

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CRIMINAL APPELLATE JURISDICTION
 CRIMINAL WRIT PETITION NO.234 OF 2020
 ALONG WITH
 INTERIM APPLICATION (ST.) NO.4183 OF 2021
 IN
 CRIMINAL WRIT PETITION NO.234 OF 2020

Capt. Amol Vasant Kelkar,]
 Residing at, 403/404, Shree Niketan]
 CHS Ltd., above NKGSB Bank Ltd.,]
 HFS Road, Jogeshwari (East), Mumbai]
 – 400 060.] ... **Petitioner**

Versus

1. **Union of India,**]
 Aayankar Bhavan, New Marine]
 Line, Mumbai – 29.]
2. **Regional Passport Officer at**]
Mumbai, having his office at]
 Raheja Tipco Plaaza, Shah]
 Arcadez, Unit – 2/B, Rani Sati]
 Mars, Malad (E), Mumbai – 400]
 097.]
3. **The State of Maharashtra,**]
 (Through Vanrani Police Station]
 at Goregaon (E), Mumbai.)] ... **Respondents**

...

Mrs. Racheeta R. Dhuru with Ms. Amruta Athavale for the petitioner.

Mr. Shashikant Chaudhari with Mr. V.G. Talreja i/b VKGT & Associates for Intervenor/Applicant.

Mr. D.P. Singh for the respondent Nos.1 and 2.

Smt. A.S. Pai, A.P.P. for respondent-State.

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CORAM : S.S. SHINDE &
MANISH PITALE, JJ.

RESERVED ON : 03RD MARCH, 2021

PRONOUNCED ON : 08TH MARCH, 2021.

J U D G M E N T:- [Per: Manish Pitale, J.]

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the rival parties.

2. By this writ petition, the petitioner has challenged the order dated 19/11/2019 passed by the Court of Metropolitan Magistrate, 17th Court, Borivali, Mumbai, whereby an application moved by the petitioner for renewal of passport was allowed, but it was recorded that 'No objection' is granted for renewal of passport of the petitioner for a period of two years.

3. According to the petitioner, he is aggrieved by the said order because renewal of his passport only for a period of two years has adversely affected his prospect of securing a job as a Commercial Pilot.

4. The petitioner is a Professional Pilot, who was working with Jet Airways. The petitioner got married to one Aakanshka in the year 2006 and they have two sons from the wedlock. The marriage ran into rough weather, as a consequence of which, legal proceedings were initiated against the petitioner, including a criminal complaint lodged by the wife of the petitioner against him and his parents for offences punishable under Sections 498A and 406 read with 34 of the Indian Penal Code (**“the IPC”**) bearing FIR No.6 of 2019 dated 09/11/2019 registered at Vanrai Police Station at Goregaon (W), Mumbai.

5. The petitioner filed Writ Petition No.4781 of 2019 seeking quashing of the said FIR, which is pending before this court.

6. In the interregnum, as the passport of the petitioner is to expire in 2024, he sought renewal of the same to meet requirement of fresh employment. Section 6 of the Passports Act, 1967 (**“the said Act”**) pertains to refusal of passports, travel documents, etc. and under Section 6(2)(f) of the said Act, it is provided that the Passport Authority shall refuse to issue passport

on the ground that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. Since the Government noted that the aforesaid provision was creating hardship for citizens, while exercising power under Section 22(a) of the said Act, the Government of India through Ministry of External Affairs, issued a Notification dated 25/08/1993 to exempt citizens from operation of Section 6(2)(f) of the said Act subject to certain conditions. The said notification reads as under:

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**“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 suppression of the notification of the Government of India in the Ministry of External Affairs No.G.S.R. 298(E), dated 14th April, 1976, the Central Government, being of the opinion that it is necessary in the 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 traveled 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/401/37/39]
L.K.PONAPPA, Jt.Secy. (CPV)''*

7. Since the petitioner desired to get his passport renewed, he moved the aforesaid application for renewal of passport before the Magistrate. By the impugned order, the Magistrate allowed the application, but granted 'no objection' for renewal of the passport only for a period of two years. The petitioner is aggrieved by the said order because unless his passport is renewed for a period of 10 years, his application for seeking employment as a Commercial Pilot will not be entertained by the Commercial Airlines. It is the contention of the petitioner that the Magistrate ought to have directed renewal of passport as per Rules.

8. Mrs. Dhuru, learned counsel appearing for the petitioner, submitted that the Magistrate erred in limiting renewal of the passport of the petitioner only for a period of two years and this has resulted in a situation where the petitioner is not able to find employment as a Commercial Pilot. It is further submitted that the Magistrate ought to have passed the order for renewal of passport as per Rules.

9. Learned counsel placed reliance on judgments of this Court in the case of Roshan Lawrence Menezes v. Union of India & Ors.¹, Jindal D/o. Nishith Dalal v. State of Maharashtra & Anr.² as also judgment and order in Narendra K. Ambwani v. Union of India & Ors.³.

10. Apart from this, learned counsel appearing for the petitioner also submitted that the offences in the present case were registered against the petitioner and his parents due to matrimonial discord between the petitioner and his wife. It was submitted that the petitioner was required to pay maintenance of Rs.80,000/- per month to his two children and also to pay instalments of the loan availed by the petitioner for purchase of an apartment in which his estranged wife is staying with the children. It is submitted that when the petitioner is unable to secure employment due to non-renewal of his passport for 10

¹ Order dated 07/08/2020 in Writ Petition (L) No.699 of 2020

² Order dated 03/02/2021 in Writ Petition No.174 of 2021

³ 2014 (4) Bom. C.R. 281

years, it is hampering his ability to pay the amount towards maintenance of his children as also the loan instalment in respect of the said apartment. On this basis, it was submitted that the impugned order was required to be quashed or modified appropriately to grant relief to the petitioner.

