

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1532 of 2018

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Mewa Lal Choudhary S/o Late Deep Narayan Choudhary, resident of Village- Kamargama, P.O.- Lakhanpur, P.S.- Tarapur, District- Mongher, presently r/o Quarter no. B- 3/21, Rajbanshi Nagar, P.S.- Shashtri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of External Affairs, Govt. of Bihar, N. Delhi.
2. Secretary, Ministry of External Affairs, Govt. of India, N. Delhi.
3. Assistant Passport Officer, Regional Office, D. Block, Maurya Lok Complex, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Baidya Nath Thakur
For the Respondent/s : Mr.S.D Sanjay Addl. Soc. Gen.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date : 20-08-2019

The present writ petition has been filed for quashing the order dated 24.10.2017 passed by the Assistant Passport Officer, Regional Passport Office, Patna (Bihar) whereby and whereunder the passport of the petitioner herein has been impounded on account of pendency of a criminal case before a court of law, in terms of Section 10(3) (e) of the Passport Act, 1967. The petitioner has further prayed for directing the Assistant Passport Officer, Regional Passport Office, Patna (Bihar) to release the passport of the petitioner at the earliest.

2. The learned counsel for the petitioner has submitted that the petitioner is a person of repute inasmuch as he is at present a Member of the Legislative Assembly of the State of



Bihar and he has also served as a Vice-Chancellor of the Bihar Agriculture University, Sabour, Bhagalpur. It is submitted that while the petitioner was Vice-Chancellor of the aforesaid University, certain selection process had been undertaken for appointment of 280 Assistant Professors-cum- Junior Scientists in 20 subjects of Agriculture Faculty and after complaint was made regarding irregularities in the said appointment, an enquiry commission was constituted to submit a report. The said enquiry commission had enquired into the matter and submitted a report dated 20.11.2016, recommending legal action against the petitioner for large scale irregularities in the appointment of Assistant Professors-cum- Junior Scientists, whereafter an F.I.R. bearing Sabour P.S. Case No. 35 of 2017 dated 21.02.2017 was lodged against the petitioner under Sections 409, 420, 467, 468, 471 and 120 of the Indian Penal Code on the allegation that in the appointment of Assistant Professors-cum- Senior Scientists under the advertisement no. 07/2011, large scale irregularities, bungling, favoritism, interpolation and manipulation have been committed by the petitioner herein. Thereafter, the petitioner had applied for grant of anticipatory bail by filing a petition bearing Cr. Misc. No. 13723 of 2017 and the Hon'ble High Court had granted anticipatory bail to the petitioner by an order



dated 22.08.2017.

3. It appears that a show cause notice dated 05.09.2017 was issued by the Assistant Passport Officer, Regional Passport Office, Patna (Bihar) to the petitioner herein, directing the petitioner to submit his reply as to why his passport bearing no. Z1725594 be not impounded under Section 10(3) (e) of the Passport Act, 1967 on account of pendency of a criminal case. Thereafter, by the impugned order dated 24.10.2017, the petitioner was informed by the Regional Passport Office, Patna (Bihar) that the passport of the petitioner has been impounded under Section 10(3) (e) of the Passport Act, 1967.

4. The learned counsel for the petitioner has submitted that the aforesaid show cause notice dated 05.09.2017 was sent to a wrong address i.e. on the earlier address of the petitioner when he was Vice-Chancellor of the aforesaid University and not on the permanent and present address of the petitioner, hence, the fact is that no notice was ever served upon the petitioner, which has led to the passport of the petitioner being impounded, in gross violation of the principles of natural justice, thus, on this ground alone the impugned order dated 24.10.2017 is fit to be set aside. The learned counsel for the



petitioner has further submitted that neither any charge sheet has been submitted by the police in the aforesaid Sabour P.S. Case No. 35 of 2017 nor the learned trial court has taken cognizance of the offence, hence, no criminal case can be said to be pending as against the petitioner. The learned counsel for the petitioner has further submitted that the right to freedom granted to the petitioner under Articles 19 and 21 of the Constitution of Indian cannot be infringed/ restricted.

5. The learned counsel appearing for the respondents has submitted that the passport of the petitioner has been impounded under Section 10(3) (e) of the Passport Act, 1967 since a criminal case is pending against him. It is further submitted that the show cause notice dated 27.03.2017 was sent to the petitioner at the address given to the passport office as also on the email ID of the petitioner herein, however, the show cause notice had returned undelivered.

6. In reply, it has been submitted by the learned counsel for the petitioner that admittedly, the respondents have not served the show cause notice on the correct address of the petitioner, as is apparent from the counter affidavit filed by the respondents and moreover even email ID, on which the respondents claim to have sent the show cause notice is the



official email ID of the Vice-Chancellor of the aforesaid University, hence, in the year 2017, when the petitioner was no longer Vice Chancellor of the aforesaid University, there was no occasion for the petitioner to have received the said show cause notice.

7. I have heard the learned counsel for the petitioner and perused the materials on record. At the outset it would be relevant to reproduce Section 10(3) (e) of the Passport Act, 1967:-

“10. Variation, impounding and revocation of Passports and travel documents-

(3) The passport Authority may impound or cause to be impounded or revoke a passport or travel document,-

(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.”

