

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4094 OF 2019

Manoj T.C. s/o C. Sathyabhama Varma ...Petitioner
Versus
Renuka Manoj Verma and Anr. ...Respondents

Mr. Rajesh Singh a/w Ms. Priti Mahajan Patil, Mr. Iftekhar Sayed, Mr. Rahul Singh, Mr. Nadim Mauk and Mr. Shubham Singh, Advocate for Petitioner.

Mr. Navin Prem Sachanandani, Advocate for the Respondent No.1.

Mr. A.R. Patil, APP for the Respondent–State.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th JULY, 2022.

PER COURT:-

1. The marriage between Petitioner and Respondent No.1 was solemnized on 10th July, 1990 at Chembur, Mumbai. The Respondent No.1 filed a private complaint before the Court of J.M.F.C., 6th Court, Thane alleging offence under Section 494 of Indian Penal Code (for short 'IPC'). Process was issued by the Court for the said offence. The Respondent No.1 preferred application for issuing warrant against the Petitioner on 16th July, 2016. The learned Magistrate by order dated 16th July, 2016 issued warrant against Petitioner. The Petitioner preferred application for cancellation of warrant on 19th August, 2017. The Petitioner received letter dated 5th August, 2016 from Regional Passport Office

stating that Petitioner's passport has been impounded on the complaint filed by Respondent No.1 with passport authority. The Petitioner filed writ petition before High Court of Kerala at Ernakulam. Vide order dated 20th December, 2017, the High Court directed that if the Petitioner obtains permission from the Court of J.M.F.C., Thane, to leave India to pursue his avocation, the Competent Authority under the Passport Act shall process the application preferred by the Petitioner for fresh passport in accordance with GSR 570(E) dated 25th August, 1993 issued by the Central Government under the Passport Act. If the Petitioner produces the order of the Court, fresh passport shall be issued within a week.

2. The Petitioner preferred an application seeking permission to travel out of India and issuing direction to passport authority of Cochin to release passport. The application was opposed by complainant (Respondent No.1) contending that the Petitioner should satisfy the Court about reason for travelling abroad with documents. If he intends to travel for the purpose of employment, he should produce work contract. If contract is for one year, permission should be granted for one year. The learned Magistrate, allowed the said application vide order dated 12th April, 2018. The Petitioner was permitted to travel abroad and it was directed that

passport be issued for one year. Petitioner was directed to provide schedule of departure and arrival and other details about address of work and residence in Kenya. The Petitioner was to be represented by Advocate before Court. He was directed to give undertaking to Court that if required he shall attend the Court as and when called upon.

3. Subsequently, the Petitioner preferred application Exh.38 before learned J.M.F.C. at Thane in R.C.C. No.677 of 2016 for extension of relief granted by order dated 12th April, 2018 and seeking direction to passport authority of Cochin to renew passport. Vide order dated 2nd February, 2019, the application was allowed and order dated 12th April, 2018 was extended and it was directed that passport of Petitioner be renewed, with extension of one year. By preferring this petition, the Petitioner is seeking modification of order dated 12th April, 2018 and 2nd February, 2019 passed by J.M.F.C., Thane in Misc. Application at Exh.31 and 38 in RCC No.677 of 2016 and permit the Petitioner to apply for renewal of his passport for minimum ten years and also to allow the Petitioner to travel abroad for five years.

4. Learned Advocate for Petitioner submitted that the Petitioner is employed as consultant with Ilanz Limited having its

office at Nairobi, Kenya. The said company is dealing with the consultation of I.C.T., sales and marketing. The Petitioner is required to travel frequently in relation to his employment. By conditional order dated 12th April, 2018 the Court allowed the Petitioner to renew his passport only for one year and permitted the Petitioner to travel abroad for a limited period of one year. The conditional order dated 12th April, 2018 and 2nd February, 2019 passed by learned J.M.F.C., 6th Court, Thane be modified and the Petitioner may be permitted to apply for renewal of his passport for a minimum period of ten years. The Petitioner may be permitted to travel abroad atleast for a period of five years. Since the Petitioner is required to travel abroad frequently, it is inconvenient for him to apply to passport authority before expiry of each year to renew his passport. Due to conditional order dated 12th April, 2018, the passport authority is not issuing passport for more than one year. In case of overseas travel the validity of the passport has to be more than six months and in given case the Petitioner hardly gets the passport utility for six months. Reliance is placed on the decision of this Court in the case of *Mr. Samip Nitin Ranjani Vs. Union India and ors., dated 30th November, 2016 passed in Writ Petition No.12784 of 2016.*

