

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 13576 of 2020

Date of Decision: 04.09.2020

Naresh Kumar

Petitioner

Versus

Regional Passport Officer, Chandigarh

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Dr. Payel Mehta, Advocate for the petitioner.

Ms. Shweta Nahata, Advocate for the respondent.

Mr. Sunil Saharan, Advocate for the wife of the petitioner.

AVNEESH JHINGAN, J (Oral):

The matter is taken up for hearing through video conference due to COVID-19 situation.

The present petition is filed seeking directions to revoke the order dated 04th October, 2019, impounding the passport of the petitioner.

The facts as pleaded are that the petitioner was issued passport bearing number J3711040. He got married to one Neelam daughter of Mahavir Singh. The couple was blessed with a daughter on 08th August, 2015. The petitioner went to New Zealand and thereafter called his wife and daughter. They were given Residency Visa. The relations between husband and wife went in troubled waters. The wife made a police complaint against the petitioner in February, 2018. A separation agreement was entered between the parties on 11th July 2018. Thereafter a new separation agreement was prepared on 21st August, 2018.

The wife of the petitioner came to India and got registered FIR No. 98,

under Sections 323, 406, 498-A, 506 read with Section 34 IPC at Police Station Barwala, District Hisar on 11th March, 2019. The petitioner was served with a show cause notice on 27th August, 2019 by the Passport Authority to show cause about adverse police verification report and that summons/warrant have been issued to the petitioner. When no response was received passport was impounded vide order dated 04th October, 2019. The said order was received by the petitioner through e-mail. In FIR case, petitioner applied for an anticipatory bail and was granted interim relief on 30th June, 2020 by Additional Sessions Judge-cum-Judge, Special Court for Heinous Crime Against Women, Hisar.

Learned counsel for the petitioner submits that the matter has been compromised as is evident from the interim order passed in the anticipatory bail proceedings. The petitioner has to bring back his daughter from New Zealand and his passport is due to expire on 18th October, 2020, hence, the impugned order be set aside.

Learned counsel appearing for the sole respondent on advance notice, brought to the notice of this Court that petitioner has already filed CWP No. 30175 of 2019 challenging the same impugned order, the petitioner has not approached the Court with clean hands.

The file of said writ was called in which following prayer has been made:-

“Issue a writ in the nature of mandamus/certiorari for quashing of impugned action/order dated 27.08.2019 and 4th October 2019 (Annexure P-10 and P-14) whereby the passport of the petitioner has been impounded without giving any opportunity and notice to the petitioner.”

It is evident that Annexure P-14 annexed with CWP

No. 30175 of 2019 and Annexure P-9 annexed with the present petition is

the same order passed by the Passport authority dated 4th October, 2019.

On specific query from learned counsel for the petitioner as to why the said fact has been withheld from this Court. It is submitted that she had no knowledge of the earlier writ petition. It is further argued that wife had knowledge of impounding of passport and the pendency of the earlier writ petition yet she made a statement before the trial Court that she is ready to go with the petitioner.

The contention of the petitioner that there was no knowledge with regard to the earlier writ petition is factually in-correct. Dr. Payal Mehta, Advocate who has filed present petition, appeared in CWP No. 30175 of 2019 on 05th March, 2020. The order is reproduced :-

“Present: Dr. Payal Mehta, Advocate for the petitioner
Ms. Shweta Nahata, Advocate for respondents No. 1 to 3

CM No. 3932-CWP of 2020

This is an application for placing on record short reply by way of a counter affidavit on behalf of respondents No. 1, 2 and 3. Application is allowed and short reply by way of a counter affidavit on behalf of respondents No. 1, 2 and 3 is taken on record subject to all just exceptions.

CWP-30175-2019

At request made by learned counsel for the petitioner, adjourned to 22.07.2020. “

Needless to submit that the petitioner was aware of the earlier writ petition and yet filed the present petition with the same relief that too without disclosing the fact of pendency of earlier writ.

There is another aspect of the matter that in the earlier writ petition following were impleaded as respondents:

1. Union of India through Secretary Ministry of External Affairs, New Delhi,

2. Regional Passport Office, Chandigarh,
3. Passport Officer, Incharge, Passport Office, Chandigarh,
4. Smt. Neelam wife of Naresh Kumar, daughter of Sh. Mahavir Singh
resident of Village Chan, Tehsil Barwala, Distt Hissar.

Whereas in the present writ petition, only Regional Passport Officer, Chandigarh has been impleaded as Respondent.

While dismissing the present writ petition, a serious note requires to be taken on the conduct of the petitioner. On 5th March, 2020 a short reply by way of counter affidavit on behalf of respondents No.1 to 3 was filed in CWP No. 30175 of 2019 and the matter was adjourned on the request of counsel for the petitioner. Now the present writ petition is filed without disclosing the pendency of the earlier writ petition and seeking the same relief. There cannot be any doubt that the lapse is intentional and is an attempt to over-reach the court.

The Supreme Court in ***Dnyandeo Sabaji Naik and Anr. vs. Mrs. Pradnya Prakash Khadekar and Ors; 2017 (5) SCC 496***, held as under:-

“This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth. “

Considering that the second petition has been filed for the same relief and in view of above the present petition is dismissed with cost of ₹50,000/-

[AVNEESH JHINGAN]
JUDGE

4th September, 2020
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |