

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

CWP No.4408 of 2018
Date of Decision: 29.05.2018

Kiranjeet Kaur

. Petitioner

Vs.

Union of India and others

. Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Swaran Tiwana, Advocate,
for the petitioner.

Mr.P.S. Sidhu, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J.

The petitioner has challenged the letter dated 6.2.2018 by which her passport No.R5001192 has been impounded. However, she has been informed that she may apply for a fresh passport with all the documents and requisite fee after quoting the previous file number, at the appropriate places, in the relevant forms.

In brief, the petitioner had applied for the re-issuance of her passport under the 'Tatkal Scheme'. Passport No. R5001192 was issued to her, subject to the final police verification. The police authorities given an adverse report on account of pendency of a case registered vide FIR No.213 dated 19.12.2001 under Sections 304, 120B, 323, 504, 506, 148 and 149 of the IPC at Police Station, Sadar, Ropar against the petitioner.

Learned counsel for the petitioner has submitted that the cancellation report in the said FIR has already been submitted to the

concerned Court on 27.3.2018 which is pending for consideration. It is also submitted that the complainant/respondent No.4 died on 24.6.2016 and his son Vazeer Singh has suffered a statement that he agrees with the cancellation report and has no objection if the same is accepted. It is further submitted that though FIR No.213 was registered in the year 2001 but the petitioner had applied for passport in the year 2008 and was issued passport No.G6566598 on 3.1.2008 which remained valid upto 02.01.2018 and at that time there was no adverse police verification.

Learned counsel for the respondents has submitted that the passport has been impounded on account of suppression of the fact by the petitioner about the pendency of the criminal case. It is further submitted that the passport has been impounded in terms of section 10(3)(b) of the Passports Act, 1967 [for short 'the Act'] and if the petitioner is aggrieved, she has a right of appeal under Section 11 of the Act read with Rules 14, 15 & 16 of the Passports Rules, 1980 [for short 'the Rules']. Therefore, it is submitted that in the presence of the statutory appeal, the petitioner does not have any right to invoke the extraordinary jurisdiction of this Court by way of writ petition.

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

Since the respondents have raised objection with regard to the maintainability of the writ petition in the presence of a right of appeal in terms of Section 11 of the Act, therefore, the provisions of Section 10(3)(b) & Section 11 of the Act and Rules 14, 15 & 16 of the Rules are necessary to be reproduced, which read as under: -

“10(3)(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]

11. Appeals

(1) Any person aggrieved by an order of the passport authority under clause (b) or clause (c) of sub-section (2) of section 5 or clause (b) of the proviso to section 7 or sub-section (1), or sub-section (3) of section 10 or by an order under sub-section (6) of section 10 of the authority to whom the passport authority is subordinate, may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against any order made by the Central Government.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(3) The period prescribed for an appeal shall be computed in accordance with the provisions of the Limitation Act, 1963, (36 of 1963) with respect to the computation of the periods of limitation thereunder.

(4) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a copy of the statement of the reasons for the order appealed against where such copy has been furnished to the appellant and [by such fee as may be prescribed for meeting the expenses that may be incurred in calling for relevant records and for connected services]

(5) In disposing of an appeal, the appellate authority shall follow such procedure as may be prescribed:

Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of representing his case.

(6) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final.

14. Appellate authorities,-*For the purpose of the Act and these rules, the appellate authority to whom an appeal shall lie from an order specified in column (1) of the Table below shall be that specified in the corresponding entry of column (2) thereof and every such appeal shall be filed within thirty day from the date on which the order*

*sought to be appealed against is
communicated to the appellant.*

TABLE

	<i>Orders against</i>	<i>Appellate Authority</i>
	<i>(1)</i>	<i>(2)</i>
<i>1</i>	<i>An order of the passport authority, other than the Central Government, under –</i> <i>(i) Clause (b) or Clause (c) of sub-section (2) of Section 5; or</i> <i>(ii) (ii) Clause (b) of the proviso to Section 7; or</i> <i>(iii) (iii) Sub Section (1) or sub-section (3) of Section 10.</i> <i>An order under sub-section (6) of Section 10 of the authority to whom the passport authority is subordinate</i>	<i>The Chief passport officer, Ministry of External Affairs, New Delhi.</i> <i>Additional Secretary or Secretary, Ministry of External Affairs, New Delhi</i>

15. Fee payable in respect of appeal.-Every petition for appeal shall be accompanied by a fee of twenty-five rupees which shall be paid in cash at the treasury and a copy of the receipted challan shall be enclosed with such petition.

16. Procedure to be followed by appellate authority.-On receipt of an appeal, the appellate authority may call for the records of the case from the authority which passed the order appealed against and after giving the appellant a reasonable opportunity of representing his case, pass final order.”

Since the passport of the petitioner has been impounded on the ground of suppression of material information, therefore, Section 10(3)(b) of the Act is squarely applicable. Section 11 of the Act provides that in case any order is passed in terms of Section 10(3) of the Act then it would be an appealable order. Section 11 further provides that the appeal would be preferred before an authority, within time and along with the fee as prescribed. Rules 14, 15 & 16 of the Rules, reproduced hereinabove, lays down the prescribed authority, period in which the appeal is to be filed, the fee which is to be paid along with memorandum of appeal and the procedure to be followed by the appellate authority. The petitioner has wrongly averred in para No.16 of the petition that she has no other remedy except to approach this Court by way of the writ petition because she has a statutory right of appeal for which the complete procedure is prescribed in the Rules.

Thus, I am of the considered opinion that the extraordinary jurisdiction of this Court cannot be invoked in ordinary circumstances if the statutory right of appeal is provided. Therefore, the present appeal is hereby dismissed as not maintainable having been filed under Section 226 of the Constitution of India in the presence of the statutory appeal. The petitioner

is, however, relegated to avail the remedy of appeal, if so advised. In case any such appeal is filed within a period of 15 days from the date of receipt of certified copy of this order, the appellate authority shall not raise the objection of limitation and shall consider the memorandum of appeal and decide the same, in accordance with law, expeditiously and preferably within a period of two months.

29.05.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No