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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A. No.563 of 2020 in
Civil Writ Petition No.25914 of 2019
Reserved on: September 03, 2020
Date of decision: September 18, 2020

M/s Kotak Mahindra Bank Limited ...Appellant

Versus

Dalbir Kaur and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Akshay Bhan, Senior Advocate assisted by
Mr.Aman Bansal, Advocate for the appellant.

Mr.Sartaj Singh Gill and Ms.Ria Khanna, Advocates
for respondent No.1.

Mr.S.P.Jain, Additional Solicitor General of India with
Ms. Gurmeet Kaur Gill, Senior Panel Counsel
for Union of India.

***

HARINDER SINGH SIDHU, J.

This Letters Patent Appeal has been filed against the judgment dated 26.08.2020 in CWP No.25914 of 2019 titled 'Dalbir Kaur vs. Union of India and others' whereby the writ petition filed by Dalbir Kaur – respondent No.1 herein was allowed with costs and the Regional Passport Officer, Amritsar was directed to release the passport of the petitioner within 15 days.

2. Respondent No.1 Dalbir Kaur, had filed the writ petition

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praying for quashing the seizure memo dated 23.04.2019 (Annexure P-11), vide which her passport, bearing No.P2208297 issued on 22.12.2016, was impounded, and for quashing the order/communication dated 17.05.2019 (Annexure P-14), whereby her representation dated 13.05.2019 (Annexure P-13) addressed to the Regional Passport Officer -(respondent No. 6 herein) against the seizure/impounding of her passport, was disposed of by him by only informing that her passport had been impounded under Section 10(3) (h) of the Passports Act, 1967 (for brevity, 'the Act') as she had been declared a proclaimed offender by the Court of Judicial Magistrate Ist Class, Ludhiana.

3. In brief the case of respondent No.1 was that her marriage was solemnized with Anudeep Singh on 23.10.1993. She then shifted to her matrimonial home at Amritsar from New Delhi. Two children were born to them. However due to serious differences with her husband, she shifted back to her parental home at New Delhi in March, 2013 and since then, she has been living there. Consequently she was unaware of the business activities of her husband. She was shown one of the partners in the business firm run by her husband, whereas she had virtually no role to play in the affairs of said business. She was shocked to receive a letter dated 13.07.2018 sent by the appellant- Kotak Mahindra Bank, at her New Delhi address, informing her that she had been declared a proclaimed offender by the Court of the Judicial Magistrate 1st Class, Ludhiana. Thereby she got to know of the proclamation order dated 14.11.2017. She appeared before the Court of Judicial Magistrate 1st Class, Ludhiana, and was released on bail

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on 17.12.2018. She went to Denmark on 18.04.2019 to meet her son, who was visiting there through his school in U.S.A.. She came back to India on 23.04.2019. On her return from Denmark, the Indian Immigration Control Department at the IGI Airport, New Delhi, impounded her passport without any prior information or any show-cause notice.

4. She filed a representation/appeal before respondent No.4 via e-mail on 29.04.2019. However she received no response to the same. Vide communication dated 17.05.2019, she was informed by respondent No.6 that her passport had been impounded on 20.03.2019. She filed Writ Petition (Civil), bearing No.5486 of 2019, before the Hon'ble Delhi High Court, which had been dismissed, vide order dated 20.05.2019 by observing that as major part of the cause of action had arisen in the State of Punjab, the writ petition ought to have been filed before this Court. However, a direction was issued to the passport authorities to furnish a copy of the statement of reasons recorded for impounding the passport within a period of one week. As the reasons were not furnished despite the directions the petitioner sent a a legal notice dated 28.07.2019 (Annexure P-14) to respondent No.6. Thereafter respondent No.6 replied that her passport had been impounded as she had been declared a proclaimed person.

5. The communication is reproduced below:

"Dated: 17.05.2019

File No.AS1070529889816/POA/CC

To

Mrs.Dalbir Kaur Madan

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23/41, West Punjabi Bagh,
New Delhi 110001

Subject: *Impounding of Passport No.P220829 dated 22.12.2016*

Ref: *Your grievance dated 13.05.2019 addressed to the Regional Passport Officer, Amritsar*

Madam

With regard to above it is informed that your Passport No.P2208297 dated 22.12.2016 issued from RPO Amritsar has been impounded by this office on 20.03.2019 under section 10(3)(h) of the Indian Passport Act, 1967 as applicant has been declared Proclaimed Offender by Hon'ble Judicial Magistrate Ist Class, Ludhiana.

Your grievance mentioned under reference stands disposed of.

