

(2017) 12 KAR CK 0066
In the Karnataka High Court
Case No : 41184 of 2017

REHMAN ROSHAN BAIG

APPELLANT

Vs

UNION OF INDIA & ANR.

RESPONDENT

Date of Decision : 26-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 200](#), [Section 156\(3\)](#) - Examination of complainant - Police officers power to Investigate cognizable case
[Indian Penal Code, 1860](#)

Citation : (2017) 12 KAR CK 0066

Hon'ble Judges : Aravind Kumar

Bench : SINGLE BENCH

Advocate : SHAMANTH NAIK, SYED KHAMRUDDIN, MAHESH, KRISHNA S. DIXIT

Judgement

1. Heard Sri Shamanth Naik, learned Advocate appearing for petitioner and Sri Mahesh, learned Central Government Standing Counsel appearing on behalf of Sri Krishna Dixit, Assistant Solicitor General for respondents.

2. Petitioner was issued with a passport bearing No.Z1731125 on 22.11.2007 valid upto 22.11.2017 and when said passport was sought for being renewed, an endorsement dated 13.04.2017 came to be issued by second respondent refusing to renew the passport of the petitioner on the ground that criminal proceedings are pending against him. Hence, petitioner is before this Court seeking for quashing of said endorsement dated 13.04.2017 - Annexure-A and for a writ of mandamus to second respondent to renew the passport.

3. Learned counsel appearing for petitioner would reiterate the grounds urged in writ petition and prays for quashing the impugned endorsement and also seeks for a direction to second respondent to renew the passport of the petitioner. Learned Central Government Standing Counsel appearing for respondents would submit that on account of criminal proceedings in Cr.No.66/2012 pending against petitioner, petitioner be directed to approach the jurisdictional Special Court

before whom said proceedings are pending for grant of permission to travel abroad and in the event of an order being passed by said Court in favour of petitioner, respondent - authorities would renew the passport of the petitioner by taking into consideration the order that may be passed by the jurisdictional Court. Hence he prays for rejection of the writ petition. In support of his submission, he has relied upon judgment of the coordinate Bench of this Court rendered in W.P.No.57756/2015 on 14.06.2016.

4. Having heard the learned Advocates appearing for parties and after bestowing my careful and anxious consideration to the rival contentions raised at the bar, material on record would disclose that a private complaint came to be filed against this petitioner and his family members under Section 200 Cr.P.C. alleging that petitioner and his family members have committed offences punishable under Sections 167, 409, 415 & 420 IPC read with Section 13(1)(c),(d) & (e) of Prevention of Corruption Act, 1988 before 23rd Additional City Civil & Special Judge for Prevention of Corruption Act. Said complaint came to be registered as PCR NO.34/2012. On same being referred under Section 156(3) Cr.P.C., investigation was taken up and subsequently jurisdictional police after registering an FIR in Crime No.66/2012, investigated the matter and have filed "B" report on 22.01.2014. Subsequently, complainant Mr.Abdul Huq Surathi has filed a petition (protest memo) opposing "B" report and matter has been adjourned from time to time before the jurisdictional Special Court as is evident from the order sheet - Annexure-D.

5. A notification has been issued by the Ministry of External Affairs dated 25.08.1993 in exercise of the powers conferred by clause (a) of Section 22 of Passports Act, 1967 stipulating conditions for issuance of passport when criminal cases are pending against citizens of India. It reads as under: "G.S.R. 570 (E).- In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:-

(a) the passport to be issued to every such citizen shall be issue-

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year;

(iii) if such order gives permission to travel abroad for a period less than one

year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified.

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued."

It is in this background, Co-ordinate Bench of this Court in W.P.No.57756/2015 having taken note of the fact that criminal proceedings are pending against petitioner, had directed the applicant therein to make suitable application before the jurisdictional Court before whom criminal case was pending for grant of permission/direction for renewal of passport. Undisputedly, in the said case criminal case still pending and had not been disposed of. However, in the instant case, as could be seen from the records, "B" report has been filed after investigation and no orders have been passed on the objections filed by the complainant to the said "B" report by the jurisdictional Court. Thus, it cannot be said that criminal proceedings initiated against petitioner is still pending. To put it differently, proceedings which had been initiated by the complainant by filing a private complaint has been closed by virtue of "B" report having been filed and as such, there is no impediment for the respondent - authorities to consider the application of the petitioner for renewal of his passport.

6. Hence, I proceed to pass the following order: (1) Writ petition is hereby allowed and endorsement dated 13.04.2017- Annexure-A is hereby quashed.

(2) Second respondent is hereby directed to consider the application of the petitioner for renewal of the passport bearing No.Z1731125 expeditiously, at any rate, on or before 31.12.2017 by keeping in mind observations made herein above and also the fact that there is no criminal case pending against petitioner as on date.

(3) It is needless to state that second respondent - authority would be at liberty to renew the passport for such time or period as deemed fit in the facts and circumstances of the present case.

Ordered accordingly.

In view of disposal of writ petition, I.A.2/2017 for production of additional documents does not survive for consideration and accordingly, it stands disposed of.