

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 3884 OF 2018

ORDER:

This Writ Petition is filed challenging the proceedings in Ref.No.VS1060766656717, dated 29.01.2018, wherein and whereby the Passport Office, Visakhapatnam, has informed the petitioner that he has to furnish proper explanation regarding the circumstances under which he had suppressed the material information in his passport application in order to process his application and also to produce order copy from this Court.

2. It is the case of the petitioner that he was working as Assistant Prohibition and Excise Superintendent and retired as such on 31.12.2005 on attaining the age of superannuation. A case was registered against him along with others by Anti Corruption Bureau under the provisions of Sections 7, 12 & 13 of Prevention of Corruption Act, which was registered as CC No.1 of 2005 on the file of Special Judge, ACB Court, Visakhapatnam. Petitioner along with others was acquitted by judgment dated 30.09.2009 and that his services were regularized and amounts due were paid. That though the ACB carried the matter in an appeal in CrI.A.No.305 of 2011, but the judgment of the ACB court was not suspended. Petitioner made an application for issuance of passport on 08.12.2017 i.e., after eight years of acquittal, the same was not considered on the ground that he has suppressed pendency of criminal appeal

before this Court. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the respondents denying the averments in the affidavit filed in support of the Writ Petition stating that the petitioner has suppressed about the pendency of criminal appeal while giving application for grant of passport and the said fact came to the notice of the 2nd respondent during police enquiry made for issuance of passport. Petitioner has to submit an order from this Court permitting him to leave India as per the conditions stipulated in GSR 570 (E) and that in the absence of the same, the respondents cannot process the application of the petitioner and issue the passport.

4. Heard learned counsel for the petitioner and learned counsel appearing on behalf of Sri K.Lakshman, learned Assistant Solicitor General appearing for the respondents.

5. Learned counsel for the petitioner submits that the petitioner was acquitted in criminal case by judgment dated 30.09.2009 in CC.No.1 of 2005 passed by the Special judge for ACB Cases, Visakhapatnam. He submits that in response to the show-cause notice dated 22.12.2017 issued by the passport authorities at Visakhapatnam, petitioner submitted explanation on 08.01.2018 and also on 29.01.2018 enclosing the copy of judgment in CC No.1 of 2005. He submits that when once the petitioner is acquitted by the date of filing of application for grant of passport, the question of mentioning about criminal case in which petitioner was acquitted, does not arise at all. He also submits that pendency of appeal before this Court does not

amount to pending criminal case before the criminal court, as the High Court is not a Criminal Court, as such, seeking permission from this Court in criminal appeal i.e., CrI.A.No.305 of 2011 does not arise. He submits that at any rate, refusal of passport, travel documents etc., on the grounds mentioned in Section 6 of the Passports Act, 1967 is arbitrary and illegal. He also submits that sub clause (f) of Sub-section (2) of Section 6 does not attract to the petitioner's case, as such, respondents cannot refuse to issue passport.

6. On the other hand, learned counsel appearing on behalf of learned Assistant Solicitor General, basing on the averments in the counter affidavit, submits that petitioner has suppressed the fact of pendency of Criminal Appeal before this Court, as such, the application of the petitioner for granting of passport was referred to Police. She submits that an adverse report was received against the petitioner stating that criminal case is pending before the Special Judge for ACB Cases at Visakhapatnam and that the petitioner suppressed the said fact, as such, a show-cause notice was issued to the petitioner to submit his explanation. She submits that even in the explanation submitted by the petitioner on 08.01.2018 and 29.01.2018, there is no mention about pendency of criminal appeal. She submits that when the matter was referred to police, it is revealed that criminal appeal is pending before this Court in CrI.A.No.305 of 2011. She submits that as criminal appeal is pending, petitioner was asked to get permission from this Court for granting of passport in terms of notification dated

25.08.1993 in GSR 570(E). She also submits that Section 6 (2)(f) of the Passports Act is applicable to the petitioner. In support of her contentions, she relied on the judgment reported in **Dattu Pant v. Advya Chari and another**¹.

7. In this case, it is to be seen that admittedly, petitioner made application for granting of passport. It is not in dispute that a criminal case was registered against him along with others by the ACB officials and same was registered as CC No.1 of 2005, which ended in acquittal by the judgment of the Spl.Judge for ACB, Visakhapatnam, dated 30.09.2009. Though the petitioner was acquitted by Spl.Judge for ACB, Visakhapatnam on 30.09.2009, Criminal Appeal No.305 of 2011 is filed before this Court and admittedly, same is pending till date.

8. A perusal of the passport application form submitted by the petitioner goes to show that there is no mention about pendency of criminal appeal against the petitioner before this Court. The petitioner has also not mentioned about the pendency of Criminal Appeal in his explanation dated 08.01.2018 to the show-cause notice issued by the respondents, it is only mentioned that he was acquitted by the Spl.Judge for ACB Cases on 30.9.2009 but he has not mentioned about pendency of Criminal Appeal filed by the Government. It is pertinent to note that only on police verification, the pendency of Criminal Appeal came to light.

¹ 1995 SCC Online Hyd 306; 1956 Cri LJ 998

In **Dattu Pant v. Advya Chari and another (supra)**, the Hon'ble Supreme Court held as follows:

“5.It may be straightaway pointed out that an appeal against an acquittal or an appeal against a conviction is in substance a continuation of the proceedings of the trial Court. Their Lordships of the Supreme Court in the case of Sm.Kalawati v. State of Himachal Pradesh, 1953 SC 131 (AIR V 40) (A), held that an appeal against acquittal is in substance a continuation of the prosecution and Article 20(2) is no bar to a conviction, on appeal against acquittal.”

Since against acquittal of the petitioner by judgment dated 30.09.2009, Criminal Appeal is filed by the State Government, as such, it cannot be said that criminal proceedings are not pending before the Criminal Court.

9. A perusal of the impugned communication dated 29.01.2018 goes to show that even though criminal case is pending before this Court, the passport authorities have taken a decision to process the application for issuance of passport to the petitioner, provided the petitioner gets permission from this Court in view of provisions under Notification under G.S.R.No.570(E) dated 25.08.2013. Instead of approaching this Court seeking permission to obtain passport as envisaged in the Notification issued by the Ministry of External Affairs dated 25.08.1993 in G.S.R.No.570(E), petitioner filed the present writ petition.

10. Though learned counsel for the petitioner submits that the fact of pendency of criminal appeal before this Court is mentioned in his explanation, but the same is not mentioned in the affidavit filed in support of this Writ Petition nor there is any acknowledgment from the office of the respondents.

In view of above facts and circumstances, I do not see any reason to entertain the Writ Petition and the same is liable to be dismissed and accordingly dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition shall stand dismissed.

A.RAJASHEKER REDDY,J

13-06-2018
kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITON No. 3884 OF 2018



kvs



