

(2020) 08 P&H CK 0071

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 25914 Of 2019

Dalbir Kaur

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 26-08-2020

Acts Referred:

Passports Act, 1967 — Section 5, 10(5), 10, 10(1), 10(3)(h), 10(3)(e)(h), 11
Negotiable Instruments Act, 1881 — Section 138
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 08 P&H CK 0071

Hon'ble Judges : Harnaresh Singh Gill, J

Bench : Single Bench

Advocate : Vikram Chaudhri, Sartaj Singh Gill, Gurmeet Kaur Gill, Akshay Bhan, Aman Bansal, Aman Talwar

Final Decision : Allowed

Judgement

Harnaresh Singh Gill, J

Case was taken up for hearing through video conferencing.

Petitioner, Dalbir Kaur, has filed the present writ petition under Articles 226/227 of the Constitution for quashing the seizure memo dated 23.04.2019 (Annexure P-11), vide which her passport, bearing No.P2208297 issued on 22.12.2016, was physically seized/impounded, and for quashing the order/communication dated 17.05.2019 (Annexure P-14), whereby her representation dated 13.05.2019 (Annexure P-13) addressed to respondent No.5 regarding illegal seizure/impounding of her passport, was disposed of without any application of mind by only informing that her passport had been impounded under Section 10(3) (h) of the Passports Act, 1967 (for brevity, 'the Act'), as she had been declared a proclaimed offender by the Court of Judicial Magistrate Ist Class, Ludhiana.

The case put up by the petitioner is that her marriage was solemnized with Anudeep Singh on 23.10.1993 whereafter she shifted to her matrimonial home

at Amritsar from New Delhi. Out of the said wedlock, two children were born but due to serious differences with her husband, she shifted back to her parental home at New Delhi in March, 2013 and since then, she has been living there.

Now away from her matrimonial home, she was unaware of the business activities of her husband. She was shown one of the partners in the business firm run by her husband, whereas she had virtually no role to play in the affairs of said business. To her utter surprise, she received a letter dated 13.07.2018, sent by respondent No.6, Kotak Mahindra Bank, at her New Delhi address, informing her that she had been declared a proclaimed offender by the Court of the Judicial Magistrate Ist Class, Ludhiana. Later, when she came to know regarding the proclamation order dated 14.11.2017, she appeared before the Court of Judicial Magistrate Ist Class, Ludhiana, and was released on bail on 17.12.2018. The petitioner went to Denmark on 18.04.2019 to meet her son, who was visiting there through his school in U.S.A., and came back to India on 23.04.2019. On her return from Denmark, the Indian Immigration Control Department at the IGI Airport, New Delhi, impounded her passport without any prior information or any show-cause notice.

When she approached respondent No.4 for redressal of her grievance, she was asked to file a representation/appeal, which she filed via e-mail on 29.04.2019. However, there had been no response to the same. Vide communication dated 17.05.2019, she was informed by respondent No.5 that her passport had been impounded on 20.03.2019. Thereafter, the petitioner filed Writ Petition (Civil), bearing No.5486 of 2019, before the Hon'ble Delhi High Court, which had been dismissed, vide order dated 20.05.2019 by observing that as bulk of the cause of action arose in the State of Punjab, the writ petition ought to have been filed before this Court. However, a direction was issued to the passport authorities to furnish a copy of the statement of reasons recorded for impounding the passport within a period of one week.

Since no statement of reasons was supplied despite the aforesaid directions, a legal notice dated 28.07.2019 (Annexure P-17) was issued to respondent No.5. In response thereto, respondent No.5 informed that the passport of the petitioner had been impounded as she had been declared a proclaimed person.

I have heard the learned counsel for the parties and with their able assistance, gone through the record available on file.

Learned Senior Counsel for the petitioner has submitted that respondent No.6, Kotak Mahindra Bank, filed two complaints under Section 138 of the Negotiable Instruments Act, 1881, before the Judicial Magistrate, Ludhiana, wherein her address was mentioned as that of her husband viz. 68-A, Maqbool Road, Amritsar, whereas she was residing in New Delhi at that time. The petitioner had been declared a proclaimed person on 14.11.2017 and respondent No.6-Bank, vide letter dated 13.07.2018, informed the petitioner about the proclamation order/proceedings at her Delhi address.

