

AD. 11.
January 15, 2021.
MNS.

W. P. A. 4743 of 2020
with
IA NO: CAN 1 of 2020(CAN 3623 of 2020)
(Via video conference)

Vishal Shah
Vs.
The Union of India and others

Ms. Malabika Roy Dey

... for the petitioner.

Mr. Avinash Kankani

...for the respondent-authorities.

The petitioner challenges impoundment of the petitioner's passport under Section 10(3)(e) and (h) of the Passports Act, 1967.

Learned counsel for the petitioner argues that the impoundment, as communicated to the petitioner on October 3, 2018 (Annexure- P1 at page 13 of the writ petition), was *de hors* the law, since no prior opportunity of hearing was given to the petitioner before taking away the petitioner's civil rights.

Learned counsel further submits that the passport authority did not apply its mind and/or assign any reason in the order of impoundment, which vitiates such order.

The petitioner relies on a Single Bench judgment of the Delhi High Court dated December 8, 2015 in the matter of *Siddhartha Ashish Dey Vs. Union of India and others* for the proposition that it is not in all cases that the pendency of proceedings in a criminal court will entail impounding of a passport; the passport authority is expected to apply its mind whether in the facts and circumstances of the case, a case of impounding of the passport is made out or not. The occasion for the passport authority to impound the passport, notwithstanding the order in criminal proceedings restraining the holder thereof from travelling abroad save with the permission of the Court, may arise where notwithstanding said order, there is danger of the person absconding.

Learned counsel further relies on a Division Bench judgement of this Court reported at 2004(1) CHN 66 (*Abhijit Sen Vs. Superintendent*), wherein it was held that the proceeding referred to in Section 10(3)(e) is a proceeding in respect of an offence pending before a criminal court. A proceeding is pending before a criminal court as soon as the cognizance is taken. In the said case, the Division Bench

drew a line of distinction between the two kinds of cases: (i) where cognizance can be taken where there is no delay and (ii) where cognizance can be taken only after condoning the delay. In the latter case, in which the delay is condoned and cognizance taken, it is a proceeding pending before a criminal court, the Division Bench held.

Learned counsel for the petitioner places further reliance on the judgment of *Suresh Nanda Vs. C. B. I.* rendered by the Supreme Court of India on January 24, 2008. In the said judgment, the Supreme Court held that, while the police may have power to seize a passport under Section 102 of the Code of Criminal Procedure if it is permissible within the authority given under the said provision, it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the said Act of 1967. If the police seizes a passport, it was held, it must be sent along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for any of the reasons mentioned in Section 10(3) of the 1967 Act. It is thereafter for the passport authority to decide whether to impound the passport or not. It was

further held that since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well-settled, it was held, that any order which has civil consequences must be passed after giving opportunity of hearing to a party vide *State of Orissa Vs. Binapani Devi* (AIR 1967 SC 1269).

Learned counsel appearing for the respondent-authorities relies on a bunch of documents handed over by counsel, including a Look Out Circular (LOC) issued in respect of the writ petitioner on the basis of an intimation by the Family Court at Muzaffarpur to the effect that the writ petitioner is avoiding to appear in the court despite service of summons.

Learned counsel for the respondent-authorities submits that sub-section (3), clauses (e) and (h) of Section 10 of the 1967 Act empowers the passport authority to impound a 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 as well as if it is brought to the notice of the passport authority that a warrant or summons for appearance of the

holder of the passport has been issued by a Court under any law for the time being in force.

In the present context, it is argued, since there was a specific intimation by the Family Court at Muzaffarpur regarding the petitioner avoiding service of summons of such Court, the passport authority acted well within its jurisdiction in impounding the passport.

Learned counsel for the respondent-authorities further submits that the writ petition is not maintainable in view of the availability of an equally efficacious alternative remedy by way of an appeal under Section 11 of the 1967 Act.

At the outset, it is seen that the communication dated October 3, 2018, impounding the petitioner's passport under Section 10(3)(e) and (h) of the 1967 Act, requested the petitioner to submit the petitioner's passport to the passport office with immediate effect. It was further communicated that it was decided to impound the passport of the petitioner. No reason was disclosed in the communication as to why the petitioner's passport was being impounded. However, it appears from the bunch of documents handed over by learned counsel for the respondent-authorities that show cause notice

was issued by the passport authorities on September 12, 2018, which could not be served on the petitioner. Taking judicial notice of such copy of show cause notice, it is seen that the address given therein tallies with the address of the petitioner as given in the writ petition. It appears that the respondent-authorities made an effort to serve a show cause notice on the petitioner, but failed to do so.

