

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

CWP No.6053 of 2017
Date of Decision:19.07.2018

Avtar Singh

..... Petitioner

Vs.

Union of India and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Jasraj Singh, Advocate,
for the petitioner.

Mr.P.C. Goyal, Advocate,
for respondents No.1 & 2.

Ms.Lavanya Paul, AAG, Punjab.

RAKESH KUMAR JAIN, J.

The petitioner is holding a passport No.A7075708 valid upto 17.4.2019. He moved an application to respondent No.2 on 16.7.2016 for re-issuance of his passport in a computerized format. He was given an appointment for 25.7.2016 and was informed that his application would be considered after police verification. Thereafter on 16.8.2016, he received a message from AD-PBSANJ that police verification is against him and his passport has been cancelled.

The grievance of the petitioner is that he has not asked for renewal of his passport because it has yet to expire on 17.4.2019 rather had applied to the passport authority on the pretext of obtaining a computerized passport but while issuing the computerized passport, respondent No.2 has again got done the police verification which was otherwise not required. It is also submitted that the reason given for not issuing the passport is that he

Sections 302, 341 & 34 of the IPC and Sections 25/27 of the Arms Act, 1959 at Police Station Khalchian, Amritsar (Rural). However, in the said case, the petitioner has been acquitted because a categorical finding has been recorded by the Additional Sessions Judge, Amritsar on 7.7.2015 that the prosecution has failed to prove the presence of the petitioner at the spot. It has also failed to prove that the petitioner has fired any shot at Karnail Singh and therefore, the prosecution had failed to prove the charge against the petitioner and hence he was acquitted of the charge. It is further submitted that the mere fact that two appeals have been filed against his acquittal by Azad Singh and State of Punjab bearing Nos.CRM-A-1874-MA-2015 and CRM-A-380-MA-2016 respectively, are pending in this Court is not a ground for not issuing the passport as it would not fall within the pendency of the case before a Criminal Court in India because after the acquittal of the petitioner, the presumption of innocence in his favour is writ large. In support of his submission, he has relied upon a decision of this Court rendered in the case of *“Balvinderpal Singh Vs. Union of India and others”* 2004(3) RCR (Civil) 284 and *“Balwinder Singh Vs. Union of India and others”* 2005(1) PLR 346, *“Jatinder Singh @ Jodha Vs. Union of India and another”* 2016(4) PLR 317 and *“Malkiyat Singh Vs. State of Haryana”* 2018(1) Law Herald 579. The sum and substance of his argument is that once he has been acquitted, it cannot be presumed that a criminal case is pending against him even if the appeal having been filed after a long delay by the State and the Complainant against his acquittal is pending.

On the other hand, learned counsel for the respondents has submitted that the petitioner was issued a passport No.A7075708 on 18.4.1999 which was valid upto 17.4.2019 i.e. for a period of 20 years but

FIR No.28 in regard to the murder of one Karnail Singh. It is further submitted that even if the petitioner has been acquitted in the said case yet passport cannot be issued because of the bar provided in Section 6(2)(f) of the Passports Act, 1967 [for short 'the Act'] in which it is provided that the passport authority can refuse to issue the passport where proceedings in respect of an offence alleged to have been committed by the applicant are pending before the criminal Court in India.

I have heard learned counsel for the parties and perused the record.

It is an admitted fact that the petitioner has not applied for renewal of his passport. The passport was valid upto 17.4.2019 and the application was filed by the petitioner on 16.7.2016 because he allegedly came to know that the handwritten passports were being phased out which were also called non-machine readable passport and the machine readable passports are being issued. The petitioner had thus applied for the change of his non-machine readable passport to machine readable passport but the respondents have refused to issue the passport only on the ground that the petitioner was allegedly involved in a murder case in which he has though been acquitted but the appeals against his acquittal are pending. The objection of the respondents is not sustainable because the presumption of innocence of the petitioner is writ large after having been acquitted in the said criminal case and in this regard reliance can be placed upon a decision of this Court rendered in the case of *Malkiyat Singh (Supra)* in which it has been held that until and unless acquittal is converted into conviction, he would be deemed to be innocent and on this ground the passport cannot be declined. Similar is the issue in the cases of *Balvinderpal Singh (Supra)* and

has been held that the petitioner may seek permission from the Court for traveling abroad but the passport cannot be denied.

Thus, keeping in view the aforesaid facts and circumstance, I am of the considered opinion that there is an error on the part of the respondents in not issuing the passport to the petitioner and hence, the endorsement dated 25.10.2016 on the acknowledgement letter dated 25.7.2016 is hereby set aside and a direction is issued to respondent No.2 to issue machine readable passport to the petitioner which is valid upto 17.4.2019 within a period of 15 days from the date of receipt of certified copy of this order. The petitioner would be entitled to travel abroad after obtaining permission from the Court where the appeals against his acquittal are pending.

19.07.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No