

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

LPA-702-2023 (O&M)
Date of decision:29.05.2023

Union of India & another

... Appellants

Vs.

Lakhwinder Singh @ Lakhi

... Respondent

**CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.**

Present: Mr. Karan Singh Jund, Central Govt. Counsel,
for the appellant/Union of India.

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SUKHVINDER KAUR, J.

CM-1831-LPA-2023:

Instant application has been filed under Section 5 of the Limitation Act read with Section 151 CPC seeking condonation of 103 days in filing the accompanying appeal.

2. Having regard to the reasons assigned in the application, prayer made in the application is allowed. Delay of 103 days in filing the accompanying appeal is condoned.

Main case:

This LPA is preferred against the order dated 10.02.2023 passed by the learned Single Judge in CWP-26912-2019, whereby learned Single Judge had directed the Passport Authorities to return the passport of the petitioner which was impounded by them and further to pay a cost of Rs.20,000/- to the respondent within a period of three months from the date of passing of the order.

2. Briefly stated, facts of the case are that the respondent was convicted by the learned Additional Sessions Judge, SBS Nagar vide judgment dated 12.06.2010, under Sections 459/394 IPC. He was ordered to be sentenced to undergo RI for a period of 3 years and to pay fine of Rs.2000/-. He challenged the said judgment before this Court by way of filing CRA-S-1722-SB-2010, which stands admitted and the sentence awarded to the respondent was suspended. The respondent worked in Malaysia and during the pendency of the appeal, he travelled and worked at Malaysia and returned back to India on 06.09.2016. After the expiry of earlier Passport No.G4031319 which was valid from 24.07.2017 to 23.07.2017, he was issued renewed passport No.P5098135 by the Republic of India on 05.02.2017 valid up to 04.02.2027. The respondent was married to Paramjit on 09.03.2018, who is a permanent resident of Germany. His wife was pregnant and expected date of delivery was in second week of December, 2018. Accordingly, the respondent applied Visa under the category of family re-union, which was granted from 04.12.2018 to 10.03.2019 for travelling to Germany. Wife of the respondent gave birth to a child on 10.12.2018 and thereafter on 12.12.2018, he had to board a flight for Germany from Delhi, but he was not permitted to go abroad and the Immigration Department, Delhi seized his passport and sent the same to the Regional Passport Office, Jalandhar.

3. Thereafter, the respondent approached the Passport Authorities for release of his passport but to no effect. The respondent approached this Court by moving CRM-46034-2018 in CRA-S-1722-SB-2010 for grant of permission to go abroad. This Court vide order dated 15.01.2019 granted

permission to the respondent to go abroad. Thereafter, the respondent make numerous visits to the Passport Office followed by a representation dated 05.05.2019 for release of his passport, but remained unsuccessful. Accordingly, the respondent approached this Court by way of filing Civil Writ petition.

4. Upon notice of motion, the appellants appeared and filed reply refuting the allegations made in the writ petition. The respondent did not disclose about his conviction and pendency of the appeal in the said FIR and applied for re-issuance of passport on 05.12.2017. These facts came into notice when the police submitted adverse police verification report. It was alleged therein that the passport of the respondent was impounded by passing a valid order and he was duly supplied photostat copies of the notice and the order dated 27.02.2017. Further, it was alleged that the impounding order dated 27.02.2017 was an appealable order under Section 11 of the Passport Act, 1967 and no such appeal has been filed by the respondent and he has approached this Court without availing the statutory remedy. The appellants prayed for dismissal of the writ petition.

5. The learned Single Judge vide order dated 10.02.2023 allowed the said writ petition and directed the Passport Authorities to return the passport of the petitioner which was impounded by them and further to pay a cost of Rs.20,000/- to the respondent within a period of three months from the date of passing of the order. Hence, the present Letters Patent Appeal.

