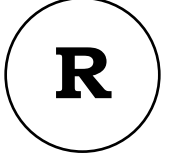




IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF FEBRUARY, 2024



BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 18066 OF 2023 (GM-PASS)

BETWEEN:

...PETITIONER

(BY SRI DHANANJAY JOSHI, SR.ADVOCATE FOR
SRI KASHYAP N. NAIK, ADVOCATE)



AND:

UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF EXTERNAL AFFAIRS,
SOUTH BLOCK,
NEW DELHI - 110 001.

HAVING ITS REGIONAL OFFICE AT:
REGIONAL PASSPORT OFFICE,
BENGALURU, 80 FEET ROAD,



KORAMANGALA, 8TH BLOCK,
BENGALURU – 560 095.

...RESPONDENT

(BY SMT.PRIYANKA S.BHAT, CGC)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTION TO THE RESPONDENT TO CONSIDER THE PETITIONER'S APPLICATION FOR RENEWAL OF HIS PASSPORT BEARING NO. K8020859 AND CONSEQUENTLY TO RENEW THE PETITIONER PASSPORT (BEARING NO. K8020859 (ANNX-B).

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of *mandamus*, to consider the petitioner's application for renewal / re-issuance of his passport.

2. Heard Sri Dhananjay Joshi, learned senior counsel along with Sri Kashyap N.Naik, learned counsel for the petitioner and Smt. Priyanka S. Bhat, learned Central Government Counsel for the respondent.

3. Facts in brief, germane are as follows:

The petitioner claims to be a lawyer by profession, registered himself with the Bar Council of Karnataka. Petitioner also claims to have registered in New York State Bar of the



United States. He is said to be holding a passport issued by the Regional Passport Office, Bengaluru, on 05.04.2013, which was valid till 04.04.2023. Six months prior to the expiry of the passport, the petitioner submits an application seeking renewal / re-issuance of passport.

4. In consideration of the application, a police verification process is undertaken for such re-issuance / renewal. It is averred that during the police verification, it is known that the petitioner is embroiled in three proceedings. One M.C.No.2679/2022 which was initiated at Bengaluru against his wife, is now transferred to Lucknow in terms of an order passed by the Apex Court; another proceeding in C.C.No.621/2022 filed by the wife against the petitioner seeking maintenance under Section 125 of the Cr.P.C. and the third proceeding is a proceeding instituted by the wife in CrI.Misc.No.2524/2022 under Section 12 of the Protection of Women From Domestic Violence Act, 2012. All proceedings are pending before the concerned jurisdictional Courts at Lucknow. At the time of police verification, the petitioner informs the police about all the aforesaid proceedings.



5. A fourth proceeding is a crime registered by the petitioner in Crime No.157/2022 against his wife invoking Sections 384, 380, 504, 506 and 34 of the IPC. The averment in the petition is that, as a counter blast, the wife also registers a crime in Crime No.164/2022 before the jurisdictional police at Lucknow for offences under Sections 498A, 323, 406, 504 and 506 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The petitioner has challenged the same before the High Court of Allahabad and the said challenge is pending consideration.

6. On 16.03.2023, the petitioner receives a letter from the Regional Passport Office informing the petitioner that they have received an adverse verification report from the police and seeks a written explanation. The petitioner replies to the notice enclosing all the documents as was sought for. No response comes about. Thereafter, the petitioner approaches the respondent and explains that his passport requires to be re-issued / renewed, no action is taken. It is therefore, the petitioner is before this Court in the subject petition.



7. The learned senior counsel would submit that the passport is not reissued / renewed by the respondent on the score that there are three cases pending against the petitioner. One, a case instituted by the wife under Section 125 of the Cr.P.C.; another case instituted by the wife invoking Section 12 of the Protection of Women From Domestic Violence Act, 2012 and a crime in Crime No.164/2022 for the offences under Sections 498A, 323, 406, 504 and 506 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Learned senior counsel would submit that the crime in Crime No.164/2022 has been stayed by the High Court of Allahabad, Lucknow Bench in Crl.Misc.Writ Petition No.9651/2022.

8. Learned Central Government Counsel representing the respondent – Union of India would refute the submissions to contend that there are three proceedings pending against the petitioner and therefore, the passport cannot be issued as is sought by the petitioner in the application. No fault can be found in the act of the respondent in not considering the application submitted for renewal of passport.



9. I have given my anxious consideration to the submissions made by the learned senior counsel for the petitioner and learned Central Government Counsel representing the respondent and have perused the material on record. In furtherance whereof, the only issue that falls for my consideration is, ***whether the re-issuance or the renewal of the passport can be denied on the score that a FIR is registered against the holder of the passport?***

10. The afore-narrated facts are not in dispute and requires no reiteration. The issue lies in a narrow compass, with regard to the action of the respondent in not reissuing the passport as was sought by the petitioner. As observed, the petitioner is a holder of an Indian passport, which was issued to him on 05.04.2013 and its validity was upto 04.04.2023. The petitioner, six months before its expiry *i.e.*, on 10.11.2022, submitted an application seeking renewal of his passport. It is not considered on the score that there are three cases pending against the petitioner, which are noted hereinabove. The tenability or otherwise of such non-consideration is required to be noticed, for which certain provisions of the Passports Act, 1967 (for short 'the Act'), are necessary to be considered.



Section 6 of the Act deals with refusal of passports / travel documents, it reads as follows:

""6. Refusal of passports, travel documents, etc.—(1) *Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:—*

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) *Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:—*

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;



(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, 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;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest."

(Emphasis supplied)

It is the afore-quoted provision is what is necessary to be considered for the resolution of the issue in the *lis*. It



mandates that a passport or a travel document can be denied to a holder of the passport, if any proceeding is pending, against him before any criminal court in India. The proceedings that are pending against the petitioner are as afore-quoted. Three proceedings against him and, one instituted by him.

11. In furtherance of the afore-quoted statutory provision, the Ministry of External Affairs had issued a notification in Notification No.GSR570(E) on 25.08.1993, as to what must be done in cases where there are pending cases before the criminal court, against the holder of a passport. This is further clarified by another Office Memorandum dated 10.10.2019, the relevant clause of which, reads as follows:

*"(vi) 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)

The clarification is rendered by the Ministry of External Affairs that mere filing of FIR and cases under investigation



would not come under the purview Section 6(2)(f) of the Act and the criminal proceedings would only be considered when pending, and the concerned Court has taken cognizance of the offence, which would presuppose that the charge sheet has been filed by the Officer in-charge of a police station.

12. In the light of the aforesaid clarification, in cases where the proceedings are pending against the holders of the passports, when they seek renewal or re-issuance, it cannot be denied on the ground that the proceedings are pending against those holders of the passports only in cases, where the proceedings are at the stage of crime, and the concerned criminal Court has not taken cognizance of the offence. Any other proceeding pending invoking any other law, will not become an impediment for the Passport Authorities for issuance / re-issuance / renewal of passport. Therefore, it is expected of the Passport Authorities to act in accordance with the clarification as obtaining in the Office Memorandum dated 10.10.2019 and not deny re-issuance / renewal of passport to those passport holders against whom pending criminal cases are at the stage of investigation, and the concerned Court is not yet take cognizance, and not drive every passport holder to



knock at the doors of this Court, for redressal of their grievance.

13. For the aforesaid reasons, the following:

ORDER

- a. The writ petition is allowed.
- b. *Mandamus* issues to the respondent to consider the application submitted by the petitioner seeking renewal / re-issuance of the passport within an outer limit of two weeks from today or if not earlier.
- c. It is needless to observe that such consideration shall happen only in accordance with law.

Ordered accordingly.

**Sd/-
JUDGE**