

OD-12

ORDER SHEET

WPO No.465 of 2024

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KAIZER AHMED
Vs
UNION OF INDIA & ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 20th May, 2024

Appearance:

Mr. Srijib Chakraborty, Adv.
Mr. Sumitava Chakraborty, Adv.
Mr. Aditya Mondal, Adv.
..for the Petitioner.

Mr. Ashoke Kr. Chakraborty, A.S.G.I.
Mr. Kumar Jyoti Tewari, Adv.
Mr. Tirthapati Acharyya, Adv.
...for the Respondent nos. 1 to 5 (UOI)

Mr. Wasim Ahmed, Adv.
Md. Shehabuddin, Adv.
...for the State

The Court :- Affidavit of service filed today be kept with the record.

Learned counsel for the petitioner contends that the petitioner's passport has not yet spent its tenure. During pendency of the same, a notice for impounding of the passport was issued to the petitioner apparently on the

ground that on the basis of a police verification report, it was found that a criminal case is pending against the petitioner.

Learned counsel assails the same on the ground that Section 10(3)(e) of the Passport's Act, 1967 stipulates that a passport may be impounded or cancelled if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel documents are pending before a criminal court in India.

Learned counsel cites a coordinate Bench judgment of this Court in the matter of *Kamal Kumar Narottam Dash Parekh vs. Superintendent (Administration) Regional Passport Office, Ministry of External Affairs and Ors.*, reported at (2010) 1 CHN 834, where it was held by relying on a Supreme Court judgment that a judicial proceeding commences under the Code of Civil Procedure in respect of an offence only when a court of competent jurisdiction takes cognizance of the offence. In the present case, although a charge-sheet has been filed against the petitioner, no cognizance thereof has as yet been taken by the concerned Magistrate. As such, applying the ratio of the said judgment, the very notice to show cause issued to the petitioner is without jurisdiction, being de hors Section 10(3)(e) of the 1967 Act.

Learned ASG appearing for the respondent authorities submits that in the case of the petitioner, the petitioner also sought for a re-issue of the passport. As such, in view of the pendency of the criminal court proceedings, the authorities rightly issued a show cause notice.

It is next contended by the respondents that the writ courts, under normal circumstances, are loathe to interfere with show cause notices. It is argued that it would be premature at this stage to interfere, since no final decision of impounding the passport has yet been taken by the authorities.

Thirdly, the learned ASG also lays stress upon Section 10(3)(b) of the 1967 Act.

It is argued on behalf of the respondents that the judgment cited by the petitioner, being contrary to the specific language of the statute, ought to be construed as *per incuriam*.

Upon hearing learned counsel, it transpires that the petitioner's passport is still valid in so far as its tenure is concerned.

Regarding the criminal case, at the present stage only a charge-sheet has been filed the Magistrate upon conclusion of the investigation. However, the criminal court is yet to take cognizance of the offence.

Learned counsel for the petitioner has rightly contended that the cognizance of offences by a Magistrate is covered by Section 190 of the Code of Criminal Procedure, which provides for the cases in which a Magistrate shall take cognizance. By placing reliance on the order-sheet of the criminal case, learned counsel for the petitioner has rightly shown to this Court that the criminal court is yet to take cognizance of the offence.

In *Kamal Kumar (supra)*, a learned Single Judge of this Court by placing reliance on *D. Lakshminarayan vs. V.Narayana*, reported at AIR 1976

SC 1672 had categorically observed that the authorities are uniform on the point that a judicial proceeding commences under the Code of Criminal Procedure in respect of an offence only when a court of competent jurisdiction takes cognizance of the offence.

It is relevant to note that the said judgment was rendered in a similar context, where a passport of the petitioner therein had been impounded under Section 10(3) of the 1967 Act.

With utmost respect, this Court is in agreement with the view expressed by the learned Single Judge in the case of *Kamal Kumar (supra)*.

Under the contemplation of the Code of Criminal Procedure, a judicial proceeding can be said to commence only upon the cognizance of an offence being taken by the Court.

In the case of the petitioner, the allegations against the petitioner is still in the twilight zone, in so far as the investigation has been concluded and a charge sheet duly submitted by the investigating agency before the Court. However, the Court is yet to take cognizance of the same. Therefore, it cannot be said that any judicial proceeding has commenced against the petitioner. The language of Section 10(3)(e) which instigated the authorities in issuing the show cause notice is that the passport authority may impound a passport if “proceedings in respect of an offence” alleged to have been committed by the holder of the passport or travelled documents are “pending before a criminal court in India”. In the present case, in view of the cognizance of the

offence having not been taken as yet, it cannot be said that any proceeding is 'pending' before a criminal court in India. Thus, the very premise of the impugned show cause notice is taken away.

The passport authority assumes jurisdiction and authority to issue a show cause notice for impounding a passport only upon conditions as stipulated in Section 10(3)(e) being fulfilled. In the present case, the same having not been satisfied, the respondents did not have any authority whatsoever to issue the show cause notice itself.

In so far as the argument of Section 10(3)(b) is concerned, the same is not applicable. Since the charge sheet was filed against the petitioner only after the initial issuance of passport, there arises no question of suppression of such complaint before the same was lodged, at the juncture when the passport was first issued in favour of the petitioner.

Insofar as the argument regarding the judgment rendered in *Kamal Kumar's case (supra)* being *per incuriam* is concerned, this Court cannot accept such submission since the said judgment clearly takes into consideration the provisions of Section 10(3) and interprets the same in the way that it did, that too, in consonance with the consistent view of the Supreme Court and different High Courts. Hence, I am of the firm opinion that the passport authority lacked the authority and jurisdiction to issue the impugned show cause notice against the petitioner for the purpose of impounding the petitioner's passport.

Accordingly, WPO No.465 of 2024 is allowed on contest, thereby setting aside the impugned show cause notice issued against the petitioner, bearing No. SCN/312185799/22.

No order is passed as to costs.

It is, however, made clear that nothing in this order shall prevent the Passport authorities, in the event the Criminal Court takes cognizance of offences against the petitioner, from issuing a fresh show-cause notice against the petitioner under Section 10(3)(e) of the 1967 Act.

(SABYASACHI BHATTACHARYYA, J.)

SN/sg.