

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.28873 OF 2018

ORDER :

This writ petition is filed challenging the communication dated 25.05.2017 sent by the 2nd respondent rejecting the request of the petitioner for issuance of passport stating as follows;

“It is found that this office could not accede to your request for issue of the passport since it has been reported by the police that ‘Applicant is an accused in Cr.No.154/2013, under Section 468, 471, 420 IPC of Agiripalli P.S. and the matter is pending in Hon’ble High Court for decision to quash petition. If the applicant produced NOC, it is OK. Otherwise adverse. This information has been suppressed by you in your passport application”.

It is the case of petitioner that he applied for Passport vide File No.VS 2060195206517, dated 26.04.2017 to the 2nd respondent; that he was shown as an accused in Crime No.154/2013 for the offences punishable under Sections 468, 471, 420 IPC along with four others in the FIR registered in the Police Station, Agiripalli, which is under investigation; that petitioner is willing to give an undertaking to the passport authority to the effect that if required by the Court concerned, he will appear before it at any time during the continuance in force of the passport if issued, as required in Clause (d) of the Notification No.GSR.570(E), dated 25.08.1993.

Learned counsel for the petitioner submits that though crime is registered against the petitioner, no criminal proceedings are pending before any criminal Court as on today and no charge-sheet is filed against the petitioner and cognizance is not take by the criminal Court, as such, petitioner's application has to be considered; and that on the ground of showing the petitioner as accused in Crime No.154/2013, he cannot be denied passport.

In support of her contentions, she relied on the Judgments in ***Venkatesh Kandasamy v. Government of India, Ministry of External Effairs, Chennai (AIR 2015 Madras 3); Daler Singh v. Union of India and others (AIR 2015 Punjab and Haryana 206)/***

On the other hand Sri G.Praveen Kumar, learned Standing Counsel for Central Government submits that since criminal case is registered against the petitioner, passport cannot be granted by virtue of Section 10 (3) (b) and (e) and also Section 6 (2) (f) of the Passport Act, 1967. He further submits that petitioner has suppressed the fact of registration of crime against him; as such, he is also liable for penalty under Section 12 of the Passport Act.

Learned Assistant Government Pleader for Home submits that since one of the accused in Crime No.154/2013, filed Crl. Petition No.3420 of 2014 and stay is granted in the said

criminal petition, investigation could not be completed and no charge sheet is filed.

In this case it is to be seen that admittedly, Crime No.154/2013 is registered against the petitioner under Sections 468, 471, 420 IPC of Agiripalli P.S., and admittedly no charge sheet is filed for whatever reason. Now it is to be seen that mere registration of crime amounts to pending of criminal proceedings before Court of law as envisaged under Section 10 (3) (e) and 6 (2) (f) of the Passport Act.

Section 10(3) (b) and (e) of the Passports Act, 1967

“10(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document_

(b) If the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf:

[Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport]

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;”

Section 6(2) (f) of the Passport Act, reads as follows;

“6(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:_

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India.”

Considering the similar issue, Calcutta High Court in ***Abhijit Sen v. Superintendent (Administration), Regional Passport Officer, (2004 CRL.L.J.1281)*** held as follows;

“11. In order to decide the said question we may look into Section 190, Cr.P.C. which prescribes the condition required for initiation of proceedings. Thus, proceedings before a Magistrate is initiated when the cognizance is taken by the Magistrate. A cognizance by a Magistrate is taken when a complaint is received by the Magistrate or upon police report of such facts or upon information received from any person other than police officer or upon his own knowledge tht such offence has been committed. But when cognizance is taken upon receiving a complaint under Clause (a) of sub-section (1) of Section 190, the Court does not do anything except directing investigation under Section 156(3) by the police officer. Therefore, we cannot accept this direction to the police officer or investigation to be a proceeding taken by the Court. It may be a cognizance of the complaint but not a cognizance of the offence. Inasmuch as this is a stage for investigation as to whether the complaint lodged disclose a case to be proceeded with and for report. Therefore, clause (a) of Section 190, Cr.P.C. does not initiate the proceeding within the meaning of Section 10 (2) (e) of the Passports Act. But as soon as a Police report within Section 190 (1) (b) is taken cognizance of the proceeding is initiated before a Criminal Court. Since the next steps are the steps for taking evidence on oath and it makes it a judicial proceedings within the meaning of Section 2(i), Cr.P.C. The proceeding referred to in Section 10(2) (e) impose a restriction on a person on his movement out of India. Article 19(1) (g) may not be affected if a passport is impounded, since the impounding does not prevent the citizen from moving inside India. He ceases to have any right to leave India. But this right of movement to

leave India cannot be restricted except by an authority of law. A restriction on such right when the citizen wants to leave India in connection with his business definitely infringes his right to carry on business, if not wholly but partially. This fundamental right, which is being interfered with must have sanction of law. A sanction of law cannot be lightly construed. Therefore, when construing the implication of Section 10(2)(e), it has to be construed in a manner so as not to incorporate or encompass each and every case and thereby interfere with the right of person to move freely outside India in connection with his business.

