

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 700 of 2020**

Smt. Sandhya Rani Mandal, A/A 56 years, W/o Shri Shambhu Mandal, R/o Samta Colony, Below the Amatalab, Police Station Azad Chowk, Raipur, Chhattisgarh.

---Petitioner

Versus

State of Chhattisgarh through Police Station Azad Chowk, Raipur, Chhattisgarh.

--- Respondent

For Petitioner :- Mr. Arvind Shrivastava, Advocate
For State :- Mr. Rahul Jha, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

19/05/2020

1. Petitioner herein is facing trial for offence punishable under Section 498A of Indian Penal Code, 1860 read with Section 4 of the Dowry Prohibition Act, 1961. When she filed an application seeking permission for issuance of passport (in fact, application was filed seeking no objection in issuing passport), it stood rejected by the J.M.F.C, Raipur vide order dated 20/12/2019 (Annexure P/3) on the ground that

certain conditions have been imposed by this Court while granting bail. The said order was challenged in a criminal revision filed by the petitioner herein, but that too, was rejected vide order impugned dated 17/01/2020 (Annexure P/1) against which this petition under Section 482 of the Cr.P.C. has been preferred.

2. Mr. Arvind Shrivastava, learned counsel appearing for the petitioner, would submit that the trial Court is absolutely unjustified in rejecting the application holding it to be meritless ignoring the notification dated 25th August, 1993 issued by the Central Government by which subject to no objection from the criminal court, fresh passport can be issued 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 her permission to depart from India, from the provisions of clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967.

3. Mr. Rahul Jha, learned State counsel, would submit that it be left to the criminal court for

determination in light of the notification dated 25th August, 1993.

4. I have heard learned counsel for the parties, considered their submissions made herein-above and went through the record with utmost circumspection.

5. At this stage, it would be appropriate to notice the application in question filed by the petitioner seeking no objection in issuing the passport which has been rejected by the J.M.F.C., which is reproduced herein-below :-

समक्ष न्यायालय श्रीमान न्यायिक दण्डाधिकारी प्रथम श्रेणी, रायपुर (छ.ग.)

श्रीमती संध्यारानी मंडल उम्र - ५४ वर्ष

पति श्री शंभुनाथ मंडल

निवासी - म. नं. २८११, घोराही तालाब के पास,

समता कॉलोनी, रायपुर (छ.ग.)

आवेदिका

आवेदन पत्र वास्ते पासपोर्ट हेतु अनुमति बाबत ।

आवेदिका की ओर से निम्नलिखित प्रार्थना प्रस्तुत है :-

1. यह कि, आवेदिका के विरुद्ध माननीय न्यायालय के समक्ष एक प्रकरण अंतर्गत धारा 498, 34 भा.द.वि. का लंबित है जिसका प्रकरण क्रमांक पेशी दिनांक को नियत है।

2. यह कि, आवेदिका ने विदेश जाने हेतु पासपोर्ट हेतु आवेदन भारत सरकार के समक्ष प्रस्तुत किया है, जिसका नंबर 19-0013450786 है, परन्तु उपरोक्त प्रकरण माननीय न्यायालय के समक्ष लंबित होने के कारन उसे माननीय न्यायालय के पासपोर्ट हेतु अनुमति आवश्यक है।

3. यह कि, आवेदिका माननीय न्यायालय को विश्वास दिलाती है कि प्रत्येक पेशी में माननीय न्यायालय के समक्ष उपस्थित रहेगी, पासपोर्ट के दुरुपयोग नहीं करेगी और अतिआवश्यक कार्य हेतु ही विदेश कम से कम दिनों के लिये जायेगी जिसकी भी अनुमति माननीय न्यायालय से प्राप्त करेगी।

4. यह कि, आवेदिका माननीय न्यायालय के क्षेत्राधिकार की स्थाई निवासिनी है तथा उसकी चल, अचल संपत्ति रायपुर शहर में स्थित है इसलिए उसके पलायन करने की कोई सम्भावना नहीं है।

5. यह कि, आवेदिका को विश्वास है कि उसके खिलाफ लंबित प्रकरण में उसे दोषमुक्त किया जायेगा।

6. यह कि, आवेदिका माननीय न्यायालय के द्वारा अधिरोपित समस्त शर्तों का पालन करेगी।

अतः माननीय न्यायालय से प्रार्थना है कि आवेदिका की ओर से प्रस्तुत आवेदन न्यायहित में स्वीकार कर उसे पासपोर्ट हेतु अनुमति प्रदान करने की कृपा करें।

स्थान - रायपुर (छ.ग.)

आवेदिका

दिनांक :

6. 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 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"

7. 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.

8. 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."

9. 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)"

10. A careful perusal of the aforesaid notification would reveal that application for issuance 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.

11. In the matter of Deepak Dwarkasingh Chhabria v. Union of India and another¹, the Bombay High Court relying upon the notification dated 25th August, 1993 held that for issuance of passport, pendency of criminal case is not a bar, if person seeking issuance 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

¹AIR 1997 Bombay 181

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 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."

12. As such, in view of the aforesaid notification dated 25th August, 1993, pendency of criminal case for an offence is not a bar for issuance of passport, if the person seeking issuance 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.

13. As a fallout and consequence of the aforesaid discussion, the impugned order dated 17/01/2020 (Annexure P/1) is set-aside and the said application dated 17/09/2019 filed by the

petitioner seeking no objection for issuance of passport is restored 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 therefore, the petitioner is free to approach the passport authority in accordance with law. Petitioner is at liberty to move an application for modification of order granting bail to her.

14. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet