18. Thus, if the petitioner produces order of the Court where he is being prosecuted “permitting (him) to depart from India”, his Passport cannot be impounded on the ground of pendency of prosecution under Section 10(3)(e).

19. The petitioner applied to the Court where he is being prosecuted for permission to travel abroad but unfortunately without any success, though that Court observed that in that proceeding there is no restriction on his travel abroad. However for the petitioner to be covered by the Notification supra the petitioner is required to produce the order of that Court “permitting him to

depart from India” whether for a particular period and in which case he would be entitled to passport for that period and if no time is specified, he would be entitled to a passport for a period of one year under the Notification aforesaid. In my view a mere observation of that Court that there is no restriction from that Court to petitioner’s travel abroad would not do as the Notification requires order of the Court permitting to depart from India. In this regard I may notice that though the order supra of the Additional Sessions Judge, Raipur records that the judicial record of the prosecution does not impose any restriction regarding travel abroad of the petitioner but the order supra granting anticipatory bail to the petitioner makes the same subject to the condition *inter alia* on the petitioner “not absconding”.

20. Since the Authorities below have not considered the matter in this light and further since considerable time has also lapsed, I deem it appropriate to allow this writ petition by directing the CPO to reconsider the matter in the light of the observations aforesaid and to pass a reasoned order on or before 31st January, 2016. The petitioner shall be entitled to make further representations/submit further documents before the CPO including the bail bond submitted to the Police in pursuance to the order supra of anticipatory bail.

It is directed accordingly.

No costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 08, 2015

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(corrected & released on 7th January, 2016)