

105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-746-2025 (O/M)

Date of decision : 15.01.2025

Kushaldeep Singh Dhingra

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Karan Dev Sharma, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Kushaldeep Singh Dhingra) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of mandamus for directing respondents No. 1 to 3 to decide the representation (Annexure P-15) submitted by the petitioner and to further direct respondents No. 1 to 4 and 6 to issue look out circular for respondent No. 5 (Pappal Dhingra/Pappal Bhateja).

1.1 It is noticeable that in the representation (Annexure P-15), the petitioner has prayed for providing written sanction letter for taking cognizance of complaint No. COMI/16/2024 under Section 12 of Passport Act, 1967 and other provisions of IPC; with a further prayer to impound passport of respondent No. 5.

2. Briefly, the petitioner is stated to have solemnized marriage with respondent No. 5 according to sikh rites and ceremonies and the said marriage was registered on 02.12.2016.

2.1 It is stated that after the marriage, respondent No. 5 got a new PAN card (CPAPD0629F) issued and also changed her name from Pappal Bhateja to Pappal Dhingra on Aadhar card (467685266118). Respondent No. 5 is stated to have submitted a complaint to the Women Cell on 08.09.2017 alleging that she was thrown out of the matrimonial home. According to the petitioner, respondent No. 5 forged her identity by changing her name to Pappal Bhateja from Pappal Dhingra and also stated incorrect details in her PPF account and showed her marital status as unmarried.

2.2 It transpires that respondent No. 5 filed a divorce petition on 13.12.2018 against the petitioner, which is stated to be pending.

2.3 The petitioner is stated to have got zero FIR dated 29.07.2020 (Annexure P-5) lodged at Jodhpur against respondent No. 5 and her family members, which was later transferred to the office of SSP, Sri Muktsar Sahib and an FIR No. 275 dated 02.08.2020 (Annexure P-6) was lodged at Police Station City Muktsar, District Sri Muktsar Sahib. The investigation in the said FIR is also stated to be pending.

2.4 Apparently, prior to marriage of petitioner with respondent No. 5, she held a passport with name Pappal Bhateja and the same expired on 23.08.2020. It is stated that on 11.02.2022, respondent No. 5 applied for renewal of her passport by concealing her matrimonial status and also concealing the factum of FIR lodged against her. It is alleged that respondent No. 5 in connivance with respondent No. 4 (State of Punjab through its Secretary, Home Department, Punjab) forged her police verification report and managed to renew her passport.

2.5 Petitioner is stated to have submitted a representation dated 27.09.2023 (Annexure P-11) to the Chief Passport Officer, Ministry of External Affairs, New Delhi, however, despite his best efforts, respondent No. 5 left India and moved to Canada on 10.04.2023 without taking any permission from any Court.

2.6 The petitioner claims that he visited the office of respondent No. 3 (Regional Passport Officer, Amritsar) with a request to impound the passport of respondent No. 5, whereupon show cause notice dated 03.01.2024 (Annexure P-13) and another show cause notice dated 12.01.2024 (Annexure P-14) was issued to respondent No. 5.

2.7 The petitioner states that he has submitted a representation dated 06.06.2024 (Annexure P-15) to the Regional Passport Officer, Amritsar, for initiating further proceedings against respondent No. 5 under the Passport Act, 1967, and to impound the passport of respondent No. 5, however, of no avail.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition before this Court for the relief (s), as noticed hereinabove.

4. Heard.

5. From a perusal of the paperbook especially the documents attached with the representation (Annexure P-15), which contains the statement of the petitioner, recorded on dated 21.05.2024 before learned Judicial Magistrate 1st Class, Sri Muktsar Sahib, it is borne out that the petitioner had submitted a petition under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights, which is stated to be pending before the Court of learned Principal Judge, Family Court, Sri Muktsar

Sahib. It further appears that respondent No. 5 had got a case FIR No. 162/2018 lodged against the petitioner under Sections 498A, 323, 406, 201 IPC, wherein the petitioner claims to have been acquitted on 10.01.2023. It is further borne out that the petitioner had also got lodged FIR No. 275 of 2020 against respondent No. 5 and her family members at Police Station City Muktsar, District Sri Muktsar Sahib under Sections 420, 406, 463, 464, 467, 468, 471, 120-B, 384, 504, 506, 191, 192, 193 IPC; Section 66-D of information Technology Act, 2000 and Section 3 of Dowry Prohibition Act, 1961. It appears that respondent No. 5 preferred a petition (CRM-M-29568-2021) before this Court, seeking quashing of the aforesaid FIR, wherein proceedings before the trial Court were stayed by this Court and in another application (CRM-34456-2021), filed by respondent No. 5, her arrest was also stayed. It also appears that a cancellation report was also submitted in case FIR No. 275 of 2020, however, according to the petitioner, the said cancellation report was not accepted by the Court and the matter is still pending. In another complaint submitted by the petitioner before the Vigilance Bureau, Punjab, the investigation is stated to have been marked to DSP Satnam Singh, Sri Muktsar Sahib, however, the said complaint is stated to have been closed without recording any FIR. It further appears from the above referred statement of the petitioner that respondent No. 5 had got Canadian study visa on 10.04.2023 and had also got admission in Algoma University in Brampton.

6. All the aforestated facts would clearly indicate that there is a matrimonial dispute between the petitioner and respondent No. 5. Both have filed cases against each other. The only grouse highlighted by the

petitioner in the instant civil writ petition is that respondent No. 5 had got her passport renewed after the marriage without disclosing her marital status and also the status of criminal case, pending against her.

