

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.9781 of 2016 (O&M)

Date of Decision.06.02.2017

Sinder Pal

.....Petitioner

Vs

Union of India and another

.....Respondents

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Deepak Gupta, Advocate
for the petitioner.

Mr. Rajeev Verma, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.1517 of 2017

Application is allowed.

Replication is taken on record.

CWP No.9781 of 2016

The petitioner is aggrieved of the impugned action of respondent No.2, who has impounded the passport of the petitioner bearing No.H-7164937 valid upto 22.09.2019.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Deepak Gupta, Advocate appearing for the petitioner submits that the petitioner from the last five years has travelled couple of times to various countries including Dubai and Singapore. The petitioner is in the business of exporting rice to different countries and in this aspect of the matter, he has to travel abroad. However, in the year 2013, office of Commissioner of Customs (Anti Smuggling), Ludhiana, initiated an investigation alleging that he is involved in the export of sanders wood. Resultantly, he was

Customs Act, 1962 and in these proceedings on 24.07.2013, the Customs Authority had taken into possession passport of the petitioner, apart from PAN Card, driving licence and other documents.

He further submits that on 23.12.2013, the officer of the Customs returned the passport to the petitioner as he was released on bail, being the alleged offence a bailable one. However, the Passport Authority vide notice dated 20.05.2014 directed the petitioner to surrender the passport within 7 days and given show cause notice regarding impounding of the same. The aforementioned order was on the basis of the notice/letter received by the Passport Authority from the office of Deputy Commissioner (Anti Smuggling Unit), Ludhiana.

The petitioner stated to have responded the same vide reply dated 09.06.2014 by contesting the show cause but during the pendency of the show cause notice, it has been informed that the passport was impounded on 03.06.2014.

The petitioner was constrained to file a writ petition bearing No.14785 of 2014 before this Court which was disposed of with a direction to respondents to decide the matter within a period of 15 days. Since the show cause notice was not decided, the petitioner was compelled to file contempt petition and during the pendency of the contempt petition, an order dated 31.10.2014 (Annexure P-3) was passed refusing to release the passport by invoking the provisions of Section 10(3)(C) of the Passport Act, 1967.

He further submits that since the aforementioned order was assailable, an appeal was filed before the Appellate Authority and the Appellate Authority vide order dated 11.08.2015 disposed of the appeal

with the following directions:-

“4. Having gone through all the records and in light of full facts and circumstances of the case, I decide as under:-

i) Decision of the PO to impound the Appellant's passport was in order in view of the adverse report from the police authorities with clear recommendation for impounding of the passport.

ii) As pleaded by the appellant, the PO may seek re-verification report from the police authorities. Only on receipt of clear verification report with recommendation for release of Appellant's passport, PO may release his passport.

iii) the appeal is not allowed.”

There is a categoric pleading in paragraph 17 of the writ petition, which reads as under:-

“17. That the respondent sought a report from the police authorities. The police authorities submitted their report to the respondent. After receipt of police report, the respondent wrote to the Customs Department regarding release of the passport of the petitioner. The Customs Authorities in their report submitted that order has been passed and prosecution has been launched. The respondent showed both reports to the petitioner when the petitioner visited office of respondent.”

The verification conducted by the local police had recommended for release of the passport yet the respondent did not release the passport and the factum of averments in the corresponding paragraph of the written statement have been stated to be a matter of record, which reads as under:-

“17. That the contents of para No.17 of the petitioner are matter of record.”

In order to buttress his arguments, he has relied upon the

clause (C) of sub-section 3 of Section 10 would apply only by the Passport Authority to impound the petitioner's passport, if it is in the interest of sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of general public. However, the annexures annexed with reply particularly Annexures R-2/1 and R-2/2 give different versions whereas as per Annexure R-2/1 dated 05.05.2014, the apprehension indicated by the Customs Authority to the Passport Authority was that there is every likelihood/apprehension of petitioner having indulged into the alleged smuggling of Red Sanders Wood. However, as per Annexure R-2/2 dated 05.04.2016, it has been intimated by the Customs Authority to the Passport Authority that the complaint under Section 135 and 135A of the Customs Act, 1962 is stated to have been filed and the petitioner is evading service. The relevant portion of the same reads as under:-

“3. Further, prosecution under Section 135 and 135A of the Customs Act, 1962 against Shri Sinder Pal, Shri Sukhjinder Singh and Shri Parminder Singh has been launched in the Hon'ble Court of Shri Ranjiv Kumar, CJM, Ludhiana on 06.12.2014 (Complaint No.COMI/15194/2014). It has been informed by the Department Counsel vide letter dated 25.01.2016 that the case was fixed for hearing on 25.01.2016 but the accused did not appear. Summons/bailable warrants have been issued by the Hon'ble Court of CJM, Ludhiana. The case is adjourned for 06.06.2016.

4. In view of the above, appropriate action may be taken in the matter at your end.”

He has also drawn attention of the Court to the zimni orders dated 25.01.2016 and 06.06.2016 passed by the CJM in the complaint, annexed with the replication, to prima facie establish that the information

provided by the Custom Authority was not only incorrect but was backed by *mens rea*/mala fides, as even notice to the petitioner had not been issued by the Court, thus, there is no question of issuance of bailable warrants or avoiding the service.

He also submits that there is also imposition of penalty of ₹3 crores vide Annexure P-7, for which remedy of appeal under Section 129A of the Customs Act, 1962 has been availed and a sum of ₹16,11,000/- has been deposited whereas sum of ₹6,39,509/- has been appropriated by the Adjudicating Authority, in essence, more than ₹22 lacs have been deposited and the matter is subjudiced.

If at all the Passport Authority is to withhold the passport, they could have issued the show cause notice as per sub-section 5 of Section 10 of the aforementioned Act. In support of aforementioned conditions, reference is made to the judgment rendered by Hon'ble Supreme Court in **Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, New Delhi and others AIR 1967 (SC) 1836**, particularly paragraphs 32 and 33 to contend that right to travel is a fundamental right and withholding of the same tantamounts to violation of Article 21 of the Constitution. He further submit that once Legislature could not do, the executive could not obviously retain the passport.

Reference has also been made to the judgment rendered by Hon'ble Supreme Court in **Suresh Nanda Vs. CBI 2008 (3) SCC 674** to contend that even the Court cannot impound the passport in exercise of power under Section 104 and 102 of the Criminal Procedure Code, being a general law, whereas the Passport Act is a special law, in essence, special law would prevail over the general law.

If at all, the Customs Authorities had any grievance, they could always raise the objection as and when any application is moved seeking permission of the Court to go abroad where the complaint, aforementioned, is stated to be pending but the Passport Authority cannot withhold the passport as it is in violation of Article 21 of the Constitution, much less, conditions of the Passport Act.

Reference has also been made to the judgment rendered by this Court in Hitesh Kapoor and another Vs. Union of India and others 2012 (4) RCR (Civil) 135 and Tarsem Singh Vs. Union of India and others passed in CWP No.8902 of 2012 on 15.01.2014.

He further submits that even the argument of the Passport Authority with regard to alleged suspicion and apprehension has been rejected by the Bombay High Court in Mirza Afzal Baig Vs. Regional Passport Officer, Thane 2005(1) Bom. C.R (Cri) 110 and in this regard, reference has been made to para 5 and 6 which reads as under:-

“5. Perusal of the affidavits-in-reply filed by the respondents as well as upon hearing the learned Advocates, it is evident that apart from issuing the letter dated 19.9.2003 for surrender of the passport, no further action in terms of Section 10 of the said Act has been taken by the authorities in relation to the passport issued to the petitioner. In the course of the hearing, the learned Advocates for the respondents were also not able to disclose any provision of law under which a passport could be detained by the authorities on the ground of mere suspicion and that in some past years the passport holder had some connection with the banned association.

6. Considering the materials on record, we find no justification for withholding of the petitioner's passport at this stage. Needless to say that in case the authorities have any justification to take appropriate action under the provisions of

law in relation to the passport issued to the petitioner, certainly they would be entitled to do so by following the procedure known to law. However, as the matter stands today, the respondents have not been able to make out any case for withholding the passport of the petitioner. Being so, the petitioner is entitled for the direction for return of the passport, albeit with liberty to the respondents to take appropriate action as regards the passport, if there is any ground for the same and in accordance with the provisions of law.”

On the contrary, Mr. Rajeev Verma, learned counsel appearing on behalf of the respondents submits that the averments made in the written statement are on the basis of the communication received from the Customs Authorities i.e. Annexures R-2/1 and R-2/2. As per the information provided by the Customs Authorities, the petitioner is stated to have indulged into smuggling activities and his passport has been impounded only on the basis of apprehension regarding the sovereignty and integrity of India, in view of the provisions of the Passport Act referred to above. He does not deny the factum of having not complied with the order of the Appellate Authority, in essence, the police had conducted verification and submitted report but in view of the letter dated 05.04.2016 (Annexure R-2/2), the passport has not been released as it has been revealed to the Passport Authorities that the petitioner is avoiding service in the complaint *ibid*, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is merit and force in the submissions of Mr. Aggarwal, learned Senior Counsel appearing for the petitioner, for, on reading of the finding extracted above by the Hon'ble Supreme Court in

Court is made to believe that withholding of the passport has been held to be a violation of Article 21 of the Constitution. Being a special law, it is only in the domain of the Passport Authority to impound the passport but there has to be basis and reasons.

Mr. Aggarwal during the course of arguments also drawn attention of the Court to paragraph 18 of the writ petition where there has been a categoric averment that as per the information obtained under the RTI Act vide Annexure P-6, similarly situated person involved in the commission of offence under Section 135 of the Customs Act, 1962 have not been released for three days, despite being the bailable offence and thereafter, a habeas corpus was filed before this Court. This Court marked an enquiry to the concerned Sessions Judge in this regard and the Sessions Judge vide his report dated 10.12.2014 found two customs officials guilty. It is the aforementioned mens rea and disgruntlement/prejudice which is the fall out of incorrect information being passed on to the Passport Authority. In fact, the information obtained under RTI does not even reveal that any passport has been impounded for the alleged commission of offence on the recommendation of the Customs Authority by the Passport Authority.

Be that as it may be, I do not intend to comment upon the conduct of the officials of the Customs Department as it would prejudice their right and interest but the fact remains that provisions of the Passport Act have not been complied with and in my view, decision of impounding the passport by relying upon the letters of the Customs Authorities is wholly misplaced. The zimni orders would reveal that even notice in the complaint had not been issued, much less, penalty has already been imposed and the matter is subjudice before the Appellate Authority.

If at all the Customs Authority would have apprehension regarding the travel of the petitioner, they can take up all possible pleas before the Court/concerned authority as and when any application is moved seeking permission to travel abroad but they cannot give incorrect/wrong information and particulars to the Passport Authority misguiding them to withhold/impound the passport. I am, prima facie, of the view that the information indicated in Annexure R-2/2 is totally off the record.

For the reasons aforementioned, I have no hesitation in holding that the impugned action of the Passport Authority based upon information provided by the Customs Authority is wholly misplaced and untenable, much less, suffers from illegality and fallacy, hence set aside.

The Passport Authority is directed is release/re-issue the passport No.H-7164937 in accordance with terms and conditions of the Passport Act within 15 days from the date of receipt of certified copy of this order. However, it will not prevent the Passport Authorities from taking any action, in case any information is provided, but it would be subject to provisions of sub-section 5 of the Section 10 of the Passport Act so that the petitioner can be put to show cause notice and rebut the alleged allegation. However, the aforementioned order is subject to the order of the trial Court/Appellate Authority. The petitioner shall take necessary permission from the Court by moving appropriate application in case he intends to go abroad.

The writ petition stands allowed.

(AMIT RAWAL)
JUDGE

February 06, 2017
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No