

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.1030 of 2019

Abhishek Tiwari, S/o Shri Shiv Prasad Tiwari, aged 40 years, R/o Kelkar Para, Nahar Para, Near Nil Kanth Mandir, Indira Gandhi Ward, Raipur, Tehsil & District Raipur (C.G.)

---- Petitioner

Versus

1. Union of India, through Regional Passport Office, Raipur, 1st Floor, Commercial Complex, Sector-4, Pandit Deen Dayal Uppadhyay Nagar, Raipur, Raipur – 492 010 (C.G.)
 2. Regional Passport Office, Raipur, 1st Floor, Commercial Complex, Sector-4, Pandit Deen Dayal Uppadhyay Nagar, Raipur, Raipur – 492 010 (C.G.)
 3. State of Chhattisgarh, through District Magistrate, Raipur (C.G.)
- Respondents

For Petitioner: Ms. Anmol Sharma and Ms. Anuja Sharma, Advocates.

For Respondents No.1 and 2 / Union of India: -

Mr. P. Chetan Kumar, Advocate on behalf of Mr. B. Gopa Kumar, Assistant Solicitor General of India.

For Respondent No.3 / State: -

Mr. H.S. Ahluwalia, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/11/2019

1. The petitioner was granted passport by respondents No.1 & 2 being Passport No.G 7856010 under the provisions of the Passports Act, 1967, the validity of which expired on 24-3-2018. He filed application for renewal of passport but in that renewal application, police verification was sought in which it was revealed that some criminal case / trial is pending against him in the jurisdictional criminal Court and thereby respondents No.1 and 2 sought clarification / explanation from him, as he is suffering trial for offence punishable under Sections 294, 323, 451 and 506 read with Section 34 of the IPC. Immediately thereafter, the petitioner filed an application under Section 6(2)(f) of

the Passports Act, 1967 before the trial Magistrate where his criminal trial is pending, for necessary orders directing renewal of passport which has been rejected by the impugned order holding that the order seeking explanation is appealable against which this writ petition has been preferred by the petitioner herein.

2. Ms. Anmol Sharma, learned counsel appearing for the petitioner, would submit that the trial Court is absolutely unjustified in rejecting the application holding it to be appealable ignoring the notification dated 25th August, 1993 issued by the Central Government by which subject to no objection from the criminal court, passport can be renewed pending trial of criminal case, as such, the impugned order deserves to be set-aside and the matter be remitted to the jurisdictional criminal Court for considering the case of the petitioner for granting him permission to depart from India, from the operation of the provisions of clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967.
3. Mr. P. Chetan Kumar, Advocate, appearing on behalf of Mr. B. Gopa Kumar, Assistant Solicitor General of India, for the Union of India / respondents No.1 & 2, would submit that if the jurisdictional criminal Court permits the petitioner in accordance with the notification dated 25th of August, 1993, it can be remitted to that Court for consideration.
4. Mr. H.S. Ahluwalia, learned State counsel appearing for respondent No.3, would submit that it be left to the criminal Court for determination in light of the notification dated 25th of August, 1993.
5. I have heard learned counsel for the parties, considered the rival submissions made herein-above and went through the record with utmost circumspection.

6. In the matter of Maneka Gandhi v. Union of India¹, the Supreme Court (Constitution Bench) has held that right to travel abroad is a part of personal liberty under Article 21 of the Constitution of India and right to travel abroad on the aspect of personal liberty cannot be curtailed without reasonable opportunity to show cause. It was further held that the procedure in Article 21 of the Constitution cannot be arbitrary, unfair, unreasonable and hence rules of natural justice must be followed before impounding a passport under Section 10(3)(c) of the Passports Act, 1967.
7. It is not in dispute that the petitioner was issued with passport being Passport No.G 7856010 which expired on 24-3-2018 for renewal of which he applied on 11-4-2019 in which clarification was sought about the pendency of criminal case against the petitioner and his passport was not renewed pending trial, as the petitioner is suffering trial for the offence punishable under Sections 294, 323, 451 and 506 read with Section 34 of the IPC being Criminal Case No.57/2018 (State of Chhattisgarh v. Abhishek Tiwari @ Raji and another) in the Court of Judicial Magistrate First Class, Raipur.
8. Section 6(2)(f) of the Passports Act, 1967 is relevant and is noticed herein-below which prescribes that the passport authority shall refuse to issue a passport or travel document for visiting any foreign country on the ground that an offence committed by the person seeking renewal of passport is pending before a criminal court in India. Clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967 reads as follows: -

“6. Refusal of passports, travel documents, etc.—(1)
xxx xxx xxx

(2) Subject to the other provisions of this Act, the

¹ (1978) 1 SCC 248

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 no other ground, namely:—

(a) to (e) xxx xxx xxx

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

(g) to (i) xxx xxx xxx”

9. Thus, on account of pendency of criminal case, the passport authority is empowered to refuse to issue passport or travel documents for visiting any foreign country under clause (c) of sub-section (2) of Section 5 of the Passports Act, 1967.