Sd/-
Assistant Passport Officer
Amritsar"

6. Before the Ld. Single Judge the contention on behalf of respondent No.1 was that the appellant Kotak Mahindra Bank had filed two complaints under Section 138 of the Negotiable Instruments Act, 1881, before the Judicial Magistrate, Ludhiana, wherein the address given was of her matrimonial home viz. 68-A, Maqbool Road, Amritsar, whereas she was residing in New Delhi at that time. She got to know that she had been declared a proclaimed person on 14.11.2017 only when the appellant -Bank, informed her vide letter dated 13.07.2018 about the proclamation order. This information was sent at her Delhi address, indicating that the appellant

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was fully aware that she was not residing at Amritsar. Respondent No.1 appeared before the Court issuing the proclamation and was granted bail on 17.12.2018. Thereafter the order declaring her as a proclaimed person ceased to be operative. Thus, there was no occasion for respondent No.6 - Regional Passport Officer to impound the passport of the petitioner on 23.04.2019 on the ground that she had been declared as proclaimed person. Reliance was placed on a decision of this Court in **Smt. Deeksha Puri Vs. State of Haryana, 2013 (1) R.C.R. (Criminal) 159**, wherein it was held as under:-

> *"41. It is also clarified that the moment a proclaimed offender is arrested or he appears at the place and time required by the Court or surrenders before the Court or authority issuing warrants or proclamation, as the case may be, the order of declaration of proclaimed offender would cease to be operative."*

It was further argued that the passport could not have been impounded without giving opportunity of hearing or issuing a show cause notice as required under Section 10(5) of the Passports Act. Reliance was placed on decisions of Hon'ble Supreme Court in the cases of **Maneka Gandhi Vs. Union of India and ors (1978) 1 SCC 248, Suresh Nanda Vs. CBI (2008) 3 SCC 674**

7. The official respondents had justified their action of impounding the passport contending that two complaints dated 31.01.2019 and 15.02.2019 had been received from the appellant- Bank to the effect

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that respondent No.1 was a guarantor for a loan amount and that in the proceedings under Section 138 of the Negotiable Instruments Act, 1881, she had been declared a proclaimed person. It was argued that though respondent No.1 had appeared before the competent Court on 17.12.2018 and furnished the bail bonds, yet the fact remains that criminal proceedings were still pending against her. Therefore, her passport had been impounded/revoked under Section 10(3)(e)(h) of the Act so that she might not leave the country. It was further argued that respondent No.1 had not furnished the order passed by the competent Court in respect of releasing her passport nor the order dated 10.06.2019 passed by the learned Judicial Magistrate 1st Class, Ludhiana, was ever supplied to the passport authorities.

8. On behalf of the appellant it was contended that it had filed two criminal complaints against M/s Wazir Singh Enterprises, in which respondent No.1 and her husband Anudeep Singh, were partners. More than Rs.50 crores was due against M/s Wazir Singh Enterprises. Two cheques, amounting to Rs.13,33,38,147/- each issued in respect of the repayment of loan on presentation got dishonored. It was further argued that as there was every likelihood that respondent No.1 and her husband might leave the country to avoid paying the outstanding dues towards the bank, the appellant had filed CWP-5843-2019, seeking impounding of the passport of respondent No.1. But as during the pendency of the writ petition the passport was impounded it was disposed of as infructous.

9. The Ld. Single Judge allowed the writ petition observing inter

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alia as under:

> *"Section 10(5) of the Act, stipulates that furnishing of reasons for impounding a passport is mandatory and despite the fact that Delhi High Court, vide order dated 20.05.2019, had directed the passport authorities to furnish a copy of statement of reasons for impounding the passport of the petitioner, no reasons had ever been communicated. When the statement of reasons was not supplied to the petitioner, she sent a legal notice dated 28.07.2019 and vide letter dated 06.08.2019, she was informed that since she had been declared a proclaimed person, her passport had been impounded and she was further asked to furnish a copy of the order passed by the concerned Court for releasing her passport. Respondent No.5, Regional Passport Officer, has ignored the order dated 10.06.2019 passed by the learned Judicial Magistrate. A relevant extracts of the order dated 10.06.2019 would read as under:*
>
> > *"However, it is made clear that accused No.2, Dalbir Kaur, who was earlier declared as proclaimed person vide order dated 14.11.2017 and now has been granted bail vide order dated 17.12.2018 and no proclamation proceedings have been intimated to the court being so initiated against her by the concerned police station. Accordingly, proclamation proceedings against the accused stand dropped as she has been granted bail."*
>
> *It would not be out of place to mention here that the aforesaid order dated 10.06.2019 was passed in a complaint under Section 138 of the Negotiable Instruments Act, 1881, preferred by respondent No.6-bank.*
>
> *The Regional Passport Officer, respondent No.5,*