11. Mr.Singh, learned counsel appearing for respondent Nos.1 and 2, submitted that since the Magistrate has specifically directed renewal of the passport of the petitioner only for two years, they are bound to follow the order of the Magistrate.

12. Mr.Chaudhari, appeared in support of the application filed for intervention on behalf of the wife of the petitioner. At the outset, we made it clear to the said counsel that the wife of the petitioner was not entitled to intervene in the present matter which pertains to the question of renewal of the passport. But, learned counsel appearing for the applicant submitted that he desired to bring to the notice of this court certain facts pertaining to the defaults committed by the petitioner towards payments of the said amount of maintenance and loan instalments pertaining to the apartment. On this basis, it was submitted that even though the applicant could not specifically oppose the prayer made in the present writ petition, this court may pass appropriate directions considering the defaults being committed by the petitioner.

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13. The question for consideration before this court in this petition is as to whether the prayer of the petitioner for grant of renewal of his passport for a period of 10 years can be granted. There can be no doubt about the fact that the petitioner was required to approach the Magistrate for an appropriate order for renewal of his passport in view of the aforesaid Notification dated 25/08/1993 issued by the respondent-Union of India read with Section 6(2)(f) of the said Act. The said Notification exempts citizens from the rigors of Section 6(2)(f) of the said Act upon conditions specified in the said Notification. As per the said Notification, the passport can be issued to a citizen even if there are criminal proceedings pending against such a citizen, for a period that may be specified, or where no period is specified, the passport shall be issued for a period of 1 year. Therefore, learned counsel appearing for respondent Nos.1 and 2 is justified in submitting that since the Magistrate in the present case has specified renewal of passport only for two years. The said respondents stood bound by the order.

14. In this backdrop, when the submissions advanced on behalf of respondent Nos.1 and 2 are considered and judgments on which learned counsel for the petitioner has placed reliance are perused, it is found that the said cases, which came up for consideration before this court, the Magistrate had passed orders

directing that the passport of the applicant be renewed as per the said Act and the Rules framed thereunder. It was found that under Rule 12 of the said Rules, the passport could be renewed for a period of 10 years. This court held in the said judgments that when the Magistrate passed such orders, the Passport Authorities could not limit the duration for which the passport was to be issued.

15. But, in the present case, the impugned order passed by the Magistrate specifically directs that 'No objection' was being granted for a period of two years. A perusal of the impugned order shows that the Magistrate has taken note of the pendency of the criminal proceedings against the petitioner under Section 406 and 498A read with 34 of the IPC and, thereafter, the Magistrate has recorded that in his opinion, the prosecution shall not suffer any hardship if 'no objection' is granted for renewal of the passport. Thereafter, the application is allowed in the interest of justice but, such 'no objection' for renewal of passport was granted only for two years. There is no reason assigned in the impugned order issued by the Magistrate as to why 'no objection' for renewal of passport was granted only for two years.

16. We are of the opinion that the Magistrate ought to have assigned reasons if he was of the opinion that renewal of the passport of the petitioner had to be granted only for a limited

period of two years. Since, no such reasons have been assigned, the said direction for renewal of passport for a limited period is rendered erroneous. The Magistrate could very well have said that the passport be renewed as per Rules. By application of law laid down by this court in the above judgments, it would necessarily mean that the passport of the petitioner would be renewed for a period of 10 years, subject to the petitioner satisfying other requirements as per the said Act and Rules framed thereunder. Therefore, we find that the impugned order passed by the Magistrate to that extent is not sustainable and it needs to be modified.

17. But, at the same time, we cannot ignore the claim of the applicant wife that the petitioner has defaulted on payment of maintenance amount towards the children and the instalments pertaining to the loan concerning the apartment in which his estranged wife and children are residing. It is pointed out on behalf of the petitioner that since he has been out of employment and he has not been able to secure employment because his passport is not renewed for 10 years, he has not been able to pay the aforesaid instalments for the past few months, although he has paid school fees of the children.

18. During the hearing of the present petition, learned counsel appearing for the petitioner as well as the applicant seeking

intervention submitted that they would take instructions from their respective clients for making statements before this court as regards the steps that would be taken by the petitioner in respect of the said defaults. Upon instructions, learned counsel for the petitioner submitted that the petitioner will make all efforts to secure a job as Commercial Pilot upon renewal of his passport and that he will pay the said instalments for a period of six months from April, 2021 onwards and that he will also deposit balance school fees, if any, of the children. Learned counsel appearing for the applicant seeking intervention submitted that this court ought to record the said statements and that appropriate conditions may be imposed even if the relief sought by the petitioner was to be granted.

19. In view of the above, we are inclined to allow the writ petition subject to certain conditions.

- (i) Accordingly, the writ petition is allowed. The impugned order dated 19/11/2019 passed by the Metropolitan Magistrate, is modified to the extent that clause (2) of the said order is set aside and it is directed that the passport of the petitioner shall be renewed for a period of 10 years, subject to the petitioner satisfying other requirements as per the said Act and the Rules

framed thereunder.

- (ii) It is further directed that the petitioner shall pay instalments pertaining to the said apartment for a period of six months from April, 2021 onwards and that he shall pay the balance school fees, if any, of the children.

20. Rule is made absolute. The writ petition is disposed of accordingly.

21. In view of the disposal of the writ petition, Interim Application (St.) No.4183 of 2021 stands disposed of.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)