7. As regards non-disclosure of marital status by respondent No. 5, it is observed that as per the petitioner's own pleading, the old passport of respondent No. 5 had her name as "Pappal Bhateja" and the said old passport (Annexure P-7) was valid till 23.08.2020. It is further borne out from Annexure P-9 that in application submitted by respondent No. 5 for re-issuance of passport, she (respondent No. 5) had stated her marital status as 'separated' which is apparently on account of the fact that the application seeking re-issuance of passport was submitted in February 2022 i.e. after the filing of divorce petition by respondent No. 5 on 13.12.2018.

8. As regards non-mentioning of criminal case against respondent No. 5 in her application for re-issuance of passport, it is observed that according to the petitioner's own statement dated 21.05.2024, recorded before the learned Judicial Magistrate 1st Class, Sri Muktsar Sahib, the police had submitted a cancellation report in case FIR No. 275 of 2020, which is although stated to be not accepted by the Court and the investigation is still pending, the fact remains that till date, no cognizance of the aforesaid FIR has been taken by any Court of competent jurisdiction. In the case of ***Abdul Razik Versus The Regional Passport Officer, 2017 (7) HLR 37***, the Madras High Court has held that mere pendency of FIR cannot be a bar for consideration of the claim for issuance of a passport. It was further held that unless the competent court takes cognizance of an offence, mere pendency of

investigation in the FIR does not attract the provisions of Section 10 (e) and/or the provisions of Clause 6 (e) of 1993 notification, issued by the Central Government. It was further held therein that the petitioner had not suppressed any material information in his passport application and a direction was issued for re-issuance of passport without reference to FIR lodged against him.

8.1 In ***Wassan Singh Versus Union of India, 2023 (3) RCR (C) 786***, a coordinate bench of this Court has also held that mere pendency of FIR itself is no ground for refusal or non issuance of passport to the applicant. The relevant extracts thereof reads as under :-

“A perusal of section 6 of the Passports Act would show that mere pendency of an FIR itself is no ground for refusal or non-issuance of passport to the applicant. This Court had also occasioned to deal with an identical issue in the case of Daler Singh v. Union of India and others(Supra) and Sahib Jaskaran Singh v. Union of India and others(Supra). So far as allegation of suppression of facts pertaining to FIRs at the time of application filed by the petitioner is concerned, Section 6 does not lay down any ground that on the basis of suppression of pendency of an FIR, a passport can be refused. So far as suppression in case of impounding is concerned, Section 10 deals with the same but a Co-ordinate Bench of this Court in Sukhdeep Singh v. Union of India and another(Supra) also dealt with this issue that even in that case as well, the suppression of FIR itself cannot become a ground for impounding of the passport. However, the present case does not pertain to impounding of the passport but it pertains to grant/issue of passport and therefore, the case of the petitioner is governed by section 6 of the Passports Act.”

8.2 That apart, the right to travel freely has been deemed a basic right by the Hon'ble Supreme Court under Article 21 of the Indian Constitution, which is seen as an endless source of further rights. In ***Maneka Gandhi Versus Union of India, (1978) 1 SCC 248***; the Hon'ble Supreme Court consciously concluded that denial of a passport without a reasonable and fair procedure constituted a breach of the right and that the freedom to travel abroad is a basic right under Article 21 of the Indian Constitution. The Court held that impairing a constitutional right to go abroad without giving reasonable opportunity to show cause was unfair and unjust and therefore, an explicit violation of the requirement under Article 21.

8.3 Hon'ble Supreme Court of India in ***Suresh Nanda Versus CBI, (2008) 3 SCC 674***; observed as under:-

“.....In our opinion, while the police may have the power to seize a passport under Section 102(1) Criminal Procedure Code, it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section 10(3) of the Passports Act, 1967.

12. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document. In the Law Lexicon by P. Ramanath a Aiyar (2nd Edition), the word "impound" has been defined to

mean "to take possession of a document or thing for being held in custody in accordance with law". Thus, the word "impounding" really means retention of possession of a good or a document which has been seized.

13. *Hence, while the police may have power to seize a passport under Section 102 Criminal Procedure Code if it is permissible within the authority given under Section 102 of Criminal Procedure Code, it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 Criminal Procedure Code), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter the passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any opportunity of hearing to a party vide **State of Orissa Versus Binapani Dei [AIR 1967 Supreme Court 1269]**.*

14. *In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal. Under Section 10A of the Act retention by the Central Government can only be for four weeks. Thereafter it can*

only be retained by an order of the Passport authority under Section 10(3).

15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Criminal Procedure Code states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Criminal Procedure Code is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edition pg. 133). This principle is expressed in the maxim "Generalia specialibus non derogant". Hence, impounding of a passport cannot be done by the Court under Section 104 Criminal Procedure Code though it can impound any other document or thing..."

8.4 In ***Hardik Shah Versus Union of India, 2022 AIR (Madhya Pradesh) 57***; the High Court of Madhya Pradesh noted that detaining a traveller's passport for unjustifiable reasons interferes with their fundamental right to subsistence protection under Article 21 of the Indian Constitution. It was held that a person's passport cannot be seized just because a case involving a violation of Section 498-A of the Penal Code (IPC) is ongoing, or a red corner notice has been issued against them.

9. Considering the aforementioned circumstances, since the decision to revoke or impound the passport of a citizen would be purely in the domain of Passport Authorities, who are competent to take action in accordance with the provisions of the Passport Act, 1967 and the

Rules/Instructions framed thereunder; I find no merit in the instant civil writ petition and the same is accordingly dismissed.

10. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

15.01.2025

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No