

* HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

+ WRIT APPEAL No.1026 of 2018

% 01.08.2018

Subhas Chandra Bose Mandava,
S/o. Veera Raghavayya,
R/o.H.No.5-121-60/1, Gurudham Marg,
Balayya Sastry Layout,
Visakhapatnam Urban.

... Appellant

Vs.

\$ Union of India,
Ministry of External Affairs,
South Block, New Delhi, and another
.

.... Respondents

! Counsel for the petitioner: Sri Ch. Samson Babu

Counsel for Respondents: K. Lakshman, learned Assistant Solicitor General

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> Head Note:

? Cases referred:

1. AIR 1971 SC 1120

**HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

WRIT APPEAL NO. 1026 of 2018

Judgment: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

This appeal is against a final order passed in a Writ Petition relating to issues arising from the application of the Passports Act, 1967; hereinafter referred to as the "Act".

2. The appellant-writ petitioner applied for passport. He signed a declaration which is part of that application. The said declaration contains the affirmation to the following effect.

"I have not been charged with criminal proceedings nor is there any arrest warrant or summon pending before any Court of Law in India against me."

3. The Passport Officer issued a notice calling upon the appellant-writ petitioner to state as to why he suppressed the pendency of a Criminal Appeal before this Court against an order of acquittal passed in favour of the appellant-writ petitioner in a Criminal Case which was charged against him for commission of offences punishable among other counts with the provisions of the Prevention of Corruption Act, 1988. He was also required by the Passport Officer to produce order from this High Court for processing the application for issuance of passport.

4. The challenge levied by the appellant-writ petitioner to the aforesaid direction of the Passport Officer found its Waterloo at the hands of the learned Single Judge. Hence, this appeal.

5. Learned counsel for the appellant-writ petitioner argued that there is no case in which the appellant-writ petitioner stands charged with criminal proceedings; nor is there any arrest warrant or summons

pending before any Court of Law in India against him. He accordingly argued that there is no foundation to link the criminal appeal pending before this Court against the order of acquittal since such proceedings do not amount to one being charged with criminal proceedings.

6. Learned Assistant Solicitor General referred to Section 6(2) of the Act, which provides the various grounds on which the Passport Authority is obliged in law to refuse to issue passport or travel document for visiting foreign countries. This includes Clause (f) to the effect that the Passport Authority shall refuse to issue a passport or travel document for visiting any foreign country if the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India.

7. What is pending before this Court is an appeal against an order of acquittal, which is governed by the provisions of the Code of Criminal Procedure, 1973; hereinafter referred to as the "Code".

8. Section 384 of the Code provides for summary dismissal of appeal including an appeal against an order of acquittal. Section 385 of the Code provides the procedure for hearing the appeals, not dismissed summarily. It enjoins causing a notice of the time and place at which such appeal will be heard. In the case in hand, there is such an appeal pending before this Court and the appellant-writ petitioner has been notified of such appeal. The power of the High Court under Section 386 of the Code includes the power in relation to appeal from an order of acquittal. Such power provides for reversal of the order of acquittal and direct that further enquiry to be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law. Obviously, therefore, the respondent in an appeal against an order of acquittal is one who should be available to the jurisdiction of the

appellate Court, which is in season (*sic*) of the appeal against the order of acquittal. Clause (f) of Section 6(2) of the Act provides an embargo on issuance of a passport if proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India. The distinction between ***“being charged of an offence”*** and ***“charge being framed in relation to an offence”*** has always been maintained. See for support **Lt. Col. S.K. Kashyap and another vs. State of Rajasthan**¹. The appellate Court, even if it is the High Court, is a Criminal Court when it sits and decides matters in criminal jurisdiction. This is a well settled principle of law.

9. Hence, if proceedings in respect of an offence alleged to have been committed by the applicant for Passport are pending before the appellate Court; the High Court in this case; that is ground enough for the Passport Officer to be compelled by the opening part of Sub-section (2) of Section 6 of the Act to refuse issuance of such Passport.

10. However, the Government of India have issued a notification in exercise of authority under Clause (a) of Section 22 of the Act on 26.8.1993. That notification was published with GSR No. 570(E), which, among other things, provides for issuance of a passport with due compliance of the conditions imposed therein. The impugned order issued by the Passport Officer to the applicant is essentially extending to him an opportunity, and in a way an advice, to seek the benefit of such notification and produce orders from the High Court, where the aforementioned criminal proceedings are pending.

11. In the aforesaid view of the matter, we do not find any illegality, infirmity or jurisdictional error in the order of the learned Single Judge. The Writ Appeal fails and is dismissed accordingly.

¹ AIR 1971 SC 1120

Pending miscellaneous petitions, if any, shall also stand closed. No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

V. RAMASUBRAMANIAN, J

Date: 1st August, 2018

**Note: L.R. Copy to be marked.
b/o
pnb**