6. Learned counsel for the appellants contends that the learned Single Judge has misread and mis-interpreted the documents available on

record and also the provisions of law. He has further contended that the learned Single Judge has over sighted the provisions of the Passport Act, 1967 that applying for the passport without disclosing material information is an offence under Section 12 of the Passport Act, 1967. He has also argued that while following the procedure, the appellants on 27.02.2017 after impounding the passport of the respondent had informed him vide letter dated 27.02.2017 (Annexure A-1) and also sought clarification vide letter dated 27.02.2017 (Annexure A-2) and thus, appellants had given a reasonable opportunity to the respondent to come present and brief his case. But the respondent himself had chosen not to come forward and brief his case and rather on 12.12.2018, he tried to go abroad without getting prior permission from the Court. Even after the passport of the respondent had been seized at Indira Gandhi International Airport, New Delhi, on 27.12.2018, he filed an application i.e. CRM Nos.46033-34 of 2018 before this Court for getting permission to go abroad, without disclosing this fact that his passport had already been impounded by the passport authorities and his this application was allowed vide conditional order dated 15.01.2019. He has contended that it has not been taken note of by the learned Single Judge that conduct of the petitioner was not fair and proper and every time, he was concealing the material facts from the Court. From 27.02.2017 to 12.12.2018, the respondent was having sufficient time to come to the office of the passport authorities and to give clarification regarding the show cause notice, but the respondent

adopted clever tactics and without giving any response to the letters of the appellants, tried to go abroad. He has also submitted that the impugned judgment, whereby cost of Rs.20,000/- has been imposed upon the appellants, is not sustainable in the eyes of law as the appellants had done everything as per provisions of the Passport Act, 1967 and reasonable time and opportunity was given to the respondent and has prayed that the present appeal may be allowed and the impugned order may be set aside.

7. We have heard learned counsel for the appellants and have also perused the relevant record.

8. Perusal of the impugned order reveals that it has been observed by the learned Single Judge that it is clear that on 27.02.2017 when the passport authorities issued notice to the petitioner as to why the passport should not be impounded, then on the same date i.e. on 27.02.2017, the order of impounding was also passed. Such fact is also evident from Annexure A-1 i.e. the intimation of impounding of passport bearing Passport No.P5098135 which is dated 27.02.2017 and Annexure A-2 which is pertaining to clarifications required regarding issuance of passport facilities to Sh. Lakhwinder Singh, which is also of the same date i.e. 27.02.2017. So from the above said documents, it is amply clear that show cause notice was issued by the passport authorities on 27.02.2017 to the respondent as to why action should not be taken to impound the Passport No.P5098135 dated 05.02.2017 under the provisions of the Passport Act, 1967 and then on 27.02.2017 itself,

the respondent was intimated that it had been decided to impound the above said passport under Section 10(3)(e) of the Passport Act, 1967 as criminal case against him was pending before the Court. The learned Single Judge has, thus, rightly observed that issuing of said notice appears to be empty formality and an eye wash and exercise of power by the passport authorities regarding impounding of passport of the respondent was totally illegal, arbitrary and violative of principles of natural justice as without seeking any clarification from the respondent regarding the show cause notice, the passport was impounded. In this respect, the learned Single Judge has rightly relied upon the judgment of the Hon'ble Apex Court in **Maneka Gandhi Vs. Union of India, 1978 (1) SCC 248**, wherein the Hon'ble Apex Court has held that impounding of the passport straightway by the passport authorities without giving show cause notice was violative of the principles of natural justice. It has further held that although power exists but the power has to be exercised in a just and fair manner.

9. The learned Single Judge has further rightly observed that when as per the petitioner he never received any show cause notice or even the order regarding impounding of his passport and moreover when it is a case of *ex-facie* violation of principles of natural justice, then this Court while exercising power under Article 226 of the Constitution of India, can invoke the inherent power. As such, this plea taken by the appellants is not sustainable that the present appeal has been filed without availing the statutory remedy under Section 11 of the Passport Act, 1967.

10. Therefore, it has been rightly held that the action of the

appellants/passport authorities in impounding the passport of the respondent is arbitrary, illegal and in violation of the principles of natural justice and the law laid down in the case of **Maneka Gandhi's (supra)**, and the passport authorities have been rightly directed to return the passport of the respondent forthwith.

11. Thus, the learned Single Judge had properly considered the matter in right perspective. We do not find any illegality or perversity in the order passed by the learned Single Judge, warranting any interference by us in the Letters Patent jurisdiction.

12. Accordingly, the instant LPA is dismissed.

Pending application(s), if any, shall also stand disposed of.

(JAISHREE THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

29.05.2023

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |