

CWP No.1719 of 2016

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

**CWP No.1719 of 2016
Date of decision:28.01.2016**

Aman Mahajan

...Petitioner

Versus

Union of India and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ajaivir Singh, Advocate,
for the petitioner.

Rakesh Kumar Jain, J. (Oral)

The petitioner has prayed for a direction to the Regional Passport Officer, Chandigarh for the issuance of passport, put on hold due to pendency of a criminal case against him.

In brief, the petitioner is running his business under the name and style of M/s Specialty Slates & Tiles and is an income tax payee. He got married to one Poonam Mahajan and has two children out of the said wedlock. However, because of the matrimonial discord, wife of the petitioner has lodged FIR No.124 dated 18.10.2011, under Sections 406, 498A, 497, 323, 506 and 120B IPC at Police Station Sector 14, Panchkula, followed by another FIR No.42 dated 14.03.2014, under Sections 312, 315 and 419 IPC at Police Station Sector 19, Chandigarh. It is alleged that the

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petitioner is on bail in both the aforesaid criminal cases and apart from those criminal cases, wife of the petitioner has also initiated proceedings against him under the provisions of the Protection of Women from Domestic Violence Act, 2005, which are also pending adjudication.

The petitioner, who is alleged to have lost his passport and had lodged a missing report on 18.07.2015, applied for a new passport on 29.07.2015. His application was accepted and numbered as CH2079017991215 but on account of pendency of the criminal cases, his application has been put on hold by respondent No.2. The petitioner had also filed an application before the Judicial Magistrate 1st Class, Panchkula, who is trying the FIR No.124 dated 18.10.2011, for a direction to the passport authorities to issue passport to him. The said application has been dismissed vide order dated 22.12.2015 on the ground that renewal of the passport is an issue between the applicant and the passport authority, in which the Court has no role to play. Moreover, it is also observed that the counsel appearing on behalf of the petitioner has failed to show any provisions under which the direction can be issued by the Court.

Learned counsel for the petitioner has referred to Section 6 of the Passport Act, 1967 (for short “the Act”), which read as under:-

“6. Refusal of passports, travel documents. etc. (1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely: -

- (a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India:

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- (b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;
 - (c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country,
 - (d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.
- (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;

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- (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.”

According to the petitioner, the passport authority can refuse to make an endorsement for visiting any foreign country on any one or more of the grounds mentioned in Section 6 of the Act, in which one of the grounds is that the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India.

It is submitted that the police report is in favour of the petitioner but because of Section 6(2)(f) of the Act, followed by the notification dated 25.08.1993, issued in exercise of powers conferred by clause (a) of Section 22 of the Act, the passport can be issued to the petitioner during the pendency of the criminal case(s) if the permission is granted by the Criminal Court(s) where the matter is/are pending. It is further submitted that the said notification has been followed by a circular dated 21.08.2014, issued by the Ministry of External Affairs, Government of India, whereby a printed format has also been provided. The application of the petitioner has ultimately been declined as per the information derived under the Right to Information Act, 2005 on the ground that since the criminal case is pending against the petitioner in a Criminal Court of India, therefore, until and unless the applicant/petitioner furnishes an order by the Court allowing him to visit any foreign country, the passport cannot be issued.

Counsel for the petitioner has submitted that though the application before the Judicial Magistrate 1st Class, Panchkula, who had

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passed the order dated 22.12.2015, was filed with an intention to procure an order, allowing him to visit abroad, but the relevant provisions, either of the Act or of the notification dated 25.08.1993, could not be produced before the Court, as a result of which the Court has opined that no provision has been shown to the Court under which such kind of direction can be issued.

After hearing learned counsel for the petitioner and examining the available record, I am of the considered opinion that there is no dispute that the passport can be put on hold by the passport authority if a criminal case is pending in a Criminal Court in India against the applicant but it can be issued if the applicant tenders travel plan for departure from India to a foreign destination, for which the concerned Court has to grant the necessary permission. The language used in the notification dated 25.08.1993 is clear and unambiguous that “....*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 (2) of Section 6 of the said Act...*” though subject to the conditions which are also mentioned in the said notification.

From the plain reading of the aforesaid provisions of the notification dated 25.08.1993, it is clear that said notification has been issued as an exception to Section 6(2)(f) of the Act where there is a total bar created by the statute that in case where the proceedings in respect of an

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offence, alleged to have been committed by them, are pending before a Criminal Court in India, then the passport can be refused, but the notification dated 25.08.1993 provides that the passport still can be issued if there is an order passed by the Criminal Court, permitting the said applicant to depart from India, on a travel plan submitted to the Court, to its satisfaction.

In this regard, counsel for the petitioner has submitted that there was an error on the part of the petitioner while applying to the concerned Court, where the criminal case is pending, to seek its permission to go abroad. It is also submitted that he had only applied to one Court, whereas he has to apply in all the criminal cases to obtain permission of the concerned Court(s) for the purpose of going abroad, for which the passport is necessary.

In view of the aforesaid facts and circumstances of the case, counsel for the petitioner prays for withdrawal of the present petition at this stage, with liberty to file the application(s) before the concerned Court(s), in accordance with the provisions of the Act and the notification dated 25.08.1993, for obtaining the necessary permission/order(s).

Dismissed as withdrawn.

Liberty is granted.

January 28, 2016
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(Rakesh Kumar Jain)
Judge