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had made no efforts to enquire into the status of proclamation proceedings against the petitioner. Even vide legal notice dated 28.07.2019, addressed to the Regional Passport Officer, the petitioner informed that she had been granted bail by the Judicial Magistrate, on 17.12.2018 and as per the settled law, the moment a proclaimed person surrenders before the Court concerned and is granted bail, the order of declaration of proclaimed person, ceases to operate. Even otherwise, complaints filed against the petitioner are under Section 138 of the Negotiable Instruments Act, which is a bailable offence and imposition of any condition even by the Court to surrender the passport, does not arise. Therefore, the principle of audi alteram partem stands violated as the petitioner was granted no notice or opportunity of hearing. By impounding her passport on 23.04.2019, she has been debarred from meeting her children, who are statedly studying in the Universities at Connecticut and Boston, since the very date of impounding of her passport.

The action of the respondents is void and illegal being violative of the principles of natural justice as in the absence of prior notice, the order passed by respondent No.5 stands vitiated. Moreover, the power conferred on the passport authority to impound a passport is a quasi judicial and it seriously interferes with the constitutional rights of the holder and entails civil consequences. Even the appeal/ representation filed by the petitioner via e-mail, under Section 11 of the Act, was not considered by respondent No.4-Chief Passport Officer.

There are two provisos to sub-section 1 of Section 10-A of the Act, which specifically mandate that every holder of the passport in respect of whom an order of suspension of passport has been passed under clause (a) or clause (b) of this

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sub-section, shall be given an opportunity of being heard, within a period of not later than eight weeks reckoned from the date of passing of such an order. Upon such hearing, the Central Government is empowered, if necessary, by an order in writing to modify or revoke the order under this section.

Thus, the act of respondent No.5 impounding the passport of the petitioner has a clear impact on her Fundamental Rights. As mentioned above, upon the petitioner's having appeared before the Judicial Magistrate at Ludhiana, she was granted bail and, thus, the proclamation order ceased to be operative. The said fact was well within the knowledge of respondent No.5-Regional Passport Officer, Amritsar. Moreover, in a bailable offence, no condition can be imposed by the Court regarding surrender of the passport."

10. Ld. Single Judge further concluded that the conduct of the proceedings at the end of Respondent No.6 - Regional Passport Officer, Amritsar leading to the passing of the impugned orders, stemmed from legal malice as the statutory provisions and the settled law on the issue had been ignored. Ld. Judge concluded that it was a clear example of the administrative overreach breaching the Fundamental Rights of the petitioner. The petition was allowed with costs of Rs.1.00 lakh (Rupees One Lakh), to be paid by respondent No.6 herein to the petitioner. The impugned order/seizure memo dated 23.04.2019 (Annexure P.11) and letter dated 17.05.2019 (Annexure P.14) were quashed and the Regional Passport Officer, Amritsar, was directed to release the passport of respondent No. 1 within 15 days from the date of receipt of the certified

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copy of the order.

11. Sh. Akshay Bhan Ld. Senior Counsel for the appellant has basically reiterated the submissions advanced on behalf of the appellant before the Ld. Single Judge. He argued that the innocence pleaded by respondent No.1 about the affairs of her husband even after she allegedly left her matrimonial home in 2013 is not borne out from the record. He further argued that the passport of respondent No.1 was rightly impounded as criminal proceedings under Section 138 of the Negotiable Instruments Act, were pending against her and there is a grave risk of her fleeing the country and in that event it would be difficult to recover the huge outstanding dues regarding which she is a guarantor along with her husband. He referred to Section 10(3) (e) the Passports Act as per which the passport authority may impound or cause to be impounded or revoke a passport or travel document "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"

12. Having heard Ld. Sr. Counsel for the appellant we are not inclined to interfere with the order of the Ld. Single as we find no illegality in the same.

13. In the writ petition Respondent No.1 had impugned the seizure memo dated 23.04.2019 (Annexure P.11) and letter dated 17.05.2019 (Annexure P.14) conveying the reason for the action. Ld. Single Judge has rightly concluded that not only was the impugned action void and illegal being violative of the principles of natural justice even the reason furnished

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for impounding that she had been declared a proclaimed person was non-existent.

14. The passport had not been impounded under Section 10(3) (e) on the ground of proceedings in respect of a criminal offence pending against respondent No.1 which is the ground pressed by the appellant to justify its impounding.

15. It is well settled that the validity of an administrative order has to be justified solely by the reasons mentioned therein. On that touchstone the impugned orders cannot sustain.

16. Accordingly, there is no merit in this appeal and the same is dismissed. However the costs are reduced to Rs.10,000/- from Rs.1,00,000/-.

17. It is also clarified that the authorities are not precluded from passing any subsequent order for impounding the Passport of respondent No.1 on justifiable grounds strictly as per the Passports Act and the settled law.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 18, 2020
gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No