



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1327 OF 2024

Mrs. Priyanka Prabhu Taikar
Age : 35 years, Occ : Service
R/at Wyavhare Hospital,
Narkesari Road, Bhandara,
Maharashtra – 441904

Current R/at – Sai Plaza, Flat No.6,
Wing B, Besides Bishop School Undri,
Hole Vasti Chowk, Undri, Pune,
Maharashtra – 411060

.. **Petitioner**

Versus

1. Union of India, through Regional
Passport Officer, Nagpur,
Office at – CGO Complex, B-Block,
Saminary Hills, Nagpur – 440006
2. State of Maharashtra through
Superintendent of Police, Dist.Bhandara
Bhandara Police Station.

.. **Respondents**

Mr. S.P.Hushing, Advocate for Petitioner.

Mr. N.S.Deshpande, DSGI for Respondent No.1.

Mr. A.A.Madiwale, A.G.P. for respondent No.2.

CORAM : NITIN W. SAMBRE AND
ABHAY J. MANTRI, JJ.

DATED : **June 19, 2024**

ORAL JUDGMENT (Per : Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith. Heard finally,
by the consent of the learned counsel, appearing for the parties.

(2) The challenge raised in this petition to the show-cause notice dated 08/03/2023 issued by the respondent No.1 Regional Passport Office, Nagpur, whereby explanation has been sought from the petitioner as to why action should not be taken to impound her Passport because of suppression of pendency of criminal case against her.

(3) The necessary facts for the determination of the petition are as under :-

The petitioner is working at VTEST Software Pvt. Ltd. On 26/10/2022, she applied for a Tatkal (Urgent) Passport to respondent No.1. Pursuant to the said application, on 02/11/2022, respondent No.1 issued a passport in her favour, which she received on 03/11/2022. On the same day, the petitioner received an email requesting her for police verification.

(4) During the police verification, one criminal complaint lodged by the petitioner's sister's husband has been found; therefore, vide show-cause notice dated 08/03/2023, respondent no.1 called upon her explanation on the suppression of the pendency of the criminal case against her. So also asked her why action should not be taken to impound her Passport on the said grounds. On 25/04/2023, the petitioner submitted an explanation to the respondent No.1 Authority and surrendered her Passport.

(5) It is further contended that vide order dated 13/03/2023, learned Judicial Magistrate Court No.3, Pune, passed the order below M.A.No.1038/2022, thereby directing the Police Inspector to investigate the complaint and submit its report within 90 days. Later on, the matter was settled between the petitioner's sister and her husband, i.e., the complainant, in the said Criminal Case. Accordingly, the complainant has withdrawn the criminal complaint lodged against the petitioner and others on 04/01/2024. The petitioner, thus, being aggrieved and dissatisfied with the notice dated 08/03/2023, has preferred this petition.

(6) Learned counsel for the petitioner strenuously argued that on the date of submission of the application to the Passport Authority, the Court had not taken cognizance of the complaint submitted before it. Therefore, the petitioner was unaware of the pendency of the criminal case against her. As such, it cannot be said that she has suppressed the pendency of the criminal case against her, and therefore, she has committed an offence under Section 12(1)(b) of the Passport Act, 1967. Hence, it is submitted that issuance of the impugned notice is bad in law.

(7) Secondly, he has canvassed that there was a family dispute between the petitioner's sister and her husband; therefore, the complainant, with intent to harass the petitioner, lodged the complaint

against her. Subsequently, the matter was settled between them, and thus, on 04/01/2024, the complainant filed a withdrawal pursis. Accordingly, the case was disposed of. Hence, the ground raised in the notice does not survive.

(8) To buttress his submission, learned counsel has relied upon the judgment in ***Thadevoose Sebastian vs. Regional Passport Office, Trivandrum, Kerala, and another*** reported in ***AIR 2021 Ker 247*** and ***Ramlala vs. State of U.P. and others*** reported in ***2023 0 Supreme (All) 1521***. He also drew our attention to para 16 and 19 of the judgment of *Thadevoose* (supra) and urged that in view of the law laid down in the cited authorities, the impugned notice is liable to be set aside.

(9) *Per contra*, learned Assistant Government Pleader for respondent No.2 vehemently contended that when the petitioner applied to the Passport Authority at that time, she suppressed the pendency of the criminal case pending against her and, therefore, show-cause notice issued by the respondent authority is just and proper and no interference is required.

(10) *Secondly*, he canvassed that as per Section 11 of the Passport Act, 1967, the appeal lies before the Appellate Authority; hence, in view of the fact that the wrong remedy is availed in this

petition, it is not maintainable. Accordingly, he urged the dismissal of the present writ petition.

(11) We have appreciated the rival contentions of the parties and perused the record. We have gone through the Authorities relied upon by the learned counsel for the petitioner.

(12) At the outset, it appears that on 26/10/2022, the petitioner applied to the respondent No.1 Authority for the grant of a Passport; at that time, she did not receive any notice about the pendency of the criminal case against her. A perusal of the copy of proceedings bearing Criminal M.A.1308/2022, it appears that on 13/03/2023, the Court took cognizance of the complaint filed by the complainant, i.e. Petitioner's sister's husband and directed the Police Inspector of concerned Police Station to investigate in the complaint as per Section 202 of the Cr. P.C. and submit the report.

(13) It further reveals that prior to taking cognizance of the complaint, on 03/11/2022, the petitioner received the Passport; as such, it cannot be said that the petitioner has suppressed the fact of pendency of the Criminal Case against her. Rather, it seems that after obtaining the Passport, the Court has taken cognizance of the complaint of the complainant.

(14) It further reveals that there was a family dispute between the petitioner's sister and her husband. As such, the complainant has lodged the complaint against his wife and petitioner. *Moreover*, the mere filing of the complaint by the complainant cannot be said that the Court has taken cognizance of the said complaint. *Besides*, in our opinion, just filing the complaint on account of the family dispute cannot deprive the petitioner of her fundamental right to travel, as enumerated under Article 21 of the Constitution. However, the passport officer has to exercise discretion in evaluating the gravity of the crime and then decide whether the pending crime must result in the impounding of the passport or the travel document.

(15) It is evident that during the pendency of this petition, the criminal complaint was settled between the petitioner's sister and the complainant. Accordingly, the complainant filed a withdrawal pursis before the court on 04/01/2024. That being so, no criminal complaint is now pending against the petitioner.

(16) In addition, the show-cause notice does not show that the respondent No.1 Authority has provided a detailed nature of the offence and grounds on which the show-cause notice has been issued. *Furthermore*, it reveals that after obtaining the Passport, the Court has taken cognizance of the complaint; therefore, also in our view, the issuance of the show-cause notice by the respondent No.1

Authority without verifying the fact of pendency of the criminal case is not sustainable in the eyes of the law.

(17) Thus, considering the discussion above and the parameters laid down in the cited Authorities, in our view, respondent No.1 has erred in issuing the impugned notice dated 08/03/2023 to the petitioner; as such, the same is not sustainable in the eyes of the law. Hence, it is liable to be quashed and set aside.

(18) For the above mentioned reasons, we allow the present writ petition. The initiation of the action by the Passport Authority appears contrary to the Passport Act of 1967. Therefore, we quashed and set aside the impugned notice dated 08/03/2023 issued by respondent No.1.

(19) As a sequel to the above, respondent No.1 Authority is directed to restore and return the petitioner's passport in accordance with the law.

Rule is made absolute in the above terms.

[ABHAY J. MANTRI, J.]

[NITIN W. SAMBRE, J.]