Learned Senior Counsel has further submitted that no doubt, the petitioner had been declared a proclaimed person, vide order dated 14.11.2017, but after appearing in the concerned Court, the petitioner had been granted bail on 17.12.2018 and, therefore, the order declaring the petitioner a proclaimed person, would cease to be operative. Thus, respondent No.5-Regional Passport Officer had no occasion to impound the passport of the petitioner on 23.04.2019 without giving her the prior information. Respondent No.5 did not communicate any reason for impounding the passport of the petitioner, which led to the filing of the writ petition before the Delhi High Court.

To buttress his arguments, learned Senior Counsel has relied upon a decision rendered by this Court in Smt. Deeksha Puri Vs. State of Haryana, 2013 (1) R.C.R. (Criminal) 159, wherein it was held as under:-

"41. It is also clarified that the moment a proclaimed offender is arrested or he appears at the place and time required by the Court or surrenders before the Court or authority issuing warrants or proclamation, as the case may be, the order of declaration of proclaimed offender would cease to be operative."

Learned Senior Counsel has also relied upon a decision rendered by the Hon'ble Supreme Court in Maneka Gandhi vs. Union of India, (1978) 1 SCC 248, wherein, it was held that sub-section 5 of Section 10 of the Passports Act, 1967, requires the Passport Authority impounding the passport to record the 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 the reasons and the ground on which the passport has been impounded, it would be open to the holder of the passport to challenge the order impounding it in a Court of law and if the Court is satisfied that the reasons are extraneous or irrelevant, the Court would strike down the order.

Learned Senior Counsel for the petitioner has also relied upon a judgment rendered by the Hon'ble Supreme Court in Suresh Nanda Vs. CBI (2008) 3 SCC 6744, wherein it was held that impounding of a passport has civil consequences and therefore, the authorities are duty bound to afford an opportunity of hearing to the person aggrieved.

On the other hand, learned counsel appearing for respondents No.1 to 5, has submitted that two complaints dated 31.01.2019 and 15.02.2019 had been received from respondent No.6-Bank to the effect that the petitioner is a guarantor for a loan amount and that in the proceedings under Section 138 of the Negotiable Instruments Act, 1881, she had been declared a proclaimed person. She has further submitted that though the petitioner had appeared before the competent Court on 17.12.2018 and furnished the bail bonds, yet the fact remains that criminal proceedings are pending against her. Therefore, her passport had been impounded/revoked under Section 10(3) (e) (h) of the Act so that she might not leave the country. She has further submitted that neither the

petitioner had furnished the order passed by the competent Court in respect of releasing her passport nor the order dated 10.06.2019 passed by the learned Judicial Magistrate Ist Class, Ludhiana, was ever supplied to the passport authorities.

Learned Senior Counsel appearing for respondent No.6, has submitted that two criminal complaints stood filed against M/s Wazir Singh Enterprises, in which the petitioner and her husband, Anudeep Singh, are partners and more than a sum of Rs.50 crores is due and two cheques, amounting to Rs.13,33,38,147/- each issued in respect of the repayment of loan, upon their presentation for encashment, got dishonoured. He has further submitted that since there was every likelihood that the petitioner and her husband might leave the country to defeat the outstanding dues towards the bank, respondent No.6-Bank had filed CWP-5843-2019, seeking impounding of the passport of the petitioner.

In the present case, undisputedly, the petitioner was declared a proclaimed person on 14.11.2017 by the Court of Judicial Magistrate Ist Class, Ludhiana. The address of the petitioner herein, given in the complaint by respondent No.6, is that of Amritsar, whereas vide letter dated 13.07.2018 sent by respondent No.6, she was informed about the proclamation order at her New Delhi address. Accordingly, the petitioner surrendered before the Court of Judicial Magistrate Ist Class, Ludhiana, on 17.12.2018 and was released on bail. Vide communication dated 17.05.2019, the petitioner was informed that by invoking Section 10(3) (h) of the Act, the passport had been impounded.

It is further the case of the petitioner that on 23.04.2019, at the time of her arrival at IGI Airport, New Delhi, from Denmark, the Immigration Officer had impounded her passport, vide seizure memo dated 23.04.2019 (Annexure P-11). No opportunity of hearing was granted to the petitioner nor any notice was ever served upon her by the passport authorities intimating the reasons for impounding the passport.

