

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.526 OF 2017

Ms.Chandbibbi Zaidi
2nd Floor, Kennedy House,
Goregaonkar Road,
Nana Chowk,
Mumbai – 400 007

.... Petitioner

versus

1. Union of India & Anr.
Ministry of External Affairs,
Joint Secretary (PSP)
& Chief Passport Officer, CPV
Division, Patiala House Annexe,
New Delhi – 110 001.

2. Regional Passport Authority,
Ministry of External Affairs,
Having its office situated at
Manish Commercial Centre, 216-A,
Dr.Annie Besant Road, Worli,
Mumbai – 400 030.

... Respondents

**WITH
CRIMINAL WRIT PETITION NO.841 OF 2017**

Ms.Chandbibbi Zaidi
2nd Floor, Kennedy House,
Goregaonkar Road,
Nana Chowk,
Mumbai – 400 007

.... Petitioner

versus

1. State of Maharashtra

2. Union of India

Through Regional Passport Authority,
216-A, Manish Commercial Centre,
Dr.A.B. Road, Worli,
Mumbai – 400 030.

... Respondents

.....

- Mr.Arshad Shaikh i/b. Gautam Yadav, Advocate for Petitioner.
- Ms.Manisha Jagtap, Advocate for Respondent Nos.1 and 2.
- Mr.Kiran Rasiklal Mehta in person-Intervenor in CHS No.99/17 in WP No.526/17.

**CORAM : B. P. DHARMADHIKARI &
SARANG V. KOTWAL, JJ.**

DATE : 18th DECEMBER, 2018.

JUDGMENT : (PER : B. P. DHARMADHIKARI, J.)

1. Heard finally by issuing Rule making it returnable forthwith with consent.

It is not disputed that both these matters are to be heard and decided together.

2. Mr.Kiran Mehta, party in person, sought leave to file reply. However, our attention has been drawn to orders dated 18/09/2018 passed by Division Court in present matters, which

rejected him permission to intervene. Hence we are not permitting him to file any reply or address the Court.

3. In Writ Petition No.526/17 challenge is to order dated 05/02/2016 passed by Appellate Authority u/s 11 of Passport Act, 1967, whereby it has impounded Petitioner's passport on the ground of suppression of criminal proceedings pending against her. The order states that passport is impounded on the ground of pendency of the criminal case u/s 10(3)(b) and (e) of Passport Act. It also concludes that as she is guilty of suppression of information relating to prosecution, it attracts provisions of section 10(3)(b) warranting impounding passport. Liberty has been given to Petitioner to apply before concerned Court, where criminal cases are pending seeking "No Objection Certificate" for restoration of passport facility. The Petitioner has been permitted to submit the same to passport officer for release of impounded passport. To justify this course of action, Appellate Authority has relied on GSR 570 (E) dated 25/08/1993. In the alternate, she has been permitted to move fresh application after acquittal from pending criminal case.

4. In Writ Petition No.841/17, the Petitioner has challenged the order dated 26/12/2016 passed below Ex.169 by Metropolitan Magistrate, 18th Court, Girgaon, Mumbai. It appears that after Appellate Authority's order mentioned supra, the Petitioner sought "No Objection Certificate" from that Court for the purpose of restoring her passport. The learned Metropolitan Magistrate has relied upon the orders of learned Single Judge of this Court in Writ Petition No.1543/13 to hold that there is no statutory provision which empowered it to give such "No Objection Certificate" to Petitioner for grant passport.
5. It is in this background that we have heard respective Counsel appearing for the parties.
6. Perusal of the orders of learned Single Judge dated 19/11/2013 in Writ Petition No.1543/13 shows that there the learned J.M.F.C. Pen had rejected the Application for grant of No Objection Certificate for issuance of passport. The learned

Single Judge found that it was not necessary to go into the merits of that order or to record any findings on impact of pendency of criminal case. It is observed that there is no statutory provision which empowers trial Court to give “No Objection Certificate” to the Petitioner for grant of passport by Regional Passport Authority. Absence of machinery with Court to verify facts necessary for this exercise is also pointed out in that order. The directions issued by External Affairs Ministry in their “Notification” to the Regional Passport Authority for getting No Objection Certificate from Court are therefore found to be misconceived.

