



2025:AHC-LKO:64769

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 8668 of 2025

Smt. Neha Arora

.....Applicant(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. Home Prin.
Secy. Home Lko. And Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Nadeem Murtaza, Harsh Vardhan
Kediya, Riyaz Ahmad, Snigdha Singh
Counsel for Opposite Party(s) : G.A.

Court No. - 14

HON'BLE RAJEEV SINGH, J.

1. Heard Sri Nadeem Murtaza, learned counsel for the applicant assisted by Sri Shashank Tilehry, Advocate, learned AGA for the State and perused the record.

2. The present petition has been filed with the following prayer:-

"WHEREFORE, it is most respectfully prayed that the Order dated 13.08.2025 passed by the Learned Additional Civil Judge (J.D.)/FTC-50, Lucknow, whereby the Learned Court has rejected the application filed by the Applicant seeking no objection certificate for renewal of passport in Case No. 54683/2024 (State v. Neha Arora & Ors.) may kindly be set aside and due permission/no objection certificate for renewal of the Applicant's passport be granted."

3. As the dispute in question is that in case the offence alleged in the charge-sheet are triable by Sessions but the case is pending after taking cognizance before the Magistrate then whether Magistrate is empowered to decide the application for grant of permission for issuance of passport or visiting any other country, as the counsel for the parties jointly requested that aforesaid issue is legal issue and this can be decided without pleading, therefore, with the consent of counsel for the parties, the matter is being decided.

4. Vakalatnama filed by Vaibhav Upadhyay on behalf of opposite party no. 2 is taken on record.

5. Learned counsel for the applicant submitted that the prosecution in question was initiated by private respondent by lodging FIR against the husband of the petitioner and on the basis of concocted facts as the charge-sheet was submitted by the Investigating Officer without considering the evidences of the applicant and he further submitted that the cognizance has already been taken by Civil Judge, FTC, Lucknow and presently the case is pending before ACJ (J.D.) FTC 50. As the cognizance was taken by the learned Magistrate for the offence under Section 323, 328, 376, 384, 504 and 506 IPC as one of the offence is triable by Session Judge, therefore, the case in question is to be committed in the Court of Sessions but the same has not been committed. In the meantime as the daughter of petitioner is studying in U.K., therefore, in necessity, as a result, application was moved for grant of no objection for renewal of passport on 07.05.2025 but the said application was rejected by the Court below vide order dated 13.08.2025 without considering the office memorandum issued by the Government of India dated 10.10.2019 and he also submitted that revise office memo dated 06.12.2024 is also issued by the Ministry of External Affairs, Government of India. As the aforesaid office memorandum clearly states that permission is necessary from the Court concerned where the case is pending and in the present case, the case is pending before the learned Magistrate, therefore, it was obligatory on the part of Court below to decide the application on merit not on the technical ground.

6. He further submitted that this controversy related to power of the Court has already been discussed by Hon'ble Supreme Court in the case of **Rajender Kumar Jail Vs. State** reported in **1980 3 SCC 435** and he further submitted that the facts of aforesaid case are that the charge-sheet was submitted by the Investigating agency for the offence triable by Session Judge but the Government issued notification for withdrawal of the prosecution, which was placed before the learned Magistrate where the case was pending after taking cognizance and the said application under Section 321 Cr.P.C. was rejected on the ground that offences are triable by Session Judge and this controversy was resolved by the

Hon'ble Supreme Court with the observation that power lies with the Court where the case is pending for taking proper decision on the said application and he further submitted that the aforesaid analogy is also applicable in the present case, therefore, kind indulgence of this Court is necessary and the petition may be allowed by setting aside the impugned order with the liberty to competent Court to pass fresh order on the application of the petitioner on merit.

7. Learned AGA as well as counsel for the complainant does not dispute the legal provisions as argued by the learned counsel for the applicant but he submitted that the case is not being committed to the Court of sessions by learned Magistrate.

8. Considering the submissions of the learned counsel for the parties and going through the contents of the petition as well as the relevant records and the judgement relied by the counsel for the applicant, as this controversy has already been decided by the Hon'ble Supreme Court in the case of **Rajender Kumar Jain (Supra)** where the learned Magistrate is the competent Court if the case is pending before him after taking cognizance even the offence is triable by learned Sessions Court as the office memorandum as mentioned by the counsel for the applicant also speaks that learned Court where the case is pending is competent to issue no objection certificate.

9. In such circumstances, this Court is of the view that order passed by the learned Court below is bad in the eyes of law.

10. Accordingly, the same is hereby set-aside with liberty to the competent Court to pass fresh order within a period of three weeks and learned court below is also directed to ensure the committal of case in question.

(Rajeev Singh,J.)

October 14, 2025

Anurag