Section 10(5) of the Act, stipulates that furnishing of reasons for impounding a passport is mandatory and despite the fact that Delhi High Court, vide order dated 20.05.2019, had directed the passport authorities to furnish a copy of statement of reasons for impounding the passport of the petitioner, no reasons had ever been communicated. When the statement of reasons was not supplied to the petitioner, she sent a legal notice dated 28.07.2019 and vide letter dated 06.08.2019, she was informed that since she had been declared a proclaimed person, her passport had been impounded and she was further asked to furnish a copy of the order passed by the concerned Court for releasing her passport. Respondent No.5, Regional Passport Officer, has ignored the order dated 10.06.2019 passed by the learned Judicial Magistrate. A relevant extracts of the order dated 10.06.2019 would read as under:

"However, it is made clear that accused No.2, Dalbir Kaur, who was earlier declared as proclaimed person vide order dated 14.11.2017 and now has been

granted bail vide order dated 17.12.2018 and no proclamation proceedings have been intimated to the court being so initiated against her by the concerned police station. Accordingly, proclamation proceedings against the accused stand dropped as she has been granted bail."

It would not be out of place to mention here that the aforesaid order dated 10.06.2019 was passed in a complaint under Section 138 of the Negotiable Instruments Act, 1881, preferred by respondent No.6-bank.

The Regional Passport Officer, respondent No.5, had made no efforts to enquire into the status of proclamation proceedings against the petitioner. Even vide legal notice dated 28.07.2019, addressed to the Regional Passport Officer, the petitioner informed that she had been granted bail by the Judicial Magistrate, on 17.12.2018 and as per the settled law, the moment a proclaimed person surrenders before the Court concerned and is granted bail, the order of declaration of proclaimed person, ceases to operate. Even otherwise, complaints filed against the petitioner are under Section 138 of the Negotiable Instruments Act, which is a bailable offence and imposition of any condition even by the Court to surrender the passport, does not arise. Therefore, the principle of audi alteram partem stands violated as the petitioner was granted no notice or opportunity of hearing. By impounding her passport on 23.04.2019, she has been debarred from meeting her children, who are statedly studying in the Universities at Connecticut and Boston, since the very date of impounding of her passport.

The action of the respondents is void and illegal being violative of the principles of natural justice as in the absence of prior notice, the order passed by respondent No.5 stands vitiated. Moreover, the power conferred on the passport authority to impound a passport is a quasi judicial and it seriously interferes with the constitutional rights of the holder and entails civil consequences. Even the appeal/representation filed by the petitioner via e-mail, under Section 11 of the Act, was not considered by respondent No.4-Chief Passport Officer.

There are two provisos to sub-section 1 of Section 10-A of the Act, which specifically mandate that every holder of the passport in respect of whom an order of suspension of passport has been passed under clause (a) or clause (b) of this sub-section, shall be given an opportunity of being heard, within a period of not later than eight weeks reckoned from the date of passing of such an order. Upon such hearing, the Central Government is empowered, if necessary, by an order in writing to modify or revoke the order under this section.

Thus, the act of respondent No.5 impounding the passport of the petitioner has a clear impact on her Fundamental Rights. As mentioned above, upon the petitioner's having appeared before the Judicial Magistrate at Ludhiana, she was granted bail and, thus, the proclamation order ceased to be operative. The said fact was well within the knowledge of respondent No.5-Regional Passport Officer, Amritsar. Moreover, in a bailable offence, no condition can be imposed by the Court regarding surrender of the passport.

The Hon'ble Apex Court in S.R.Venkataraman Vs. Union of India and another, (1979) 2 SCC 491, held that malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause. It was also observed that in case a discretionary power had been exercised for an unauthorized purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith.

The conduct of the proceedings at the end of respondent No.5 leading to the passing of the impugned orders, stems from the malice, giving a complete neglect to the statutory provisions and the settled law on the issue. The instant case is a clear example of the administrative overreach, thereby breaching the very Fundamental Rights of the petitioner. Hence, the impugned action is highly deprecated.

As a result of foregoing discussion, the present petition is allowed with a costs of Rs.1.00 lakh (Rupees One Lakh), to be paid by respondent No.5 to the petitioner. As a consequence thereof, the impugned order/seizure memo dated 23.04.2019 (Annexure P.11) and letter dated 17.05.2019 (Annexure P.14) are hereby quashed and respondent No.5, Regional Passport Officer, Amritsar, is directed to release the passport of the petitioner within 15 days from the date of receipt of the certified copy of this order.