

A. F. R.

Court No. - 32

Case :- WRIT - C No. - 27307 of 2019

Petitioner :- Neera Chandra

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Nipun Singh

Counsel for Respondent :- A.S.G.I.

Hon'ble Shashi Kant Gupta,J.

Hon'ble Umesh Kumar,J.

1. Heard Sri Nipun Singh, learned Counsel for the petitioner, Ms. Aradhna Chauhan, learned Central Govt. Advocate who has filed appearance on behalf of Union of India and learned Standing Counsel for State Authorities.

2. This petition has been filed seeking relief to quash the impugned order dated 28.5.2019 passed by respondent no.3 by which, the passport of the petitioner has been ordered to be impounded imposing penalty.

3. Briefly stating the facts giving rise to this petition are that initially, a passport was issued to the petitioner on 30.4.2008 bearing Passport No. G 7983341 having validity up to 29.4.2018; that before its expiry, the petitioner applied on line for its renewal on 14.1.2018 and she was given appointment for completing requisite formalities by the Regional Passport Office, Ghaziabad on 31.1.2018 bearing File No. GZ04C4010003218 which the petitioner complied with; but when, the petitioner did not receive her passport, she again took appointment on 20.3.2018 and personally met the official at Regional Passport Office, Ghaziabad, upon

which, on 21.3.2018, the petitioner received her passport on 25.3.2018 bearing No. R 9685546; that on 26.3.2019, police verification on renewal application of the petitioner was done by police authorities; that after getting police verification report, the Regional Passport Officer, Ghaziabad issued a show cause notice dated 13.4.2018 seeking clarification from the petitioner about pendency of a criminal case, relevant extract whereof, is quoted below;

*“ COURT CASE IS PENDING CRIME NUMBER
475/2012 188/171 J IPC BY REPORT*

You may recall that a passport bearing passport number R9685546 dated 21/03/2018 was dispatched to you by this office on the basis of your application dated 01/02/2018.

You are therefore, called upon to provide a suitable explanation and submit a fresh application with correct details. Please note that you are required to furnish a proper explanation regarding the circumstances under which you had suppressed the material information in your passport application and obtained the above said passport.

Also state why action should not be taken to impound the passport number R9685546 dated 21/03/2018, of the Passport Act, 1967 and Section 12(1)(b) of the Passport Act, 1967 should not be initiated against you.

Please quote the reference number mentioned in the top block of this letter for further correspondence.”

4. The petitioner submitted reply to the show cause notice and after receipt of the reply, the Regional Passport Officer, Ghaziabad passed the impugned order on 24.5.2018 directing the petitioner either to surrender her passport or to produce an order from the competent Court as is required by notification (GSR 570E); that on 12.6.2018, the petitioner submitted reply again to the Regional Passport Officer, Ghaziabad through registered post; that thereafter on 7.9.2018, the petitioner received e-mail letter bearing Reference No. SCN312165822/18 seeking clarification as to why, the material information was not disclosed in the application; that just within 14 minutes of the above e-mail letter, the petitioner received another order dated 7.8.2018 (Reference No. IMP/

312166100/18) which the petitioner challenged by filing Civil Misc. Writ Petition No. 344419 of 2018, which ultimately was dismissed as withdrawn by order dated 11.10.2018 with liberty to approach the appropriate authority /forum.

5. The petitioner in term of the aforesaid order, approached the competent Court below where criminal case was pending under Section 188 and 177 of IPC and sought permission to go abroad and the learned Court below granted permission by order dated 26.3.2019, which is quoted here in below;

“ पत्रावली पेश। पुकार पर प्रार्थिनी के विद्वान अधिवक्ता उपस्थित।

प्रार्थिनी की ओर से आवेदन इस आशय का प्रस्तुत किया गया कि प्रस्तुत प्रकरण न्यायालय में वर्ष 2012 से विचाराधीन है और काफी समय पूर्व आरोप विरचित हो चुका है। और वह नियमित रूप से हाजिर अदालत है किन्तु अभियोजन पक्ष द्वारा गवाह प्रस्तुत नहीं किए गए हैं। प्रार्थिनी पेशे से चिकित्सक है और वर्ष 2012 में मवाना नगरपालिका की चेयरमेन रही है किन्तु सत्ता पक्ष के दबाव के कारण उसके विरुद्ध आरोप पत्र पुलिस द्वारा न्यायालय में दाखिल किया गया है। जिससे उसे मानसिक तनाव है। उसकी पुत्री ब्रिटेन में रहकर पढ़ाई कर रही है। प्रार्थिनी उससे मिलने जाना चाहती है किन्तु कार्यालय द्वारा पासपोर्ट जमा करने हेतु कहा जाता है तो उसे मानसिक पीड़ा होती है। और पासपोर्ट जमा करने पर वह अपनी पुत्री से मिलने से वंचित हो जायेगी। प्रार्थिनी द्वारा मुकदमा लम्बित रहने के दौरान पुत्री से मिलने हेतु ब्रिटेन जाने की अनुमति हेतु याचना किया है।

प्रा.पत्र पर विद्वान अभियोजन अधिकारी द्वारा विरोध करते हुए प्रा.पत्र निरस्त किए जाने की याचना किया है।

सुना एवं पत्रावली का परिशीलन किया।

पत्रावली के परिशीलन से विदित है कि प्रकरण वर्ष 2012 की घटना से सम्बंधित है। और प्रकरण में पुलिस द्वारा विवेचना उपरांत पर्याप्त साक्ष्य पाते हुए आरोप पत्र न्यायालय दाखिल किया है। यह तथ्य सही है कि प्रकरण वर्ष 2012 से लम्बित है और अभियोजन पक्ष की ओर से कोई साक्षी प्रस्तुत नहीं किया गया है।

प्रकरण के तथ्य व परिस्थितियों में प्रार्थिनी को सशर्त विदेश जाने की अनुमति प्रदान की जा सकती है।

आदेश

प्रार्थिनी का प्रा.पत्र इस शर्त के साथ स्वीकार किया जाता है कि प्रार्थिनी इस आशय का शपथ पत्र दाखिल करेगी कि वह प्रत्येक तिथि पर द्वारा वकालतन न्यायालय में उपस्थित रहेगी तथा एक लाख रुपए का एफ.डी.आर. न्यायालय में इस आशय का दाखिल करेगी कि यदि उसके द्वारा न्यायालय आदेश का उल्लंघन किया जाता है तो उक्त एफ.डी.आर. राज्य सरकार के हक में जब्त हो जायेगा। पत्रावली नियत दिनांक 15.04.2019 को पेश हो।

ह0 अपठीत

26 / 03 / 2019

(अंशुमन धुन्ना)

न्यायिक मजिस्ट्रेट,

मवाना, मेरठ।

6. The petitioner complied with the condition imposed by learned Court below by filing affidavit and the FDR.; that the grievance of the petitioner is that although the petitioner has completed all the formalities as was required by the Regional Passport Office, yet the respondent no.3(Regional Passport Officer, Ghaziabad) by his order dated 28.5.2019, has issued passport only for a period of one year, subject to payment of penalty amounting to Rs. 5000/-. which is arbitrary and illegal. In support of his submission learned Counsel has relied upon the decision of a co-ordinate Bench of this Court passed in **Writ-C No.59959 of 2016** (Mohd. Farid Vs. Union of India & another) decided on 20.12.2016.

7. Learned Counsel appearing on behalf of Union of India submits that the Regional Passport Officer is empowered to impound/revoke passport under Section 10 of Passport Act, 1967 and grounds thereof have been mentioned in Clause(a) to (h) of sub-Section 3 of Section 10 of the Act.

8. The Hon'ble Supreme Court in **Menaka Gandhi Vs. Union of India 1978(1) SCC 248**, has observed that sub-section 5 of Section 10 of the Passports Act, 1967 requires the Passport Authority impounding the passport to record reasons of making such order and the necessity of giving reasons has obviously been introduced in the sub-section so that it may act as a healthy check against abuse or misuse of power. If the reasons given are not relevant and there is no nexus between reasons and the ground on which the passport was impounded, it would be open to the holder of the passport to challenge the order of impounding in a Court of law and if the Court is satisfied that the reasons are extraneous or irrelevant, the Court would struck down the order.