5. Learned Advocate for Respondent No.1 submitted that, proceedings are pending against the Petitioner. The prayer for modification of the aforesaid orders may not be granted. The Petitioner is required to face the proceedings in the trial Court. Reliance is placed on the decision of this Court in the case of *Deepak Dwarkasingh Chhabria V/s. Union of India and another*, AIR 1997 Bombay 181 and Order dated 17th January, 2018 of Mr. Manoj T.C. Varma V/s. Mrs. Renuka Manoj Varma, passed in Writ Petition No.12953 of 2016.

6. The dispute between the Petitioner and Respondent No.1 is on account of matrimonial differences. The Petitioner is required to travel abroad frequently. The learned Magistrate has permitted him to travel abroad and issued directions with regard to issuance of passport for a period of one year. The Petitioner is not charged for commission of heinous crime. Renewal of passport for one year is causing in convenience to the Petitioner. He is working in Kenya. The High Court of Kerala had directed that, Petitioner's application can be processed for fresh passport. The family disputes and civil disputes between the parties pending before Court cannot be impediment for processing the application by Petitioner for fresh passport. If the Petitioner obtains permission from the Court of J.M.F.C., Thane, to leave India to pursue his avocation, the

Competent Authority under the Passport Act shall process the application preferred by the Petitioner for fresh passport. The learned Magistrate vide order dated 12th April, 2018, observed that accused had allegedly committed offence under Section 494 IPC. Exemption from personal attendance is granted from time to time. Refusal to grant permission would affect fundamental right of the accused to travel abroad. Considering the nature of proceedings pending against the Petitioner passport can be issued for a period of five years. In the case of *Samip Ranjani (Supra)* the grievance of the Petitioner was that the passport authorities instead of renewing the passport for a period of ten years, has renewed the passport for a period of one year. Court relied upon decision of this Court in the case of *Narendra Ambwani V/s. Union of India* (Writ Petition No.361 of 2014) and held that whenever a criminal complaint is pending against a person, who wishes to travel abroad, the Magistrate has jurisdiction to impose conditions regarding his right to travel abroad. When an application is made for renewal of passport, the passport authorities have to adhere to the provisions of the Act. The Central Government has issued a notification by exercising power vested in them under Section 6(2)(f) of the Passport Act, 1967 and in the said notification it has been mentioned that, the passport can be renewed for a period of one

year. The passport authorities do not have right to decide whether the accused has right to travel abroad or not and that right is vested in Magistrate. The Court directed renewal of passport for ten years. In the case of *Deepak Dwarkasingh Chhabria (Supra)*, it was observed that, an application of passport is not liable to be refused on the ground of pendency of criminal case if the applicant obtains permission from Court for travelling outside India. The passport authority cannot reject the application for passport mechanically on the ground of pendency of criminal case against the applicant. It will be the duty of the passport authority to bring the relevant notification to apply to the concerned criminal Court for permission to travel abroad. If the applicant obtains such permission from criminal Court where his case is pending, the passport authority will be duty bound to issue passport in terms of order of Court subject to conditions of notifications.

ORDER

- i. Writ Petition is allowed and disposed off.
- ii. The order dated 12th April, 2018 passed by Judicial Magistrate, First Class, 6th Court, Thane in R.C.C. No.677 of 2016 below Exhibit-31 issuing directions to issue passport to the Petitioner for one year and order dated 2nd February, 2019

passed by Judicial Magistrate, First Class, 6th Court, Thane in R.C.C. No.677 of 2016 below Exh.38 allowing renewal of passport by extending order dated 12th April, 2018 for further one year, are modified with direction that Passport authority may renew passport of Petitioner for five years.

[PRAKASH D. NAIK, J.]