

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

211

CWP No.3320 of 2022

Date of Decision: 28.09.2022

Manpreet Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Ajay Pal Singh Rehan, Advocate, for the petitioner.

Ms. Gehna Vaishnavi, Advocate, for respondent Nos.1 and 2.

Mr. Rajesh Mehta, Addl. Advocate General, Punjab
for respondent Nos.3 and 4.

VIKAS SURI, J. (Oral)

The grievance raised in this petition preferred under Article 226 of the Constitution of India, is that the petitioner who holds passport bearing No.V1368778 issued on 09.09.2021 valid till 08.09.2031, had applied for 'Police Clearance Certificate' (PCC) in the requisite form given in Schedule-III to the Passport Rules, 1980. The said application was made on 14.10.2021. In response to the said application, vide letter dated 29.10.2021 (Annexure P-4) the petitioner was put to notice with regard to FIR No.123 dated 09.11.2018 under Sections 302, 323, 324, 148, 149 IPC registered at Police Station Sadar, District Gurdaspur and accordingly, the petitioner was called upon to show cause as to why proceedings to impound the passport under Sections 10(3)(b) and 12 (1)(b) of the Passports Act, 1967 (in short "the Act"), should not be initiated against him. He was also directed to surrender the passport.

Learned counsel for the petitioner submits that as on 17.02.2022, as per online status tracker (Annexure P-7), the status shown against the said application was “Police Verification Report is not clear and application is under review at Regional Passport Office”.

The petitioner has pleaded that in the FIR case referred to hereinabove, after investigation the petitioner was found to be innocent and thus in the final report under Section 173 Cr.P.C., he was kept in Column No.2. However, the concerned Court summoned the petitioner under Section 319 Cr.P.C. as an additional accused vide order dated 05.08.2019. The said order was assailed by way of CRR-2128-2019, which revision petition was allowed on 20.09.2019 and the impugned order was set aside. The relevant portion of the said order reads as under:-

“As per the allegations in the FIR, Manpreet Singh-petitioner had given a kirpan blow to deceased Ashok Kumar-brother of the first informant, which hit on elbow of his right arm. A bare look at the medico-legal report (Annexure P-2) shows that injury No.5 is on the right forearm just below the elbow joint. However, the same is with blunt weapon. Still further, additional accused under Section 319 Cr.P.C. can be summoned only when the Court finds that more than *prima-facie* case is made out against him. At this stage, only statement of Baldev Raj has been recorded in part.

Keeping in view the aforesaid facts, the order under challenge is set-aside. The Court shall be at liberty to pass a fresh order at an appropriate stage while taking into consideration the entire material including medico-legal report.

The petition stands disposed of.”

It is notable that as on the date of application for issuance of the PCC, i.e. 14.10.2021, there was no criminal proceeding pending against the petitioner. It is no longer *res-integra* that criminal proceedings under the

Act are said to be pending only when the concerned criminal Court takes cognizance of the offence alleged against the accused, i.e. when charge is framed against the accused. Mere registration of FIR or the *challan* pending consideration by the concerned Court, would not constitute criminal proceedings referred to in Section 6(2)(f) of the Act. The aforesaid proposition stands settled by a coordinate Bench in ***Daler Singh vs. Union of India and others 2015 (8) RCR (Criminal) 618*** and ***Sahib Jaskaran Singh vs. Union of India and others, 2016 (2) RCR (Civil) 798***.

On notice of motion, reply was filed on behalf of respondent Nos.1 and 2, whereby the passport authority has referred to the adverse police report and also the additional information sought from the police authorities vide letter dated 02.03.2022 (Annexure R-1/1), specifically bringing to the notice of the police authorities the aforesaid factual clarification submitted by the petitioner.

In response to the aforesaid communication, vide letter dated 23.02.2022 it has been maintained by the police that after investigation, Manpreet Singh (petitioner) son of Daljit Singh, resident of Village and Post Office Jaura Chhattran, was found to be innocent by Sh. Dev Dutt Sharma, DSP, City Gurdaspur and *Zimini* No.4-A dated 16.11.2018 was also recorded in that regard. In the same narration, it has also been added that *challan* of the case has been prepared on 17.01.2019, which was submitted before the concerned Court on 20.02.2019 and the same is pending consideration. The said communication further records that the local police has no objection in giving the PCC to Manpreet Singh, if the Hon'ble Court allows to make PCC.

It is not clear from the said letter whether despite having found the petitioner to be innocent in investigation and till date no *challan* having

been presented against him, mere registration of FIR in which the petitioner was implicated at the initial stage, could come in the way to deny the petitioner a clean character/police clearance certificate (PCC), in the absence of any other incriminating material against him.