Regarding recording of reasons, it is not a mandate, even if the order interdicts some civil rights, to give elaborate reasons, if otherwise there is sufficient basis for the impoundment of a passport.

In the present case, although the communication made to the petitioner does not disclose any basis for the impoundment, sufficient *prima facie* material has been produced before this Court to indicate that the passport authorities reasonably sought to impound the passport, in view of a specific request being made by the Family Court at Muzzafarpur to the effect that the petitioner was avoiding summons.

Section 10(3(h) of the 1967 Act clearly empowers the authorities to impound the passport in the event summons have been issued

for the holder to appear. Such condition is satisfied in the present case.

That apart, the context of the Division Bench judgement cited by learned counsel for the petitioner was different than the present case. In the said case, a distinction was drawn between the two kinds of cases where cognizance can be taken where there is no delay and in cases where such cognizance can be taken only after condoning the delay. In the absence of any materials to satisfy the court that such ratio applies to the present case, it cannot be said that the proposition laid down is relevant for the present adjudication.

As far as the proposition laid down by the learned Single Judge of the Delhi High Court is concerned, with utmost respect, this Court observes that the same does not lay down an absolute proposition set in stone. Undoubtedly, in general, in all cases of pendency of proceedings in Criminal Court, the passport might not be impounded. In the present case, however, there was a specific request, as seen from the documents filed in Court by learned counsel for the respondent-authorities, from the Family Court at Muzaffarpur, indicating that the petitioner has

been avoiding summons. Thus, Clause- (h) of sub-section (3) of Section 10 of the 1967 Act is squarely applicable.

That apart, the passport authority having sufficient power even under clause (e) of sub-section (3) of Section 10 of the 1967 Act to impound the document due to pendency of a criminal proceeding, the said provision, read in conjunction with clause (h), afforded ample basis for the authorities to impound the passport of the petitioner in the present case.

As far as the proposition laid down in the cited decision of the Supreme Court of India is concerned, it was observed by the said Court that the passport authority must give an opportunity of hearing to the concerned person before impounding his passport. The judgment was rendered in a specific context where the court was examining the power of the police to seize a passport under Section 102 of the Code of Criminal Procedure. The proposition relied on by the petitioner, as extricable from paragraph- 13 of the report, was an observation in passing, neither being argued nor decided, even in a cursory manner, by the Supreme Court. Thus, the said observation does not qualify, even as *obiter*

dictum, which would have been binding on this Court. The said observation was general in nature and was rather out of context of the subject matter being decided by the Supreme Court.

The decision is undoubtedly an authority of the lack of power of the police to impound a passport under Section 102 of the Code of Criminal Procedure and for the proposition that the police have to send the passport to the appropriate authority for impounding. Yet, the ratio laid down therein is irrelevant for the present purpose.

It is all the more so in the factual context of the present case, where the petitioner has been alleged to avoid summons by particular court of law where a criminal proceeding is pending against the petitioner.

As regards the availability of alternative remedy, the same is not an absolute bar but a self-imposed restriction on the powers of the High Courts under Article 226 of the Constitution. However, such question need not be gone into by this Court in the present matter, since, upon the invitation of the petitioner to adjudicate the matter on merits, this Court considered the materials on

record and is of the firm opinion that there is no illegality or irregularity in the present case regarding the exercise of power under Section 10 of the 1967 Act by the respondents.

In any event, the stipulated limitation period for filing a statutory appeal against the impugned decision is long over. The petitioner, having consciously taken recourse to the alternative remedy by way of this writ petition, cannot be permitted further to approach the appellate authority at this belated stage.

In such view of the matter, W. P. A. 4743 of 2020 is dismissed. CAN 1 of 2020 (CAN 3623 of 2020) is disposed of accordingly.

It is made clear that in the event the petitioner responds to the summons issued by the Family Court at Muzaffarpur and approaches such court for reversal of the intimation for impounding of passport, it will be open to the Family Court to revoke such intimation. It will further be open to the petitioner to move the passport authorities subsequently for issuance of fresh passport and /or for recall of the order of impoundment, in the event the basis of such impoundment is removed in due course of law. If such approach is made, the observations made

hereinabove shall not preclude the authorities from issuing a fresh passport to the petitioner and/or recalling its order of impoundment.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)