

BR
11

21.4.
2021

W.P.A 8637 of 2020

Souvik Mukhejee

-vs-

**The Additional Secretary and Chief Passport Officer,
Passport Seva Programme Division, Ministry of
External Affairs , Union of India and Others.
(Via Video Conference)**

Mr. Kallol Basu,
Mr. Suman Banerjee For the petitioner

Mr. Sutanu Chakraborty For the respondent
No. 3

In this writ application, the petitioner challenges an order dated September 24, 2020 whereby he was intimated that his passport bearing no. Z3547520 had been impounded following a show cause notice issued under Section 10 (3) (e) of the Passport Act, 1967 as a criminal case was pending before a Criminal Court against him.

Mr. Basu, learned advocate appearing for the petitioner submits that the said order impounding the passport of the petitioner cannot be sustained in the eye of law since in this present case the show cause notice was issued on 9th July, 2020, on the ground that a criminal case was pending against the petitioner. Mr. Basu draws the attention of this Court to page 19 of the writ petition wherefrom it appears that cognizance of the relevant criminal case under Sections 448, 341, 323, and 506 of the Indian Penal Code was taken by the Criminal Court on August 9, 2020.

Mr. Basu urges that the said criminal case has been lodged at the instance of mother-in-law of the petitioner with ulterior motive.

Mr. Basu relies upon a judgment of this Court reported at (2004) 1 CHN 66 (**Abhijit Sen –versus- Superintendent (Administration), Regional Passport Officer, Kolkata & Ors.** for the proposition that a criminal case can be said to be pending only after the cognizance of the offence is taken by the competent criminal Court. In the present case since the cognizance was taken by the competent criminal Court after show cause notice dated 9th July, 2020, the order impounding the passport of the petitioner cannot be sustained.

Mr. Basu further submits in course of impounding the passport of the petitioner, he was not given any opportunity of hearing. Mr. Basu relied upon a judgment reported at **2012 SCC online Calcutta 12742** for the proposition that alternative remedy is not a bar to entertain a writ petition in such a case.

The proposition of law is clear. Section 10 (3)(e) of the Passport Act, 1967 can be invoked by the authorities in the event there is a pending criminal case against the passport holder. Since admittedly, in this present case, on the date of issuance of the show cause notice the cognizance of the offence was not taken by the competent criminal Court it cannot be said that there

was a pending criminal proceeding against the petitioner on the date of issuance of show-cause notice.

It has been submitted by the learned advocate for the passport authorities that when the order impounding the passport was passed, cognizance was taken by the competent criminal Court and, therefore, at the time of passing the order impounding there was, admittedly, a pending criminal case against the petitioner. Therefore, the order impounding the passport of the petitioner should not be interfered with by this Court .

I am unable to accept the submission advanced by the passport authorities. The show cause notice was not founded on proper legal footing. The order impounding the passport following the show cause notice, therefore, must fail.

It further appears that the legal position with regard to the impounding a passport in view of pending criminal Court has been explained by a Office Memorandum dated 11th December, 2017 issued by the Chief Passport Officer.

The said circular makes it clear that impounding/revoking of passport under the relevant Sections of the Passport Act, 1967 is purely discretionary in nature. The impounding of passport should be based on the explanation given by the passport holder in response to the show cause notice issued by them.

A passport should not be impounded simply

because a criminal case is said to be pending. The relevant Passport Officer should weigh the merit of the case and use his discretion for impounding the passport.

In view of the discussions made above, I am of the view that the order impounding the passport of the petitioner is not sustainable in the eye of law and the same is set aside.

In view of the discussion made above, this writ petition is disposed of with the following directions:-

- 1) The Regional Passport Officer, Kolkata, the respondent no 2 will be at liberty to issue a fresh show cause notice to the petitioner.
- 2) If such show cause notice is issued, the petitioner should be given adequate opportunity of hearing before the passport authority to explain his case. Such opportunity of hearing will include a personal hearing of the petitioner before the said Regional Passport Officer.
- 3) The Regional Passport Authority will pass a reasoned order with regard to impounding the passport of the petitioner in the light of the office memorandum dated December 11, 2017 issued by the Chief Passport Officer.
- 4) The entire exercise should be completed within a period of two months from the date of communication of this order.

This writ petition being WPA No. 8637 of 2020 is disposed of.

(*Kausik Chanda, J.*)