10. Section 22 of the Passports Act, 1967 deals with power to exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder. It reads as follows: -

“22. Power to exempt.—Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,—

(a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder; and

(b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions.”

11. In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 and in super-session of the notification dated 14th April, 1976, the Central Government has issued a notification dated 25th August, 1993 exempting citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India,

from the operation of the provisions of clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967, which states as under: -

“MINISTRY OF EXTERNAL AFFAIRS

NOTIFICATION

New Delhi, the 25th August, 1993

G.S.R. 570(E).—In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No. G.S.R. 298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely :—

(a) the passport to be issued to every such citizen shall be issued—

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order

specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

[No. VI/401/37/79]

L.K. Ponappa, Jt. Secy. (CPV)”

12. A careful perusal of the aforesaid notification would reveal that application for renewal of passport is not liable to be refused on the ground of pendency of criminal case if the particular person obtains permission from the concerned criminal Court in line with the above-stated notification issued by the Central Government.
13. In the matter of **Deepak Dwarkasingh Chhabria v. Union of India and another**², the Bombay High Court relying upon the notification dated 25th August, 1993 held that for renewal of passport, pendency of criminal case is not a bar, if person seeking renewal obtains permission from the concerned criminal Court for travel abroad, and observed as under: -

“10. In view of the aforesaid notifications by the Central Government, it is clear that the citizens against whom criminal cases are pending are made exempt from the operation of Section 6(2)(f) provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications. In other words, an application of passport is not liable to be refused on the ground of pendency of criminal case if the applicant obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore cannot reject the application for passport mechanically on the ground of pendency of criminal case against the application. It will be the duty of the passport authority to bring the relevant notification to apply to concerned Criminal Court for permission to the travel abroad. If the applicant obtains such permission from the Criminal Court where his case is pending, the passport of authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the notification. In the present case the

2 AIR 1997 Bombay 181

passport authority has failed to bring the relevant notification to the notice of the applicant in spite of the fact that the application was pending before the authority for more than one-and-half years. In fact it is doubtful whether the passport authority himself was aware of the notification granting exemption to the citizens from the operation of Section 6(2)(f). It is matter of regret that applications are kept pending by the passport authority for such a long time particularly, when it affects the fundamental right of the citizen. At no point of time the passport authority had informed the petitioner that he was entitled to passport subject to orders of the Criminal Court. The passport authority has also failed to give information or particulars about the pending criminal case. It is an admitted position that till today the petitioner is not served with the summons of the pending criminal case. In such a situation, it was all the more necessary for the passport authority to inform the petitioner of his right to apply to the Criminal Court for permission to travel abroad. In my opinion, it is necessary to issue specific directions to the passport authority in order to ensure that the citizens' application for passport are not unnecessarily delayed on account of pending criminal cases."

14. As such, in view of the aforesaid notification dated 25th August, 1993, pendency of criminal case for an offence is not a bar for renewal of passport, if person seeking renewal obtains due permission from the jurisdictional criminal Court to travel abroad, therefore, in the instant case, the trial Magistrate was required to consider the application of the petitioner for permitting him to depart from India in light of the provisions contained in clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967 read with the notification dated 25th August, 1993 and in light of the decision of the Bombay High Court in **Deepak Dwarkasingh Chhabria** (supra), which has not been considered and the application has been rejected and the order has been passed on the ground that the order by the passport authority refusing renewal is appealable.
15. As a fallout and consequence of the aforesaid discussion, the impugned order dated 6-9-2019 is set-aside and the application for renewal of passport is restored to its original number for hearing and

disposal in accordance with law and in light of the observations made herein-above and in light of the notification dated 25th August, 1993. The said application will be decided afresh by the trial Court within two weeks from the date of receipt of a copy of this order and in case the criminal court passes an order for issuance of passport, the passport authority shall forthwith issue the passport subject to the terms and conditions mentioned in the notification.

16. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).
17. Before parting with the record, it is proper to note that the passport authorities, instead of directing the petitioner to get necessary order from the court in view of pending criminal case, in light of the notification dated 25th August, 1993, issued notice to the petitioner for suppressing the pendency of criminal case, since the right to travel abroad is a part of personal liberty which is a fundamental right under Article 21 of the Constitution of India, it is directed that in case of pendency of criminal case, renewal of passport is sought, the passport authority will inform the person concerned the right to apply for necessary permission from the court concerned to travel abroad, as the present notification dated 25th August, 1993 was issued by the Central Government to avoid unnecessary delay in renewal of passport, without fail.

Sd/-
(Sanjay K. Agrawal)
Judge

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Versus

Union of India and others

Head Note

Renewal of passport can be done during the pendency of criminal case, if the passport holder obtains permission from the criminal court for travel abroad in line with notification dated 25-8-1993 issued by the Central Government.

आपराधिक मामले के लम्बित रहने के दौरान पासपोर्ट का नवीनीकरण किया जा सकता है, यदि पासपोर्ट धारक, केन्द्र सरकार द्वारा जारी अधिसूचना दिनांक 25-8-1993 के अनुसरण में दंड न्यायालय से विदेश यात्रा के लिये अनुमति प्राप्त कर लेता है।