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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 6<sup>th</sup> January, 2023*+ **W.P.(C) 6526/2022 and CM APPL. 26315/2022****SAURAV SEN GUPTA**

..... Petitioner

Through: Mr. Nishant Solanki, Advocate.

versus

**UNION OF INDIA & ANR.**

..... Respondents

Through: Mr. Niraj Kumar, Sr. CGSC with Mr. Gurjas Singh Narula, Advocate for R-1. (M:9810020341)

Mr. Avishkar Singhvi, Mr. Naved Ahmed &amp; Mr. Vivek Kumar, Advocates for R-2 (M-9654847982)

**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The Petitioner - Mr. Saurav Sen Gupta has filed the present petition seeking directions to the Respondents to issue police clearance certificate in his favour.
3. The Petitioner is an Indian passport holder having passport no. M6528402 which was issued to him on 18th February, 2015 and is valid up to 17th February, 2025. He was married on 22nd January, 2016 and found a job with the Commonwealth Bank, Australia. Accordingly, an employment agreement was executed between the Petitioner and his employer.
4. In 2019, matrimonial disputes arose between the Petitioner and his wife resulting in **FIR No. 17/2017** under Sections 498A/323/341/420/120B/504/506/34 of the Indian Penal Code, 1860 and Section 3/4 of the Dowry Prohibition Act, 1961 being registered against him in Jamshedpur,

Jharkhand. Thus, the Petitioner was constrained to approach the Hon'ble High Court of Jharkhand at Ranchi for the grant of anticipatory bail. The Hon'ble High Court of Jharkhand at Ranchi vide order dated 10<sup>th</sup> December, 2019 in **A.B.A No. 6503/2019** titled ***Sourav Sen Gupta v. The State of Jharkhand & Anr.*** granted anticipatory bail to the Petitioner. The Petitioner is also stated to have deposited certain amounts as *ad interim* victim compensation.

5. Due to his professional service commitments, the Petitioner sought permission to leave India and move to Australia vide ***Crl. M.P. No. 4374/2019*** titled ***Sourav Sen Gupta v. The State of Jharkhand & Anr.*** before the Hon'ble High Court of Jharkhand at Ranchi. Therein, vide order dated 5th June, 2020, the High Court of Jharkhand at Ranchi allowed the Petitioner to leave India subject to certain conditions. The relevant part of the order is as under:

*“Considering the aforesaid submission of the learned counsel for the petitioner and the fact that the petitioner is employed as Branch Concierge in Commonwealth Bank at Australia presently posted at Victoria, Australia, and he undertakes to retain the mobile phone number, which he has submitted before the trial court at the time of his surrender and in case of any change in the said number, he will inform the new mobile phone number to the trial court by submitting the same to the trial court and that he will appear before the trial court as and when the trial court directs him to appear in person during the course of trial, the petitioner is exempted from the conditions as mentioned in Section 438 (2) (iii) Cr.P.C. and he is permitted to leave India and only to remain in the country namely Australia and to come back to India again.*

*It is made clear that if the petitioner violates the direction of the trial court to remain present in person during the trial, the trial court will be at liberty to cancel the bail granted to him without any reference to this Court.*

*This criminal miscellaneous petition is disposed of accordingly.”*

6. In view of the aforementioned order of the Hon’ble High Court of Jharkhand at Ranchi the Petitioner was given a police clearance certificate on 18<sup>th</sup> November, 2020 which was valid till 18th November, 2021.

7. In June, 2022 in order to enable him to join his professional service commitments in Australia, the Petitioner submitted documents for issuance of Australian visa before the Respondent No.1 - Ministry of External Affairs (MEA). Therein, he received information that police clearance certificate was required for him to seek issuance of the Australian visa as the earlier police clearance certificate had expired. It was also revealed to him that the same was being withheld due to an adverse police report by the concerned police authority in view of the pending criminal proceedings against the Petitioner.

8. Aggrieved by the non-issuance of the police clearance certificate, the Petitioner filed the present petition in April, 2022. Notice was issued in the present petition and a counter affidavit was filed by the MEA. It is stated in the said counter affidavit that the police clearance certificate was not issued to the Petitioner due to the pending proceedings in **Mat. Suit 580/2021** before the Court of Principal Judge, Family Court at Jamshedpur, East Singhbhum. The relevant part of the counter affidavit is as under:

*“3. That Mr. Saurav Sen Gupta (herein after refer as the applicant) has applied for Police Clearance*