12. The proceeding that has been referred to in Section 10 (2) (e) is a proceeding in respect of an offence pending before a Criminal Court. A proceeding is pending before a Criminal Court as soon as the cognizance is taken. In case there is no delay in filing the charge sheet, the cognizance could have been taken as a matter of course and the question would have been different. But in a case where the cognizance is dependent on consideration of delay, until the delay is condoned the Court is not empowered to take cognizance. A criminal case is initiated only when the cognizance is taken. The presentation of the charge-sheet before a Criminal Court may not entitle the Court to take the cognizance of the offence beyond time on the face of it. A distinction is to be drawn in the two kinds of cases; (i) where cognizance can be taken where there is no delay and (ii) where cognizance can be taken only after condoning the delay. In the latter case, in which the delay is condoned and cognizance taken, it is a proceeding pending before a Criminal Court.”

In ***Daler Singh v. Union of India (AIR 2015 Punjab and Haryana 206)*** it is held as follows;

“14. Coming to the facts of the case in hand, a criminal case arising out of the strained matrimonial ties has been registered against the petitioner at the instance of his alleged wife. As per the documents available on record and the version of the parties, the Criminal Court has not taken cognizance of it and charge against the petitioner has not been framed.

In ***Venkatesh Kandasamy v. Government of India (AIR 2015 Madras 3)*** it is held as follows;

“19. Having taken note of the scheme of the Passports Act, if we now go back to Section 6(2)(f) of the Act, it is seen that after invoking the said provision the first requisite is that proceedings in respect of an offence should be pending before a Criminal Court in India. The question as to what tantamount to proceedings pending before the Criminal Court, had come up for consideration earlier.”

22. In *Abhijit Sen Vs. Superintendent* [2004 CrL.L.J. 1281], a Division Bench of the Calcutta High Court was concerned with a case where the Passport Authority impounded the passport under Section 10(2)(e), on the ground that a criminal case was pending against the passport holder. The Calcutta High Court held that there are two processes for initiation of a proceeding before a Criminal Court. While the first part is the investigation by the Police, the other part is the direction by the Court. Therefore, after pointing out the condition prescribed in Section 190 of the Criminal Procedure Code for initiation of proceedings, the Division Bench of the Calcutta High Court opined that the proceedings before a Magistrate is initiated when cognizance is taken. The Court held that no proceeding can be said to have been initiated under Clause (a) of Section 190 within the meaning of Section 10(2)(3) of the Passports Act.

23. In so far as the case on hand is concerned, all the criminal complaints as against the petitioner are only at the stage of investigation. It is not a case of the Respondent that final reports have been filed in the criminal Courts in any of the criminal complaints, so as to make the case come within the four corners of Section 6(2)(f). Therefore, the impugned order is vitiated by non-application of mind and hence it is liable to be set aside.

Thus, it has been held that proceedings can be said to be pending before a criminal court only when a cognizance has been taken by the Court.”

In view of the law laid down in the Judgments referred supra, it is clear that unless charge sheet is filed and cognizance is taken by the concerned Criminal Court, it cannot be said that criminal proceedings are pending.

In view of the same, action of the respondents in not granting passport to the petitioner on the ground that crime is registered against the petitioner is not valid. As far as suppression of fact that crime is registered against the petitioner is concerned, learned counsel for the petitioner submits that since no criminal proceedings are pending before any Court of law, the same was not mentioned.

Though in the impugned order it is stated that petitioner has to obtain permission from the concerned Court as required in Clause (d) of the Notification No.GSR.570(E), dated 25.08.1993, the rejection is on the ground that adverse report is received as crime is registered against the petitioner.

In view of the aforesaid facts and circumstances, the writ petition is disposed of directing the respondents to issue passport to the petitioner subject to undertaking given by the petitioner that he will be present before the concerned Court as and when his presence is required. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

18.09.2018

Note: Issue CC by 19.09.2018.

B/o. t k.