9. The Apex Court in the case of **Suresh Nanda Vs. CBI 2008(3) SCC 6744** has held that impounding of a passport has civil consequence and therefore, the Authorities are duty bound to afford opportunity of hearing to the person aggrieved.

10. Suffice to note that there is no doubt about the discretion vested with the Authority in terms of the provisions of Section 10 of the Act, but that is not at all mandatory to impound or caused to be impounded the passport or any travel document if proceedings in respect of offence merely alleged to have been committed by the holder of the passport pending in the Court . The pendency of criminal offence against the holder of the passport would not automatically results in impounding of the passport

11. It will not be out of place to mention here that in the case of the husband of petitioner, this Court has been pleased to pass the following order in **Writ-C No. 39572 of 2018 (Naresh Chandra Vs. Union of India and 3 others)**;

“.....In the instant case, passport of the petitioner was impounded by the Regional Passport officer Ghaziabad on the count that the petitioner had suppressed certain material facts. The facts stated were relating to subsequent criminal cases wherein the

Investigating Agency had filed negative police report under section 173 of the Cr.P.C.”

Having considered the facts of the case, this Court by the impugned order dated 16.1.2019, directed the Regional Pass Officer Ghaziabad to reconsider the decision for impounding of passport by taking into consideration the facts relating to the criminal cases concerned and by ignoring suppression of facts relating to the cases aforesaid. In pursuance of the order dated 16.1.2019, a passport has already been issued in favour of the petitioner but that is subject to final decision of this petition for writ. As already stated, the passport was impounded on the count of suppression of facts but in the light of the order dated 16.1.2019, ignoring that aspect of the matter, the passport has now been released.

Looking to all the facts of the case specially in view of the fact that the cases concerned are having no material effect relating to the conduct and character of the petitioner, we deem it appropriate to make the issuance of passport absolute.

In view of the facts stated above, the writ petition is disposed of by making issuance of the passport by Regional Passport Officer Ghaziabad, absolute and without the condition of subject to final decision of the present writ petition.”

12. Submission of learned Counsel for the petitioner that non disclosure of the pendency of criminal case cannot be taken as a material suppression of the fact for impounding the passport of the petitioner has substance. Moreover, the petitioner is a lady doctor having political background. Her daughter Nishitha Chandra is doing her Ph.D in Biotechnology from the University of Manchester, U.K and the petitioner has reason to visit her daughter who is studying abroad. The criminal case taken note by the Passport Authority is of minor nature under Sections 177 and 188 of I.P.C. which provides punishment for maximum period of six months and one month respectively and that too has been registered due to alleged political vengeance. Moreover, the offence in question is not against property or person.

13. For ready reference, provisions of Sections 177 and 188 of IPC is reproduced below as follows;

177. Furnishing false information.—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

14. Initially, the FIR was lodged under Sections 188, 171G, IPC and Section 127(ka) of The Representation of the People Act, but after investigation, charge sheet has been submitted under Sections 177 and 188 of IPC as is clear from Annexure-10 to the writ petition. In the present case, very basis for impounding the passport of the petitioner is only pendency of a criminal case as stated above, but the fact remains that the competent Court has granted permission by passing a reasoned order and thus, it goes

without saying that the reason disclosed by the Regional Passport Officer, Ghaziabad for impounding the passport of the petitioner has no legs to stand.

15. In view of the discussion made here in above, this petition is disposed of with the direction to the Regional Passport Officer, Ghaziabad to re-consider the decision of impounding the passport of the petitioner, without taking note of the pendency of a criminal case, within a period of one month from the date of presentation of a certified copy of this order.

16. Before parting with the case, we feel it necessary in the ends of justice to direct the concerned Court below to decide the Criminal Case No. 430 of 2012 under Section 188 and 177 IPC, P.S. Mawana pending in the Court of Judicial Magistrate, Mawana, Meerut, in accordance with law, as expeditiously as possible, preferably within a period of 6 months from the date of presentation of a certified copy of this order.

17. Registry of this Court is directed to send a copy of this order to the learned District Judge, Meerut for compliance within a week from today.

18. With the above observations, this petition stands disposed of.

(Umesh Kumar,J.)

(Shashi Kant Gupta,J.)

Order Date :- 26.8.2019
Shahid