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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13538/2018 & CM APPL. 4069/2019,**
CM APPL. 32711/2019

BARINDER PAL SINGH MANCANDA Petitioner

Through Ms Malvika Rajkotia, Ms Aashka
Talwar, Mr Jai Bansal, Advocates.

versus

CHIEF PASSPORT OFFICER AND ORS. Respondents

Through Mr Jasmeet Singh, CGSC with
Mr Srivats Kaushal, Advocates for UOI.
Ms Anu Narula, Mr Manish, Advocate for R3.
Mr Pravesh Thakur, Advocate with
Mr Abhijeet Singh (Inspector P.S. Mukherjee
Nagar) for R5 and R6.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 11.12.2019

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 21.11.2018 (hereafter 'the impugned order') passed by the respondent, whereby the petitioner's passport No. K7492501 was revoked under the provisions of Section 10(3)(e) of the Passports Act, 1967 (hereafter 'the Passports Act').
2. The counter affidavit filed on behalf of respondent no.1 indicates that the said impugned order was passed in view of the proceedings initiated pursuant to FIR No. 682/2017 under Sections 498-A/406/34 of the IPC

registered with Police Station Mukherjee Nagar.

3. The said FIR was registered at the instance of the petitioner's wife (respondent no.3).

4. Mr Jasmeet Singh, learned counsel appearing for respondent no.1 states that in terms of Section 10(3)(e) of the Passports Act, the passport authorities are empowered to revoke the passport "*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.*" He submits that since a chargesheet was filed against the petitioner and the matter is pending trial, the said provisions of Section 10(3)(e) of the Passport Act would apply. He, however, concedes that it is not imperative that the passport be revoked in each case where criminal proceedings have been initiated; the passport authorities would have to exercise their discretion as to whether to impound or revoke the passport in a given case.

5. He also drew the attention of this Court to a notification dated 25.08.1993 issued by the Government of India in exercise of powers conferred under Clause (a) of Section 22 of the Passports Act. The said clause empowers the Central Government to exempt any person from all of any of the Rules made under the Passports Act. A plain reading of the said notification indicates that exemption has been granted in respect of cases where proceedings in respect of an offence alleged to have been committed by any passport holder, are pending before any Criminal Court in India and he produces orders from the concerned Court permitting him to depart from India.

6. Although, the said notification was in context of Clause 6(2)(f) of the

Passports Act, which provides for denial of passport in cases where proceedings in respect of the offence, alleged to have been committed by the applicant, are pending before a criminal court in India.

7. Although, the said notification is not applicable *sensu stricto* since the said notification relates to the provisions relating to rejecting an application for a passport and not for revoking the same; nonetheless, the rationale for issuing the notification is quite clear. The Central Government has considered it apposite to leave the matter to the discretion of the concerned Court in cases where criminal proceedings are pending.

8. Thus, if the action of the respondent in revoking the passport is accepted, the petitioner would not be precluded from applying for a fresh passport if permitted by the concerned Court.

9. In the present case, the petitioner and respondent no.3 were married in the year 2004. They shifted to United States of America in 2007. Apparently, matrimonial disputes arose between the said parties. The petitioner's wife (respondent no.3) has also instituted proceedings against the petitioner in USA and she has also received US\$ 83611 from the petitioner. It is averred that respondent no.3 had come to India in July, 2017 and filed a complaint through her brother with the CAW Cell, which has resulted in the FIR in question being lodged. Respondent no.3 had left for USA after her short visit. Respondent no.3 has, thereafter, also made complaints for cancellation of the petitioner's passport.

10. It is apparent from the above that respondent no.3 has now prevented the petitioner from travelling to USA, while she has proceeded to USA. It is also not disputed that respondent no.3 was permitted residence in USA on a

spouse visa granted to her by virtue of her marriage with the petitioner. Whilst, respondent no.3 is continuing with the proceedings against the petitioner in United States of America, she has effectively precluded the petitioner from travelling overseas by pursuing proceedings in India through a Power of Attorney/her brother. Resultantly, the petitioner is also unable to meet with his minor child, who by virtue of being born in USA is a national of that country.

11. It is stated that the revocation of the petitioner's passport at the instance of respondent no.3 has resulted in the petitioner losing his job in the U.S.A.

12. In the peculiar facts and circumstances of the case, this Court considers it apposite to direct that passport facilities to be provided to the petitioner. This is also considering the statement made on behalf of the petitioner that the petitioner would join the criminal proceedings instituted in India.

13. In terms of the notification dated 25.08.1993, a passport is required to be issued to every citizen for a period as specified in the order of the concerned Court. This Court is of the view that in the peculiar facts and circumstances of this case, the passport should be provided to the petitioner for the normal period of five years.

14. This Court is informed that this Court, by an order dated 19.12.2018, had stayed the impugned order dated 21.11.2018, whereby the petitioner's passport had been revoked. By an order dated 01.08.2019, this Court had also directed the concerned passport authorities to ensure that the

information on the software is updated to reflect the status of petitioner's passport, as was obtaining prior to the petitioner's passport being revoked. This Court is informed that the same has been done.

15. In view of the above, rather than relegate the petitioner to apply afresh in terms of the notification dated 25.08.1993, this Court considers it apposite to set aside the impugned order revoking the petitioner's passport and thereby restore the passport facilities to the petitioner. It is so directed.

16. The petition is disposed of in the aforesaid terms. All pending applications are also disposed of.

DECEMBER 11, 2019
pkv

VIBHU BAKHRU, J