

A.F.R.

Neutral Citation No. - 2024:AHC:118592-DB

Reserved

Court No. - 40

Case :- WRIT - C No. - 20480 of 2024

Petitioner :- Mohammad Umar

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Suhel Ahmad Azmi

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

Hon'ble Manjive Shukla,J.

(Pronounced in Court by Hon'ble Manjive Shukla, J.)

1. Heard Sri Suhel Ahmad Azmi, learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the respondents.
2. Petitioner through this writ petition has challenged the communication dated 30.05.2023 issued by the Regional Passport Officer, Vipin Khand, Gomti Nagar, Lucknow whereby he has been informed that decision has been taken to impound the passport No. M1266202 issued in his favour on 20.08.2014, under Section 10 (3) (e) of the Passports Act, 1967 on the ground of pending criminal case.
3. Facts of the case, in brief, are that pursuant to petitioner's application, Passport No. M1266202 was issued to him on 20.08.2014. The said passport is valid up to 19.08.2024. The petitioner on the basis of the aforesaid passport was residing in Kingdom of Saudi Arabia and was doing a private job. Petitioner's wife Fatima Jahara has lodged an F.I.R. against the petitioner which has been registered as Case Crime No. 25 of 2023 under Sections 498-A, 323, 406, 504, 506 I.P.C., Section 3/4 Dowry Prohibition Act and Section 3/4 of Muslim Women (Protection of Rights of Marriage) Act, 2019 at Police Station Mahila Thana, District Ambedkar Nagar. The investigating officer after completing his investigation in the aforesaid crime

had submitted charge-sheet on 27.08.2023 before the competent court. The petitioner and other accused of the aforesaid crime have filed an application under Section 482 Cr.P.C. before this Court at Lucknow bearing Case No. 4935 of 2024 and the Court vide order dated 29.05.2024 has stayed the proceedings of the criminal case pending before the Court concerned.

4. Learned counsel appearing for the petitioner has submitted that Section 10 (3) (e) of the Passports Act, 1967 provides that the passport authority may impound or cause to be impounded or revoked a passport or travel document if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before criminal court in India. He further submits that under Section 10 (5) of the Passports Act, 1967 provides that where the passport authority makes an order impounding a passport or travel document under sub-section 3 of Section 10 of the Passports Act, 1967, it shall record in writing a brief statement of the reasons of the making such order and furnish it to the holder of the passport.

5. Learned counsel appearing for the petitioner has argued that the legislature while enacting Section 3 of the Passports Act, 1967 had conferred discretion to the passport authority that in the case of pending criminal proceedings against a passport holder, he may impound the passport. He further argues that the legislature in Section 10 (3) had deliberately used word 'may' therefore intention of the legislature is very clear that a passport officer may impound the passport if criminal proceedings are pending against a passport holder but that does not mean that the passport officer is required to impound the passport of a person in every case where the criminal proceedings are pending against the said person. The passport officer as per the mandate of the legislature under Section 10 (3) (e) is required to consider each

and every case on its own facts and thereafter by recording reasons of a possible misuse of the passport for avoiding presence of the passport holder before the court trying the offence or possibility of delay in conclusion of the criminal proceedings, can impound the passport.

6. Learned counsel appearing for the petitioner has further argued that when Section 10 (3) (e) is read with Section 10 (5) of the Passports Act, 1967 it can easily be inferred that the legislature had mandated the passport officer to give reasons for recording his satisfaction that a case for impounding passport is made out under Section 10 (3) (e) of the Passports Act, 1967 but in the case of the petitioner no reasons for recording satisfaction of the passport officer has been given and in the impugned communication dated 30.05.2023 it has been stated that because of the pending criminal case before the court, petitioner's passport has been impounded under Section 10 (3) (e) of the Passports Act, 1967.

7. Learned counsel appearing for the petitioner has vehemently argued that since the decision of impounding petitioner's passport is unreasoned and without consideration of the necessary facts, the said decision cannot be sustained in the eyes of law.

8. Learned counsel appearing for the petitioner in support of his arguments has relied on the judgment dated 20.12.2016 rendered by a Divisional Bench of this Court in Writ-C No. 59959 of 2016 and has contended that in the said judgment it has categorically been held that the passport officer is required to record reasons for arriving at a conclusion that in view of pending criminal case before the court, impounding of passport is necessary and only thereafter the order for impounding of passport can be passed, whereas in the case of the petitioner no

such consideration has been done and straightaway his passport has been impounded, therefore the decision of the passport officer cannot sustain in the eyes of law.

9. Per contra, learned counsel appearing for the respondents has argued that the passport officer is empowered to impound passport of a person under Section 10 (3) (e) of the Passports Act, 1967 on the ground of pending criminal proceedings against him and therefore the passport officer while taking decision for impounding petitioner's passport under Section 10 (3) (e) of the Passports Act, 1967 in view of the pending criminal case against the petitioner in the competent court has acted strictly in accordance with law. He further submits that in view of the criminal case pending against the petitioner in the competent court, interference may not be shown by this Court in the impugned communication dated 30.05.2023.

10. We have considered the arguments advanced by the learned counsels appearing for the parties. We find that Section 10 (3) (e) of the Passports Act, 1967 provides that the passport authority may impound or cause to be impounded a passport if the proceedings in respect of an offence alleged to have been committed by the holder of the passport are pending before the criminal court in India. For ready reference Section 10 of the Passports Act, 1967 is extracted as under :-

“10. Variation, impounding and revocation of passports and travel documents.—

(1)The passport authority may, having regard to the provisions of sub-section (1) of section 6 or any notification under section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or a travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be

specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,—

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) If the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf:

Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of,

a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document: Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay, surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.”

