

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

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CWP No.4384 of 2022

Date of decision: 29.10.2022

Lakhbir Kaur

....Petitioner

V/s

Union of India and others

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Harjass Sandhu, Advocate, for
Mr. G.S. Bajwa, Advocate, for the petitioner.

Ms. Anju Arora, Advocate, for
Mr. Alisha Arora, Advocate for respondent Nos.1 and 2.

Ms. Ambika Bedi, AAG, for respondent Nos.3 and 4.

VIKAS SURI, J. (Oral)

The petitioner has invoked jurisdiction of this Court by filing the present petition under Article 226/227 of the Constitution of India with the grievance that without there being any legal impediment, passport is not being re-issued to her. Thus, the petitioner seeks a writ in the nature of mandamus, directing the passport authorities to issue passport to her after renewal.

Succinctly, material facts that need to be noticed are that the petitioner was holder of a valid passport since 13.03.2002, which was further re-issued on 27.03.2012 and as such was valid up to 26.03.2022 (Annexure P-1). During the validity of the passport, petitioner applied for re-issue of the same for a further period of 10 years on 29.10.2021 (Annexure P-2). Accordingly, appointment was taken for appearing before the Regional

Passport Office, Jalandhar, which was scheduled for 29.10.2021 (Annexure P-3). Petitioner appeared before the passport authority on the scheduled date and time. The passport authority vide letter dated 12.11.2021 (Annexure P-4), sought clarification from the petitioner with regard to case FIR No.331 dated 01.10.2008 under Sections 420 and 406 IPC, registered at Police Station City Kapurthala. The petitioner responded to the said letter and submitted the order dated 19.02.2008 (Annexure P-5), passed by this Court and order dated 13.06.2016 (Annexure P-6), passed by the Court of Ms. Manpreet Kaur, Chief Judicial Magistrate, Kapurthala. The grievance of the petitioner is that despite having supplied copy of the aforesaid orders, no response was received in that regard and neither has the passport authority re-issued the passport to her.

The categoric stand before this Court is that the passport authority cannot refuse to issue a passport on any other ground other than those specified in Section 6(2) of the Passports Act, 1967. On the said premises, it is urged that the police after investigation in the above-noticed FIR, had found the petitioner and her husband to be innocent and as such the cancellation report was filed before the concerned Court.

On notice of motion being issued, respondent Nos.1 and 2 have filed short reply by way of affidavit of Krishan Kumar, Assistant Passport Officer, RPO, Jalandhar, wherein it is submitted that the petitioner had not disclosed the pendency of the criminal proceedings in case FIR No.331 dated 01.10.2008 (supra) and as such, was guilty of suppressing material information. It was also submitted that the police has marked the police verification report (PVR) of the petitioner as adverse, with the following remarks:-

“FIR NO.331 DATE 01-10-2008 U/S 420, 406 IPC PS

CITY KAPURTHALA IS REGISTERED. CANCELLATION REPORT WAS INTERED IN PS CITY KPT ON DATE 21-9-09 BUT IT WAS NOT SEND TO THE COURT.”

Reference has also been made to communication dated 07.07.2022 purporting to be the letter from SHO District Kapurthala (*sic.*), wherein the specific recommendation is that the passport should not be issued to the petitioner. However a copy of the said letter has not been placed on record, rather a copy of another letter dated 21.04.2022 has been appended as Annexure R-2, which shows that the same has been sent by the SSP, District Kapurthala, to the Regional Passport Officer, Jalandhar. The said letter reads as under:-

“In the above said subject, it is requested that the applicant Lakhbir Kaur daughter of Ajit Singh wife of Paramjit Singh resident of H.No.333/10, Street No.03, Mohalla Santpura, Police Station City Kapurthala, District Kapurthala (Punjab) registered Case No.331 Dated 01.10.2008 under Section 420, 406 Police Station City Kapurthala, report was obtained from the Chief Officer Police Station City Kapurthala District Kapurthala. From which it was found that this case was filed by Kulwant Singh son of Nirmal Singh resident of Kajali District Kapurthala. Now due to the mutual compromise of both the parties in this case, the report of Akhraj Officer Police Station City Kapurthal has been rejected (*sic.*-presented) on 21.09.2009, which is pending for approval of the Hon’ble Court. The report of the Chief Officer of Police Station City Kapurthala is attached herewith. Sd/- Sr. Superintendent of Police, Kapurthala.”

The short reply was concluded by stating that the passport to the petitioner cannot be issued in the absence of clear police verification report or permission from the concerned Court as per notification dated 25.08.1993.

Vide order dated 21.09.2022, learned State counsel was directed to file a status report with regard to the afore-noticed FIR and it was also to

be specifically stated therein whether any charge has been framed against the petitioner or not. In deference to the aforesaid order passed by this Court, status report dated 29.10.2022 has been filed in Court, which is taken on record. A copy of the same has been furnished to other counsels appearing in this case. The relevant portion of the said status report reads as under:-

“2. That present FIR No.331 dated 01.10.2008 u/s 420/406 IPC was registered against Paramjit Singh and Lakhbir Kaur i.e. petitioner his wife on the basis of complaint filed by Kulwant Singh wherein he stated that petitioner alongwith co-accused Paramjit Singh have duped sum of Rs.3,50,000/- from him on the pretext of sending him to Italy. He further stated that he was called at Delhi and was given fake visa of Italy and they failed to send him to Italy and have failed to return the amount as such he requested to take legal action against them.

3. That after registration of FIR co-accused Paramjit Singh filed one application before SSP Kapurthala to declare him innocent and said complaint was enquired by then SP(D) Kapurthala and after enquiry co-accused Paramjit Singh and Lakhvir Kaur were found innocent and upon enquiry Dalvir Singh @ Raju @ Chacha Travel Agent was found guilty and it was recommended to take action against him.

4. The SP(D) forwarded his report to SSP Kapurthala who approved the same and recommended to take action against accused Dalvir Singh @ Raju.

5. That during investigation complainant Kulwant Singh suffered statement before investigating officer that he do not want to take any action against Dalvir Singh @ Raju as he do not know him.

6. That on the basis of enquiry report of then SP(D) Kapurthala and on the basis of statement of complainant Kulwant Singh SHO P.S. City Kapurthala prepared cancellation report in present case.

7. That cancellation report was submitted before the Court of Ld. CJM Kapurthala however same was returned for re-investigation vide order dated 13.06.2016.

8. That thereafter re-investigation was conducted however no allegations surfaced against petitioner and her husband Paramjit Singh as such cancellation report was again prepared on 02.10.2022 by SHO PS City Kapurthala, which is likely to be

presented before Ld. Trial Court.

It is, therefore, prayed that present status report be taken on record, in the interest of justice.”

A perusal of the status report reveals that on the basis of the inquiry report of SP (D), Kapurthala and the statement of the complainant Kulwant Singh, cancellation report was prepared in the FIR case, which was submitted before the concerned Court. However, vide order dated 13.06.2016, the same was returned for re-investigation.

Heard learned counsels for the parties at considerable length and with their able assistance perused the paper-book.

It would be necessary to examine the relevant provisions of the Passports Act, 1967 (in short “the Act”), to decide the present petition.

Section (6) (2) of the Act reads as under:-

“6. Refusal of passports, travel documents. etc.

(1) xxx xxx xxxx

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

- (a) that the applicant is not a citizen of India.,
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,
- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;
- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for

- not less than two years;
- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;
 - (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;
 - (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;
 - (i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

It is contended by learned counsel for the petitioner that the passport authority can refuse to issue a passport on any one or more of the grounds enumerated in sub-section 2 of Section 6 of the Act and on no other ground. It is further submitted that it appears from the record that the passport authority seems to have misconstrued clause (f) of Section 6(2) of the Act. The word ‘proceedings’ used in the said clause has been interpreted by a coordinate Bench of this Court to refer to the proceedings only after the concerned Court has taken cognizance of the offence alleged against the accused/the applicant for issue of passport.

It is contended on behalf of the petitioner that even in the police verification report, the police has categorically mentioned that cancellation report was entered in Police Station, City Kapurthala on 21.09.2009 but was not sent to the Court. A perusal of the letter dated 21.04.2022, which has been placed on record as Annexure R-2, would reveal that the complainant had compromised the matter and the report in that regard had been presented, which is pending approval of the Court.

It is urged that in the FIR case neither *challan* has been presented, nor any charge has been framed against the petitioner, thus, the ground specified in clause (f) of Section 6(2) of the Act would not be attracted and as such, the passport authority is acting outside the framework of law in not issuing the passport to the petitioner.

The legal proposition arising in the present case is no longer *res integra*.

A coordinate *Bench* in ***Daler Singh vs. Union of India and others***, AIR 2015 (Punjab and Haryana) 206 has held with reference to Section 6(2)(f) of the Act that proceedings can be said to be pending before a criminal Court only when cognizance has been taken by the Court. Reliance has been placed on judgment of the Madras High Court in ***Venkatesh Kandasamy vs. Government of India, Ministry of External Affairs, Chennai***, AIR 2015 Mad. 3. The relevant reference in the aforesaid judgment reads as under:-

11. In **Venkatesh Kandasamy Vs. Government of India, Ministry of External Affairs, Chennai, 2015 AIR (Madras) 3**, the Court was concerned with the question as to when can the proceedings be said to be pending before the Criminal Court.

“19. Having taken note of the scheme of the Passports Act, if we now go back to Section 6(2)(f) of the Act, it is seen that after invoking the said provision the first requisite is that proceedings in respect of an offence should be pending before a Criminal Court in India. The question as to what tantamount to proceedings pending before the Criminal Court, had come up for consideration earlier.

*20. In **Suresh Nanda v. C.B.I. [Appeal (Crl.)No.179 of 2008 dated 24.1.2008** by the Supreme Court], the passport of a non resident Indian settled in the United Kingdom, was seized by the Police, when they conducted a search. A first information report was registered on the basis of a sting operation carried out by a news portal. The passport seized during the search was retained by the Central Bureau of Investigation. The Special Judge of the CBI Court directed the release of the passport. On a criminal revision*

filed by the Central Bureau of Investigation, the High Court reversed the order of the Special Court. Therefore, the individual filed a special leave petition before the Supreme Court.

