

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

CWP-6508-2020

Date of Decision: 20.09.2021

Shiv Nath

....Petitioner

VS

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Tahaf Bains, Advocate
for the petitioner

Mr. Amit Sharma, Advocate
for respondent-Union of India

SUDHIR MITTAL, J. (Oral)

The petitioner is aggrieved because his application dated 10.07.2018 for issuance of a passport had been closed.

Proceedings on the application dated 10.07.2018 were closed on 06.09.2018. The petitioner sent a legal notice dated 12.12.2018, which was responded to vide communication dated 01.01.2019. It was stated that the application for issuance of a fresh passport could not be entertained on account of provision of Section 6(2)(e) of the Passports Act, 1967.

During the pendency of this writ petition, the petitioner submitted another application dated 11.08.2020. This application has also been rejected vide order dated 26.08.2021 on the ground that Section 6(2)(f) of the Passports Act, 1967 would apply as appeal is pending.

Learned counsel for the petitioner has submitted that bar under Section 6(2)(e) of the Act operates for a period of 5 years only. The petitioner was convicted vide order dated 17.05.2014 and the period of 5 years has elapsed on 16.05.2019. Thus, application dated 11.08.2020 should have been considered.

Section 6(2)(f) of the Act would not get attracted as the pendency of an appeal against conviction would not amount to pendency of criminal proceedings. He relies upon a judgment of the Delhi High Court in *Ashok Kumar Sharma vs. The Regional Passport Officer and others, 2019(256) DLT 437*.

Learned counsel for the respondents submits that the matter has been considered by the Ministry of External Affairs and communication dated 26.08.2021 has been sent to respondent No.3 stating therein that Section 6(2)(f) of the Act is attracted. Since the decision has been taken by the Ministry, the application dated 11.08.2020 cannot be processed.

A perusal of communication dated 26.08.2021 (Annexure R-4) makes it clear that even the respondents are convinced that Section 6(2)(e) of the Act is not applicable. Section 6(2)(f) of the Act applies only if criminal proceedings are pending against an applicant. The pendency of an appeal against conviction would not mean that criminal proceedings are pending as on date of application. An order of conviction has already been passed and, thus, the only relevant consideration would be the period of 5 years as provided by Section 6(2)(e) of the Act. Even in case of dismissal of the appeal, the petitioner would not suffer any further liability.

The writ petition is accordingly allowed. Impugned orders dated 01.01.2019 and 30.07.2019 are quashed. Communications dated 06.07.2021 (Annexure R-3) and 26.08.2021 (Annexure R-4) are also quashed. The respondents are directed to consider the application dated 11.08.2020 in accordance with law and take action thereupon as early as possible.

(SUDHIR MITTAL)
JUDGE

20.09.2021
Poonam Negi

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No