*Certificate (PCC) vide file no. DL4086707112821 dated 08.12.2021.*

*4. That PCC is a distinct miscellaneous service. The purpose of PCC is to establish criminal antecedent of an applicant. Further, it is used by foreign countries to process long term immigration requests of applicants who, inter alia, desire to apply for permanent residency. Issuance of PCC indicates absence of criminality or any criminal antecedent of an applicant/petitioner.*

*5. That in the current application for the issuance of PCC, it has been brought into the notice of this officer/Regional Passport Office through Police verification Report that the applicant is facing criminal proceedings in the court of Principle Judge, Family Court at Jamshedpur, East Singhbhum under Mat Suit No. 580/2021 [Suit for dissolution of Marriage U/S 27(1)(b)(d)] of the Special Marriage Act, 1954 and the matter is pending under trial. It may be noted here that the applicant has not disclosed this pendency of criminal case in his application form.*

*6. The Hon'ble High Court of Jharkhand at Ranchi vide order dated 05.06.2020 has granted permission to the applicant to go abroad. And, thereby provided relief from the operation of section 6(2)(f) under Passport Act, 1967 (refusal of passport). However, it is submitted that relief from section 6(2)(f) is applicable only on issuance of passport in terms of GSR 570(E) dated 25.08.1993. There is no provision under the Passport Act, 1967 and the Passport Rules 1980 for issuance of PCC based on Court NOC wherever Criminal Case(s) are pending against an applicant before a Hon'ble Court. Moreover, as per Passport Manual, PCC is a certificate indicating police clearance. It basically pertains to checking of criminal antecedents and confirmation from police that there are no criminal proceedings or criminality against the applicant. ”*

9. Today, it is submitted by Id. Counsel for the Petitioner that the disputes between the Petitioner and his spouse have been settled and the Petitioner's wife has withdrawn the *Mat. Suit No. 580/2021*. A decree of divorce has been granted by the Principal Judge, Family Court, Jamshedpur in *O.S. No 472/2022* titled *Ayanica Sen Gupta and Saurav Sen Gupta* vide order dated 1st August 2022 (*hereinafter, "decree of divorce"*).

10. It is further submitted by the Id. Counsel that in *G.R. Case No. 1425 of 2017* titled *State v. Saurav Sen Gupta* vide judgment dated 28th June, 2022 passed by the Court of Judicial Magistrate, 1<sup>st</sup> Class at Jamshedpur, the Petitioner has been acquitted in the criminal proceedings arising out of *FIR No. 17/2017* (*hereinafter, "judgment of acquittal"*)

11. The Court has perused the aforementioned decree of divorce and the judgement of acquittal in the criminal proceedings. The operative portion of the decree of divorce granted on 1<sup>st</sup> August 2022, is as under:

*"In the result the petition for recall of date along with the petition for waiver of the cooling off period is hereby allowed. There is nothing on record or from statements of the parties to disbelieve the averments made in the plaint. Accordingly, the parties are held to be entitled for a decree of divorce declaring the marriage between them to be dissolved.*

**ORDERED**

*that the suit may and is hereby decreed on mutual consent of the petitioners. The marriage solemnized on 22 .01.2016 between petitioners Ayanica Sen Gupta and Saurav Sen Gupta u/s 28 of the Special Marriage Act is hereby dissolved. Let a decree be prepared accordingly. The terms of settlement entered into by the petitioners on 29.07. 2022 at the Mediation Centre, Jamshedpur shall form part of the decree. The divorce win come into effect from the date of decree."*

12. Insofar as **FIR No. 17/2017** is concerned, the acquittal order passed vide the judgment dated 28<sup>th</sup> June, 2022 reads as under:

*“18. Since the prosecution has been unable to bring home the guilt of the accused person under Section 498A of the Indian Penal Code, Section 3 or 4 of the Dowry Prohibition Act, 1961, 323 and 420 of IPC the accused is hereby acquitted of the charges under the aforementioned sections. Therefore the accused person is hereby acquitted of the charges levelled against him in the present case. The accused is already on bail so he along with his bailors are hereby discharged from their liabilities of their respective bail bonds.”*

13. At this stage, the Petitioner, who is presently located in Australia has joined online through the Court link and confirms that there is no appeal pending against the aforementioned decree of divorce and the judgment of acquittal dated 28<sup>th</sup> June, 2022.

14. Under these circumstances, this Court is of the view that there is no reason not to grant the police clearance certificate to the Petitioner. Thus, taking the overall facts and circumstances into consideration, it is directed that the Respondents shall issue the police clearance certificate to the Petitioner in accordance with law within a period of four weeks from today.

15. If the Petitioner's appearance is required before the Respondents, online appearance of the Petitioner shall be considered, if the same is permissible as per the procedure.

16. With these observations, the present petition, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**JANUARY 6, 2023/dj/kt**