21. *After taking note of the provisions of Section 10(3)(e) of the Passports Act, 1967 and after taking note of the decisions of two Constitution Benches, one in **Satwant Singh Sawhney v. D.Ramarathnam, Assistant Passport Officer [1967 (3) SCR 525]** and **Menaka Gandhi v. Union of India and another [1978 (1) SCC 248]**, the Supreme Court held that the Passports Act, 1967 being a Special Act, the provisions therein would prevail over Section 104 of the Criminal Procedure Code, which confers general power upon the Court to impound any document. The Court also pointed out the distinction between the mere seizure of a passport and the impounding of the same. A seizure is made at a particular moment, when somebody takes into possession of some property. However, if the seized property is retained for some period of time, the retention amounts to impounding. Therefore, the Supreme Court pointed out that while the Police may have the power to seize a passport under Section 102 of the Code, if it is permissible within the authority given therein, it does not have the power to retain or impound the same. The Court also indicated that the moment the Police seizes a passport under Section 102 of the Criminal Procedure Code, they must send it along with a letter to the Passport Authority clearly stating that the seized passport deserves to be impounded for want of reasons mentioned in Section 10(3). It is thereafter for the Passport Authority to decide what to do. Even while taking a decision, the Passport Authority is to give an opportunity of hearing. What is important in the aforesaid decision is that in paragraph 15, the Court indicated that even the Court cannot impound a passport despite the enabling provision in Section 104 of the Code.*

22. *In **Abhijit Sen v. Superintendent [2004 CrL.J. 1281]**, a Division Bench of the Calcutta High Court was concerned with a case where the Passport Authority impounded the passport under Section 10(2)(e), on the ground that a criminal case was pending against the passport holder. The Calcutta High Court held that there are two processes for initiation of a proceeding before a Criminal Court. While the first part is the investigation by the Police, the other part is the direction by the Court. Therefore, after pointing out the condition prescribed in Section 190 of the Criminal Procedure Code for initiation of proceedings, the*

Division Bench of the Calcutta High Court opined that the proceedings before a Magistrate is initiated when cognizance is taken. The Court held that no proceeding can be said to have been initiated under Clause (a) of Section 190 within the meaning of Section 10(2)(3) of the Passports Act.

23. In so far as the case on hand is concerned, all the criminal complaints as against the petitioner are only at the stage of investigation. It is not a case of the Respondent that final reports have been filed in the criminal Courts in any of the criminal complaints, so as to make the case come within the four corners of Section 6(2)(f). Therefore, the impugned order is vitiated by non-application of mind and hence it is liable to be set aside.”

Thus, it has been held that proceedings can be said to be pending before a criminal court only when a cognizance has been taken by the Court.

Reliance has also been placed on ***Sahib Jaskaran Singh vs. Union of India and others*, 2016 (2) RCR (Criminal) 798**, wherein the question under consideration was whether a citizen can be denied the passport merely on the ground that a criminal case is registered against him.

Relying upon **Daler Singh’s** case (supra), it was held as under:-

“10. Taking note of the fact that as per Sections 6(2) and 10 (3) of the Passports Act, 1967, a passport can be refused or revoked or cancelled 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*', and that proceedings in respect of a criminal case can be said to be pending before a criminal court only when cognizance has been taken by the criminal court, it was held that a passport cannot be refused or cancelled only on the ground of registration of an FIR.

11. In the present case, as per the pleadings of the parties, the petitioner's passport is not being released merely on the ground of pendency of the FIR and that the cancellation report submitted by the police has not yet been accepted by the Trial Court. Clearly, this is not a ground for which the passport can be refused or cancelled or impounded.

12. In view of above, this petition is disposed of with a direction to respondent No.4 to release the passport to the petitioner, if there is no other legal impediment, except the

registration of the aforesaid case. However, it is directed that the manner of the use of the passport for travel outside will be subject to the orders of the appropriate criminal court of competent jurisdiction in respect of the FIR registered against the petitioner. The petitioner will himself approach the concerned Court, and seek appropriate directions to travel abroad, if he intends to use the passport for such a purpose.”

In light of the above and the admitted factual position detailed in the latest status report dated 28/29.10.2022 regarding case FIR No.331 dated 01.10.2008 (supra), I am of the considered view that the present case is covered by the ratio of the judgments noticed above.

In view of the above discussion, this petition is allowed and a direction is issued to respondent No.2 to consider the application dated 29.10.2021 (Annexure P-2) for re-issue of the passport in light of the status report dated 28/29.10.2022, in accordance with law. If there is no other legal impediment for issuance of passport, the same be issued expeditiously preferably within a period of one month from the date of receipt of copy of this order.

The writ petition is allowed in the aforesaid terms.

(VIKAS SURI)
JUDGE

October 29, 2022
vcgarg

Whether speaking/reasoned:	Yes
Whether reportable:	No