



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 14496 OF 2024

ANJALI TUSHAR ASWALE
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Date: 2024.06.25 00:37:51 +0530

Kartik Vaman Bhatt .. Petitioner

Versus

Union of India & Ors. .. Respondents

Adv. Y. C. Naidu a/w. Edem Ribeiro, Deep Bopardikar i/b. Chirag Gupta for the Petitioner.

Adv. Pratik Irpatgire for Respondetn Nos. 1 &2.

Adv. Uma Palsule-Desai, AGP for Respondent No.3.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: JUNE 21, 2024

P. C.

1. The above Writ Petition is filed seeking an order and direction to Respondent No.2 to approve the pending Application of the Petitioner for renewal of passport and issue the passport for the full period of 10 years.

2. The only ground [which is found at paragraph 10 of the Affidavit in Reply filed on behalf of the Respondent No.2] on which the Application of the Petitioner for re-issuance of his passport has not been processed further

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is because there is an adverse police report showing that (i) a criminal proceeding is pending against him before the M.M. Court, Andheri Mumbai; and (ii) an Application under Section 14 of the SARFAESI Act, 2002 is pending against him before the CMM, Esplanade Court, Mumbai.

3. As far as the proceedings pending under Section 14 are concerned, we have already taken a view in the case of **Kokila Kartik Bhatt Vs. Union of India & Ors. [Writ Petition (L) No.14486 of 2024 decided on 26/06/2024]** that the same are not really criminal proceedings but are of a civil nature. Once this is the case, this objection cannot really survive for not proceeding further with the Application of the Petitioner for re-issuance of his passport.

4. As far as the criminal proceeding pending before the M.M. Court, Andheri, Mumbai is concerned, it appears that a private complaint has been filed against the Petitioner alleging offenses punishable u/s. 147, 182, 288, 325, 336, 352, 406, 420, 469, 452, 407, 468, 471, 504 and 506 of the Indian Penal Code, 1860. In this private complaint, an order is passed by the learned Magistrate that the complaint be sent to the concerned police station for enquiry u/s. 202 of Cr.P.C., returnable on 28th June 2011. No further order has been passed on this complaint. Further, this order of the M.M.

Court was challenged before a learned Single Judge of this Court, who, by his order dated 21st April 2015, has stayed the aforesaid order passed by the M. M. Court.

5. In this factual backdrop, the learned counsel appearing on behalf of the Petitioner brought to our attention section 6(2)(f) of the Passports Act, 1967 and submitted that the said provision stipulates the passport authority can refuse to issue a passport if proceedings in respect any offence alleged to have been committed by the applicant are pending before a criminal court in India. He submitted for criminal proceedings to be “pending” before a criminal court in India would mean that a case has been registered before any Court of law **and** the court has taken cognizance of the same. He submitted that this is clarified by an Office Memorandum dated 10th October 2019, issued by the Government of India, Ministry of External Affairs, PSP Division, Government of India, New Delhi. The learned counsel submitted that paragraph 5(vi) of this Office Memorandum states that in case where the Secondary Police Verification is adverse, it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. He submitted that the said clause further stipulates that mere filing of FIRs and cases under investigation do not come under the purview of Section 6 (2) (f) and criminal proceedings would only be considered

pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same.

6. The learned Counsel for the Petitioner submitted that in the facts of the present case, admittedly, no cognizance has been taken by the Court because only an enquiry has been ordered u/s. 202 of Cr.PC. and which also is stayed by this Court vide its order dated 21st April 2015. He, therefore, submitted that there is absolutely no merit in the contention of the Passport Authority to contend that because a criminal case is “pending” against the Petitioner, they are not processing his application for grant of passport.

7. The learned Counsel thereafter submitted that there is another facet to this matter. He submitted that the person who has filed the aforesaid complaint, and which according to the Passport Authority is pending, has himself has undertaken in this Court [in Contempt Petition No.42 of 2012 in Appeal No.115 of 2011 in Writ Petition (L) No.3012 of 2010] that he shall withdraw the criminal complaint filed before the Metropolitan Magistrate at Andheri. He submitted that once this is the case, the Passport Authorities are wholly unjustified in not issuing the passport to the Petitioner.

8. On the other hand, the learned Counsel appearing on behalf of the passport authorities, submitted that admittedly, there is an adverse police report against the Petitioner. The adverse police report clearly states that criminal proceedings are pending against the Petitioner. Once this is the case, Section 6(2)(f) of the Passports Act, 1967 is clearly attracted and the passport authority is fully justified in not processing the Application of the Petitioner further for issuance of a passport.

9. We have heard learned Counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. We find consideration for us in the arguments canvassed on behalf of the Petitioner. Firstly, we find that the complaint filed against the Petitioner has been sent by the Magistrate to the concerned police station for enquiry u/s.202 of the Cr.P.C. The sending of this complaint for enquiry also has been stayed by this Court vide its order dated 21st April 2015. When we look at the Office Memorandum dated 10th October 2019, it clearly stipulates that merely filing of a FIR and cases under investigation do not come within the purview of the Section 6(2)(f) of Passport Act, 1967. For a criminal proceeding to be considered as “pending”, it is only when a case is registered before any Court of law and the Court has taken cognizance of the same. This Office Memorandum is certainly binding on the Passport Authorities. For the sake

of convenience, the relevant portion of the Office Memorandum is reproduced herein:-

“5. In view of the above, the following instructions may be adopted while processing the passport applications in respect of those applicants who may have criminal proceedings pending before a criminal court in India

(iv) In case where the secondary Police Verification is also 'Adverse', it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2)(f) and that criminal proceedings would only be considered pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same.”

(emphasis supplied)

10. In the facts of the present case, it certainly cannot be argued that cognizance has been taken by any Court, as contemplated in the said provision, because only an enquiry has been ordered under Section 202 of the Cr.PC., and which order also has been stayed by this Court. Once this is the case, we find that the decision taken by the Passport Authority is in fact contrary to the Office Memorandum issued by the Government of India, Ministry of External Affairs and which we have reproduced above.

11. There is yet another facet of the matter in the facts of the present case. We find that in the Contempt Petition that was filed in this Court,

arising in some other proceedings, the complainant has given an undertaking to this Court to withdraw the criminal complaint bearing CC No.60/I&R/2010 filed before the learned Metropolitan Magistrate at Andheri. This is clearly recorded in a Division Bench order of this Court comprising of the Hon'ble Chief Justice and A. S. Doctor J. dated 8th April 2024. Despite this undertaking, the complaint has still not been withdrawn. We do not think that if the complainant has breached this undertaking, the Petitioner ought to suffer.

12. For all the aforesaid reasons, we do not find that the passport authorities were justified in not processing the Petitioner's Application for issuance of a passport. We, therefore, dispose of this Writ Petition by directing the Passport Authorities to process the Application of the Petitioner for issuance of a passport ignoring the adverse police report given on 6th December 2023. If the Passport Authorities find that the application of the Petitioner is otherwise in order, they shall then proceed to issue the passport to the Petitioner. This entire exercise shall be done by the Passport Authorities within a period of three weeks from today.

13. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

14. Though, we have disposed of the Writ Petition, we are placing it on board on 18th July 2024 for reporting compliance.

15. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]