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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 12.09.2023**Pronounced on: 13.09.2023*+ **W.P.(CRL) 970/2023 & CRL.M.A. 21888/2023**

INDER PAL KHANNA

..... Petitioner

Through: Mr. Rishi Bharadwaj, with
petitioner in person

versus

GOVT OF NCT OF DELHI

..... Respondents

Through: Mr. Amol Sinha, ASC for the
State with SI Bijender Singh,
PS Hauz Qazi and Mr. Kshitiz
Garg, Mr. Ashvini Kumar, Mr.
Chavi Lazarus, Advocates**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present writ petition has been filed under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. by the present petitioner seeking quashing of FIR bearing No. 17/2009, registered at Police Station Hauz Qazi, Delhi, for offence under Section 3 of West Bengal Prevention of Defacement of Property Act, 1976.



2. Briefly stated, facts of the present case are that the petitioner used to run a shop at Ajmeri Gate, Delhi dealing with hardware machinery tools. Allegedly, the petitioner had put up a board on an electric pole installed at Nukkad Gali, Phatak Karor, Ajmeri Gate, Delhi to advertise his business, for which the FIR in question for defacement of the government property was registered against him. Thereafter, the chargesheet was filed against the present petitioner, and pursuant to filing of the same, the petitioner had appeared before the concerned Court on receipt of summons and had pleaded guilty, after which a fine had been imposed on the petitioner.

3. Learned counsel for the petitioner states that the petitioner, who is holder of a passport issued by Government of India which had got renewed from time to time for about 30 years by the Passport Authority, is now facing trouble as his application for renewal of passport was rejected and his passport was cancelled by the Regional Passport Authority, ITO, Delhi on the ground of pendency of the present FIR. It is also argued that though the petitioner has misplaced receipt of the fine paid by him, the record of the concerned Magistrate would reveal that he had deposited the fine. It is also stated that no other action has been taken in the said FIR since the year 2009, i.e. for the last 12 years. It is also stated that the judicial record of the said case is not traceable. It is further argued that the passport of the petitioner was lastly renewed in the year 2012 and at the time of said renewal, the Passport Authority had not raised any objection with regard to the pendency of the present FIR. It is further



stated that the West Bengal Prevention of Defacement of Property Act, 1976 was not in force in Delhi though he was chargesheeted under it since it was repealed by Delhi Prevention of Defacement of Property Act, 2007. It is, therefore, stated that the FIR be quashed and the passport authorities be directed to renew the passport of the petitioner.

4. Learned ASC for the State submits that the present FIR was registered on 04.03.2009 on the complaint of a police official alleging that an advertisement board of the shop petitioners had been put up on the government electric pole. It is stated that the State has no objection with respect to the present FIR since the petitioner had pleaded guilty and had deposited the fine imposed on him before the concerned Court. Further, it is submitted that State has no objection in regards to the issuance of passport to the present petitioner, if the same has been denied in view of the present FIR.

5. This Court has heard arguments addressed by learned counsel for the petitioner and learned ASC for the State and has gone through material on record.

6. It is the case of petitioner that the petitioner was under the impression that proceedings under the present FIR have been closed by depositing the fine as imposed by the learned Magistrate, Tis Hazari Court, Delhi, in the year 2009. However, when he had applied for renewal of the passport in the year 2022, he was informed by the Ministry of External Affairs, Government of India that proceedings under FIR No. 17/2009, P.S. Hauz Qazi under Section 3 of West



Bengal Prevention of Defacement of Property Act, 1976 were pending investigation.

7. This Court, while perusing the Status report filed by the State, notes that the charge sheet in this case was filed against the present petitioner on 23.04.2009 before the evening Court, Tis Hazari Court, Delhi. As per available record, i.e. FIR register and Crime Register No. 9 Part III at Police Station Hauz Qazi, the present petitioner was convicted by the concerned Court and the file was consigned to the Record Room. It was also reported that despite of sincere efforts and several visits to evening Court and Record Room, Tis Hazari Court, Delhi, the copy of the judgment/order of the Trial Court and the conviction slip are untraceable.

8. In the present case, as per record, it is revealed that the petitioner herein was convicted and the fine was imposed upon him after which the case file was consigned to the Record Room, since the FIR had already culminated into filing of chargesheet and, therefore, conviction of the accused and imposition of fine upon him, which is not disputed by the State. Though now despite best efforts, the judicial record of the said FIR is not available since the case pertains to the year 2009, this Court, relying on the FIR register and Crime Register No. 9 Part III at Police Station Hauz Qazi and the report filed by the SHO and the prosecution herein, is of the opinion that the charge sheet has already culminated into the conviction of the present petitioner upon his pleading guilty and depositing fine. Therefore, there is no occasion to quash the FIR in question as no



proceedings under the said FIR are pending.

9. Having observed so, this Court notes that the main grievance of the petitioner is in regards to him being refused passport by the passport authority on account of the pendency of criminal proceeding against him. In this regard, this Court observes that the grounds for refusal of passport are contained under Section 6(2) of the Passports Act, 1967, which has been reproduced as under:

“6. Refusal of passports, travel documents, etc.- xxxx xxxx
xxxx 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) ***

(b) ***

(c) ***

(d) ***

(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 committed by the applicant are pending before a criminal court in India;”

10. A perusal of aforementioned provision reveals that the passport authority can refuse to issue passport, *inter alia*, on the following two grounds:

(a) If the applicant has been found guilty of any morally reprehensible offence by an Indian court and sentenced to imprisonment for a period of at least two years, within the last



five years prior to the date of application.

(b) If there are criminal proceedings pending against the applicant in an Indian court for any offence.

11. In this regard, this Court notes the present petitioner was convicted of an offence under Section 3 of the West Bengal Prevention of Defacement of Property Act, 1976, which is punishable with imprisonment which may extend to six months or with fine or with both. Consequently, the provisions under Section 6(2)(e) of the Passports Act do not apply in this case as it pertains to offences punishable by imprisonment of at least two years. Therefore, given the nature of the petitioner's conviction, the ground under Section 6(2)(e) of Passports Act for refusal of Passport to the petitioner is not made out.

12. This Court also notes that provisions of Section 6(2)(f) of the Passport Act are similarly not applicable in this case. The petitioner was convicted in the present FIR upon pleading guilty and was subsequently directed to pay a fine, which has indeed been deposited, and the same has also been confirmed by the State. Therefore, the continuation of the criminal proceeding as a ground for refusal of passport cannot be considered as a valid ground in the present case, as the petitioner has already been convicted, and the fine has been paid.

13. Thus, there are no justifiable reasons to deny the petitioner a passport, in view of FIR bearing no. 17/2009, P.S. Hauz Qazi, New Delhi, as the petitioner's case does not fall within the scope of the



grounds listed in Section 6(2) of the Passports Act, 1967.

14. In view of the above, the present petition stands disposed of along with pending applications.

15. The judgment shall be uploaded on the site forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 13, 2023/