7. The notification issued by Ministry of External Affairs on 25/08/1993 is in exercise of powers conferred by section 22(a) of Passport Act. This notification is not addressed to any Regional Passport Authority. It 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 and who produce orders from that Court permitting them to depart

from India from the operation of provisions of clause (f) of subsection 2 of section 6. It has imposed certain conditions for said purpose. This direction is not issued in any particular case.

8. Section 6(2)(clause f) mandates when Passport Authority shall refuse to issue passport or travel document and one of the contingencies in which this mandate operates, is pendency of criminal case. This mandate operates subject to other provisions of the Act.

9. Thus in exercise of powers conferred upon it by section 22(a) a conscious decision to exempt citizens in contingencies stipulated in that notification has been taken by the Government of India. We therefore find that learned Single Judge on 19/11/2013 was not required to deal with this notification.

10. The perusal of Appellate Authority's order dated 05/02/2016 shows that passport was issued to Petitioner on 24/07/2010 and she had applied for it on 12/04/2010. Finding

of fact that pending criminal prosecution was not disclosed therein is not in dispute at this stage. Provisions looked into by us show that the Authority while deciding whether to issue passport or not, has to consider the pendency of criminal matters as one of factors. This is one of the factors which should have been taken into reckoning but could not be looked into because of this suppression and passport therefore, was impounded. The Appellate Authority has observed as under;

“(13) 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 on the ground of pendency of proceedings in criminal cases against her in the court of law, under section 10(3)(e) of the Passports Act, 1967, is in order. The appellant is also found guilty of suppression of information relating to her prosecution, in her passport application, and the same attracts Section 10(3)(b) of the Passports Act, 1967 for impounding of the passport.

(ii) *The appellant is at liberty to move fresh application before the concerned courts where the criminal cases are pending, seeking NOC for restoration of passport facility, which she may submit to the PO for release of the impounded passport, in terms of provisions contained in GSR 570 (E) dated 25.8.1993 “OR” may submit fresh application after acquittal from the pending criminal case.*

(iii) *The appeal is not allowed.”*

11. In effect therefore, though it impounds passport issued in favour of Petitioner, it also grants her liberty to move fresh Application before the concerned Court for restoration of that facility and points out that thereafter she can submit the orders passed by that Court to Passport Officer for release of impounded passport. It also expressly refers to notification dated 25/08/1983 supra. It is therefore clear that the impounding is subject to adjudication of criminal case. Not even this, during pendency, Petitioner has been permitted to obtain necessary

clearance from the concerned criminal Court in terms of notification dated 25/08/1993.

12. It appears that in exercise of this liberty, the Petitioner sought “No Objection Certificate” for the purpose of restoration of passport. The trial Court therefore could have looked into the said Application in the light of notification dated 25/08/1993 and then passed the suitable order in terms thereof. We have already found supra that orders dated 19/11/2013 in Criminal Writ Petition No.1543/13 did not prohibit trial Court from considering request made in terms of notification dated 25/08/1983.

13. We in this situation, are inclined to grant Petitioner leave to move fresh Application before learned Metropolitan Magistrate in terms of notification dated 25/08/1993. If such Application is moved within two weeks from today, the trial Court shall decide it as per law within next four weeks.

14. After the orders are passed by learned Metropolitan Magistrate, it is open to the Petitioner to follow the procedure as stipulated in paragraph No.13(ii) of the Appellate Authority's order dated 05/02/2016.

15. With this liberty, we partly allow the Petitions and dispose of the same.

(SARANG V. KOTWAL, J.)

(B. P. DHARMADHIKARI, J.)