8. This Court finds, from the materials on record that admittedly, the show cause notices dated 27.03.2017 and 05.09.2017 were never served on the petitioner herein, hence, the impugned order dated 24.10.2017 issued by the Assistant Passport Officer, Regional Passport Office, Patna (Bihar), impounding the passport of the petitioner, on account of pendency of a criminal case, has been passed, both, in violation



of the principles of natural justice as also without affording any opportunity to the petitioner to put forth his defence, hence, is illegal and is accordingly quashed.

9. This Court further finds that neither charge sheet has been filed by the police in the pending criminal case i.e. Sabour P.S. Case No. 35 of 2017 nor the learned trial court has taken cognizance of the offence, as has been clearly averred by the petitioner herein, which stands un-rebutted by the respondents and, in fact, upon an query having been put by this Court to the learned counsel for the respondents regarding the said issue, the learned counsel appearing for the respondents could not deny the fact that neither the charge sheet has been filed nor the learned trial court has taken cognizance of the offence in the aforesaid pending criminal case bearing Sabour P.S. Case No. 35 of 2017. In this regard, it would be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of **S.R. Sukumar vs. S. Sunaad Raghuram**, reported in (2015)9 SCC 609, wherein the Hon'ble Apex Court has held that taking cognizance of an offence by a Magistrate has a reference to the application of judicial mind by a Magistrate in connection with the commission of an offence and only after cognizance of an offence has been taken by the Magistrate, it



can be said that judicial notice of an offence has been taken by a Magistrate and the learned Magistrate has decided to proceed against the person accused of having committed that offence, as alleged.

10. The learned counsel for the petitioner has further referred to a judgment reported in *(2012) 3 SCC 64* [**Subramanian Swamy v. Manmohan Singh & Anr.**], paragraphs No.34 and 43 whereof are reproduced herein below:-

“34. The argument of the learned Attorney General that the question of granting sanction for prosecution of a public servant charged with an offence under the 1988 Act arises only at the stage of taking cognizance and not before that is neither supported by the plain language of the section nor the judicial precedents relied upon by him. Though, the term “cognizance” has not been defined either in the 1988 Act or CrPC, the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is “taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause



or matter judicially”.

43. Before proceeding further, we would like to add that at the time of taking cognizance of the offence, the court is required to consider the averments made in the complaint or the charge-sheet filed under Section 173. It is not open for the court to analyse the evidence produced at that stage and come to the conclusion that no prima facie case is made out for proceeding further in the matter. However, before issuing the process, it is open to the court to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, find out whether an offence has been made out. On finding that such an offence has been made out the court may direct the issue of process to the respondent and take further steps in the matter. If it is a charge-sheet filed under Section 173 CrPC, the facts stated by the prosecution in the charge-sheet, on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the court. Thus, it is not the province of the court at that stage to embark upon and sift the evidence to come to the conclusion whether or not an offence has



been made out”.

11. In this regard, this Court would further like to place reliance upon the judgments rendered by the Hon’ble Apex Court in various cases, which are elaborated herein below:-

(i) (1976) 3 SCC 252 [**Devarapalli Lakshminarayana Reddy & Ors. Vs. V. Narayana Reddy & Ors.**].

(ii) (2000) 7 SCC 183 [**Narsingh Das Tapadia vs. Goverdhan Das Partani & Anr.**]

(iii) (2005) 7 SCC 467 [**CREF Finance Ltd. vs. Shree Shanthi Homes**].

(iv) (2012) 6 SCC 228 [**General Officer Commanding Rashtriya Rifles vs. CBI & Anr.**]. As far as this judgment is concerned, it would be apt to reproduce herein below paragraph No. 63:-

“63. In broad and literal sense ‘cognizance’ means taking notice of an offence as required under [Section 190 Cr.P.C.](#) ‘Cognizance’ indicates the point when the court first takes judicial notice of an offence. The court not only applies its mind to the contents of the complaint/police report, but also proceeds in the manner as indicated in the subsequent provisions of Chapter XIV of the [Cr.P.C.](#) (Vide [R.R. Chari v. The State of Uttar Pradesh](#) and [State of W.B. & Anr. v. Mohd. Khalid](#).”

12. Having regard to the law laid down by the Hon’ble Apex Court in a catena of judgments, as aforesaid, this Court is of the view that since neither the charge sheet has been



filed by the police nor cognizance of the offence has been taken by the learned Magistrate in the aforesaid pending Sabour P.S. Case No. 35 of 2017, it cannot be said that a criminal case is pending as against the petitioner herein so as to warrant impounding of the passport of the petitioner under Section 10(3) (e) of the Passport Act, 1967, hence on this ground as well, the impugned order dated 24.10.2017 is liable to be quashed and is accordingly set aside.

13. Considering the facts and circumstances of the case and for the reasons mentioned herein above, the order dated 24.10.2017 passed by the Assistant Passport Officer, Regional Passport Office, Patna (Bihar) in terms of Section 10(3) (e) of the Passport Act, 1967 is quashed.

14. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
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