Likewise, on being put to notice, additional affidavit of Sukhpal Singh, PPS, Deputy Superintendent of Police, City, Gurdaspur, on behalf of respondent Nos.3 and 4 has been filed. The aforementioned position has been reiterated in the said affidavit, the relevant portion thereof reads as under:-

“6. That it is humbly submitted that the father of the petitioner had filed a representation dated 01.12.2018 to the SSP/Gurdaspur regarding his son innocent in this case. The SSP/Gurdaspur issued direction to Sh. Dev Dutt, PPS the then Deputy Superintendent of Police, City Gurdaspur to during the investigation, verify the complaint and take necessary action as per law and justice. During the investigation of the then DSP/City/Gurdaspur, the petitioner was found to be innocent in this case.

7. That it is humbly submitted that after the investigation, the challan was also presented in the Ld. Court on 20.02.2019. It is further submitted that co-accused Avtar Singh was declared proclaimed offender by the Ld. Court on 25.03.2019.

8. That it is humbly submitted that the complaint party had filed an application under Section 319 Cr.P.C. for summoning of innocent persons i.e. petitioner and Baljinder Singh @ Laddi. The learned Court issued summon to the petitioner and co-accused Baljinder Singh @ Laddi vide order dated 06.08.2019. The petitioner had filed a petition in the Hon'ble High court against the above said order vide CRR No.2182 of 2019. The Hon'ble High Court passed the order dated 20.09.2019 that ***“...Keeping in view the aforesaid facts, the order under challenge is set aside. The Court shall be at liberty to pass a fresh order at an appropriate stage while taking into consideration the entire material including medico-legal report.”***

9. That it is humbly submitted that the in compliance of order dated 20.09.2019, the Ld. Court passed the order dated 30.09.2019 that ***“Accused produced through VC. They be produced in Court 16.10.2019. As per report of Ahlmad order received from Hon’ble High Court. Perusal of the order dated 20.09.2019 in CR No.2182 of 2019 O&M. Whereby vide Order dated 05.08.2019 Manpreet Singh (Petitioner) was summoned as additional accused. The said order has been set aside.”***

10. That it is humbly submitted that the case is pending in the Ld. Court, which is fixed for 23.05.2022 for prosecution evidence.”

It is apparent from the record that since issuance of the letter dated 22.03.2022 (Annexure R-1/2) and filing of the above noticed affidavit dated 16.05.2022 before this Court in the present proceedings, the police authorities seem to have apparently realized that the adverse report, initially submitted to the passport authorities, is not sustainable in law and as such a soft stand has been taken in the additional affidavit. Moreover, the said affidavit does not disclose any additional material or ground against the petitioner to deny him the relief for grant of police clearance certificate (PCC), as per law.

Heard learned counsel for the parties and with their able assistance I have perused the record.

Learned counsel for respondent Nos.1 and 2 submits that as per established procedure, though the Police Clearance Certificate (PCC) is processed and issued by the passport authority, but role of the said authority is limited to endorsement of the police clearance certificate on the passport, as mandated under the rule. Nonetheless, initiation and clearance for the said certificate, mandatorily has to be from the police authorities, i.e. respondent Nos.3 and 4.

Learned Addl. Advocate General, Punjab, on instructions from ASI Kulwant Singh, posted at Police Station Sadar, Gurdaspur, who has after verification from the Superintendent of Police (Detective), the concerned Court through the Naib Court and the concerned District Attorney, i.e. the Prosecutor in the said FIR case, submitted that the record has been got re-checked and even as on date, there is nothing incriminating against the petitioner. The petitioners has also not been summoned again by the concerned Court, in terms of the liberty granted by this Court vide order dated 20.09.2019 (Annexure P-2).

In view of the same, a categoric stand has been taken before this Court that the police authorities have no objection in giving PCC to Manpreet Singh, as was their stand reflected in letter dated 22.03.2022 (Annexure R-1/2), though it was stated if the Hon'ble Court allowed.

On a categoric query raised regarding the above, it is unequivocally stated at the Bar that the afore-noticed rider in the letter dated 22.03.2022 is withdrawn, as there is nothing incriminating against the petitioner even on date to disentitle him from the relief sought in this petition.

In view of the above, the present writ petition is disposed of with a direction to respondent No.3 to once again examine the matter in detail and thereafter, if still nothing incriminating is found against the petitioner and there is no impediment in doing so, the requisite police verification report be submitted to respondent No.2 within two weeks from the receipt of a copy of this order. Thereafter, respondent No.2 without further loss of time would take necessary steps to process the application of the petitioner for issuance of PCC and the said process be also completed

within a period of two weeks from the date of receipt of the police verification report from the police authorities.

Before parting with this judgment, it may be noticed that the manner in which the police authorities have conducted themselves and not having thoroughly looked into the matter and given the complete correct picture to the passport authorities at the first instance or before this Court, cannot be overlooked.

Accordingly, respondent No.3 is directed to enquire into the matter regarding standard procedures in place and functioning of the officials responsible for submitting police verification report to the passport authorities and suggest the reforms needed, if any. The aforesaid exercise be undertaken forthwith and completed expeditiously, preferably within four months from the date of receipt of a copy of this order. Necessary corrective measures be implemented promptly thereafter.

The writ petition is disposed of in the aforesaid terms.

(VIKAS SURI)
JUDGE

September 28, 2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No