11. We find that the legislature under Section 10 (3) (e) of the Passports Act, 1967 had deliberately used word ‘may’ meaning thereby that in the eventualities enumerated under Section 3 of the Passports Act, 1967 of the passport officer by recording reasons can impound passport but it is not necessary that in every case falling under Section 3 the passport officer is mandatorily required to impound the passport. The legislature under Section 10 (3) (e) has given power/discretion to the passport authority that if he is satisfied then he can impound the passport of a person on the ground of pending proceedings in relation to an offence in the criminal court, therefore prior to passing the order

of impounding passport, the passport officer after considering the facts and circumstances of each case has to record reasons to arrive at a conclusion that due to pending criminal proceedings in a criminal court, the passport holder may misuse the passport for avoiding his appearance before the court and can delay the conclusion of the the proceedings.

12. The Division Bench of this Court vide its judgment rendered on 20.12.2016 in *Writ-C No. 59959 of 2016 (Mohd. Farid Vs. Union of India & Anr.)* had considered the purport of Section 10 (3) (e) of the Passports Act, 1967 and has held that before impounding the passport of a person, the passport authority is required to record reasons for arriving at a conclusion that the passport holder may misuse the passport for avoiding his appearance before the court concerned and for delaying the conclusion of the criminal proceedings. Relevant paragraphs of the judgment rendered in the case of Mohd. Farid (supra) are extracted as under :-

“After respective arguments have been advanced, we have proceeded to examine the provisions of the Passport Act, 1967 wherein section 10 confers power on the Passport Authority to pass orders for impounding/revocation of passports and travel documents. The grounds of impounding/revocation has been provided under Clause (a) to (h) of sub-section 3 of Section 10 of the Passport Act, 1967. Sub-section (5) of Section 10 obligates the Passport Authority to give reasons for making such an order. The relevant provisions that have been invoked in the present case is as follows:-

"(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document:-

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India

(5) Where the passport authority makes an order varying or cancelling the endorsement on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the

interests of the sovereignty and integrity of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy."

A bare perusal of the provisions quoted above would go to show that the Passport Authority under the Passports Act, 1967 has been conferred with the Authority to impound or caused to be impounded/revoked a passport or travel document if proceedings in respect of an offence have been committed by the holder of the passport or travel document are pending before a criminal Court in India. Sub-section 5 of Section 10 obligates the Passport Authority to record in writing a brief statement of reasons for making such an order.

Apex Court in the case of *Menaka Gandhi vs. Union of India 1978 (1) SCC 248* has taken the view 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.

Apex Court in the case of *Suresh Nanda vs. CBI 2008 (3) SCC 674* has taken the view that impounding of passport entails civil consequences and in view of this, the Authorities are duty bound to give opportunity of hearing to the person concerned.

There is no doubt on this fact that discretion is vested with the Passport Authority in terms of section 10 of the Passports Act, 1967 but it is not at all mandatory on the passport authority to impound or caused to be impounded or revoke a passport or travel document if proceedings in respect of offence merely alleged to have been committed by the holder of the passport or travel document are pending before the Court in India.

Pendency of criminal case against the holder of passport would not automatically result in impounding of his passport and the mere fact that certain conditions specified in Section 10 (3) of the Act, on the basis of which a passport can be impounded, subsists in a given case cannot by itself result in impounding of passport automatically and once the Passport Authority, in his wisdom, chooses to exercise his discretion in the said direction as to whether on account of pendency of such criminal case, the passport in question should be impounded or not, then, at the said point of time, the Passport Officer should apply his mind looking into the nature of the criminal cases that have been lodged/initiated against the petitioner and further that if a passport is not impounded, then there are possibilities that the incumbent would not at all face the criminal cases. Even if criminal case is pending against a

person that by itself does not require passport authority to impound/revoke the passport in every given case. It is only in appropriate cases for adequate and cogent reasons such an order could be passed. While passing order of impounding/revocation of passport, merely by quoting the requirement mentioned in the section is clearly indicative of circumstance that order has been passed without there being any objective consideration of the subject matter.”

13. We find that a criminal case relating to a matrimonial discord is pending against the petitioner in the criminal court and proceedings of the said case have been stayed by the High Court and mediation proceedings in between the parties are in process.

14. The passport officer in the present matter has taken decision to impound petitioner’s passport under Section 10 (3) (e) of the Passports Act, 1967 only on the ground that proceedings related to an offence are pending against the petitioner before criminal court but he has not considered the facts of the criminal case and has also not recorded reasons to arrive at a conclusion that petitioner may misuse his passport for avoiding his presence before the criminal court and also for delaying the conclusion of the criminal proceedings and therefore it is necessary to impound his passport under Section 10 (3) (e) of the Passports Act, 1967. More so we find that Section 10 (5) of the Passports Act, 1967 mandates the passport authority to give brief reasons for passing the order for impounding of the passport but in the present case impugned communication dated 30.05.2023 does not disclose that the passport authority has made any consideration of the facts of the case and has recorded reasons. Ergo, the impugned decision for impounding petitioner’s passport contained in the impugned order dated 30.05.2023 cannot be sustained in the eyes of law.

15. In view of the aforesaid reasons, this writ petition is allowed. The impugned decision of impounding petitioner’s

passport No. M1266202 contained in impugned order dated 30.05.2023 is quashed. The Respondent No. 2 is directed to reconsider the entire matter, grant an opportunity of hearing to the petitioner and thereafter pass a fresh order within a period of six weeks from the date of service of a copy of this order.

Order Date :- 25.7.2024

Gaurav

(Manjive Shukla, J.)

(Shekhar B. Saraf, J.)