

(2003) 11 DEL CK 0125
In the Delhi High Court
Case No : C.W.P. No. 4536 of 2003

Shailender Kumar Jain

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Passports Act, 1967 — Section 10(3)
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2004) 110 DLT 510

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : V.K. Makhija, P.R. Thakur and R.K. Saini, for the Appellant; S.K. Mittal, for the Respondent

Judgement

S.K. Mahajan, J.

CWP No. 4536/2003:

Rule.

1. The petitioner has filed this petition to challenge the show-cause notice dated 13.7.2003 issued by the Consulate General of India, Dubai calling upon the petitioner to show cause why his passport should not be revoked u/s 10(3)(h) of the Passport Act, 1957. The only ground taken to challenge the notice is that on the date of issue of show-cause notice, the conditions precedent for revoking the passport u/s 10(3)(h) of the Act were not satisfied and consequently show cause could not be issued by the Consulate General of India, Dubai.

2. The contention of learned Counsel for the respondent that not only that non-bailable warrants had been issued for the arrest of the petitioner in a case registered under Sections 498A/306 of the Indian Penal Code but the petitioner had also impersonated in Court to get stay of execution of the non-bailable warrants. Though these pleas have been taken in the counter affidavit as well as

the documents filed subsequently by the respondents, however, for disposal of the present writ petition they are not relevant inasmuch the passport could be revoked or impounded on the grounds as contained in Section 10(3)(h) or (e) of the Passport Act. u/s 10(3)(e) of the Act, if any proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before the criminal Court in India or if it is brought to the notice of the passport authority that warrants or summons for the appearance; or a warrant for the arrest of the holder of the passport or travel documents has been issued by the 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 travel document has been made by any such Court and the passport authority is satisfied that the warrant or summon has been so issued or an order has been made, it may impound or cause to be impounded or revoke the passport or travel document. Nothing has been shown to the Court that before 19.7.2003, either any notice or summons or warrant for the appearance of the petitioner were issued by a Court of competent jurisdiction. It is no doubt true that a case under Sections 498A/306 of the Indian Penal Code is registered against the petitioner but cognisance of the same can at best be said to have been taken by the Court when it issued the non-bailable warrant on 19.7.2003 and not prior thereto. Prima facie it appears to the Court that before 19.7.2003 neither cognisance was taken by the Court of the offence alleged to have been committed by the petitioner nor any notice or warrant or summon for his appearance was issued by the Court and, Therefore, there was no occasion for the passport authority to issue show cause notice on 13.7.2003. May be after issue of warrants on 19.7.2003 the respondents had a right to issue show-cause notice on which I do not want to make any comment, but as on 13.7.2003, notice in question could not be issued by the respondents as no case was pending against the petitioner in Court as on that date.

3. I, accordingly, make the Rule absolute and quash the notice dated 13.7.2003 and consequential action, if any, taken by the respondents, however, the respondents will be at liberty to take action against the petitioner under the provisions of the Passport Act on the grounds as have been alleged by the respondents in their counter affidavit or on the ground that the petitioner had impersonated to get stay of the warrants or any other grounds, as may be permissible in law to the respondents.

Copy of the order be given dusty to learned Counsel for the parties.