

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
143**

LPA-480-2022 (O&M)

Date of Decision: July 04, 2022

HARBHAJAN SINGH

...APPELLANT

Versus

UNION OF INDIA AND ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

**Present: Mr. Krishan Kanha, Advocate,
for the appellant.**

**Ms. Neha Sharma, Advocate,
for Union of India.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the order dated 31.03.2022 passed by the learned Single Judge, whereby the writ petition preferred by the appellant (petitioner therein) has been dismissed on the ground that a criminal trial is pending against the appellant and since Section 6 (2) (f) of the Passport Act, 1967 (hereinafter referred to as '1967 Act') stipulates that the competent authority can refuse re-issuance of passport, in case, a criminal trial is pending, so no fault can be found in the action of the respondents in not renewing the passport of the appellant.

It is the contention of the learned counsel for the appellant that Section 6 (2) (f) of the 1967 Act will not be applicable to the case of the appellant, rather it would be covered by Section 6 (2) (e) of the 1967 Act in his favour. He asserts this in the light of the fact that the appellant has been convicted for a period of five years vide judgment dated 23.02.2011 passed

by the learned Sessions Court, SBS Nagar, Nawanshahr under Sections 307, 34, 326, 324, 426 of IPC. He also asserts that an appeal has been preferred i.e. CRA-S-696-SB-2011, which is pending before this Court, in which sentence of the appellant stands suspended. He, on this basis, contends that the order of the learned Single Judge is not sustainable.

On a question being put by this Court as to whether this aspect has been so pleaded in the writ petition, which was preferred before the learned Single Judge by the appellant, to which the counsel has tried to give an explanation that it was not required to be so mentioned as the appellant was not aware as to the ground for non-renewal of his passport. In any case, he asserts that since the conviction of the appellant is beyond a period of five years from the date of submission of the application for renewal of the passport, even Section 6 (2) (e) of the 1967 Act would not be applicable.

This contention of the learned counsel for the appellant cannot be accepted, firstly, for the reason that these facts, which are being sought to be asserted before this Court, were neither pleaded nor brought to the notice of the learned Single Judge. The plea, which has not even been taken before the learned Single Judge, cannot be permitted to be taken and pressed before a Division Bench of the Court in an appeal.

The order, which has been passed by the learned Single Judge, is based upon the pleadings and, therefore, in the given facts and circumstances before the learned Single Judge, the same having been decided on the basis of the pleadings and the assertions of the counsel, who has appeared before the Court, cannot be faulted with. In any case, the present plea, as has been sought to be taken, cannot be accepted as the appeal is pending, which shows that only the sentence of the appellant has

been suspended and the conviction stands. Conviction, in any case, is for a period of five years and that too, for an offence which involves moral turpitude. The reason for non-renewal of the passport of the appellant cannot, therefore, be faulted with.

The appeal is dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANDEEP MOUDGIL)
JUDGE

July 04, 2022
pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No