
(1999) 11 BOM CK 0028

In the Bombay High Court

Case No : Criminal Writ Petition No. 188 of 1993

Shayam Dwarkadas Chabria

APPELLANT

Vs

The Regional Passport Officer and another

RESPONDENT

Date of Decision : 15-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Passports Act, 1967 — Section 2, 6(2)
Penal Code, 1860 (IPC) — Section 109, 120
Prevention of Corruption Act, 1988 — Section 5(1)

Citation : (2000) 2 BomCR 609 : (2000) CriLJ 2942

Hon'ble Judges : Ranjana Desai, J

Bench : Single Bench

Advocate : A.P. Mundargi, for the Appellant; R.M. Agarwal and P. Singhal, Assistant Public Prosecutor, for the Respondent

Judgement

Mrs. Ranjana Desai, J.—This petition, filed under Article 227 of the Constitution of India and u/s 482 of the Criminal Procedure Code, 1973, seeks quashing of the order dated 5th January 1993 passed by respondent No. 1, the Regional Passport Officer, Mumbai asking the petitioner to furnish Court order stating that he has been granted permission to go abroad and an undertaking that no case is pending against him in India to enable respondent No. 1 to issue/renew his passport.

2. In this petition there is some dispute as to whether this petition would lie on the Original Side or on the Appellate Side of the High Court. However, since Rule is issued in this matter as far back as on 23rd April 1993 and the facts in this case are admittedly covered by a decision of this Court, I do not wish to get into that aspect of the matter.

3. The petitioner was original accused No. 6 in Special Case No. 4 of 1986 pending on the file of the Special Court of Pune. The petitioner's brother one Deepak Chhabria was original accused No. 7 in that case. The said case arose out

of C.R. No. 188 of 1986 registered at Paraskhana Police Station u/s 120B, 109, 420, 467, 471, 447-A of the Indian Penal Code and section 5(2) read with section 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act and section 147(o) and 147(p) of the Maharashtra Co-operative Societies Act.

4. Some relevant facts of this case may have to be stated. The application made by original accused No. 1 in the said Special Case for discharge on the ground that he was not a public servant was rejected by the Special Judge. He filed Writ Petition No. 738 of 1992 before this Court. The said Writ Petition No. 738 of 1992 and other companion petitions were disposed of by the Division Bench (Coram : A.C. Agarwal & I.G. Shah, JJ.) by judgment dated 12th/13th January 1994. This Court held that the officers of the Co-operative Societies were not public servants. On 29th March 1994, original accused No. 7, and original accused Nos. 6, 8, 9 and 10 made an application before the Special Judge contending that in view of the decision of the Division Bench mentioned hereinabove they should be discharged as they are not public servants. The said application was disposed of by the Special Judge, who after referring to the aforementioned decision of the Division Bench held that the accused in Special Case No. 4 of 1986 were not public servants and, therefore, they could not be tried for offences committed by them as public servants and therefore, the Special Judge had no jurisdiction to try the said case. The learned Special Judge ordered that as far as other offences not relating to public servants were concerned, they should be returned to the Anti-Corruption Bureau (ACB), Pune for presenting the same either to the Chief Judicial Magistrate or the Judicial Magistrate, First Class having jurisdiction. The Special Judge also ordered discharge of all the accused with direction asking them to remain present before the concerned Court. I am informed that the said case is pending before the Chief Judicial Magistrate, Pune being Regular Criminal Case No. 39 of 1995.

5. It appears that on 24th July, 1984 the premises of the petitioner were raided by the anti-corruption department and the petitioner's passport came to be seized. The petitioner made two applications to the trial Court one dated 2nd May, 1991 and the other dated 13th July, 1992 and was granted permission to go abroad as his passport was valid at the time of the said applications. As the petitioner's passport was to expire at the end of 1992, the petitioner made an application for renewal of his passport on 27th February, 1992. By reply dated 24th July 1992, he was informed that as the case was pending in the Special Court at Pune, the passport facilities u/s 6(2)(f) of the Passport Act would be refused. However, he was asked to appear before the Regional Passport Officer to represent his case. The petitioner accordingly, appeared before the passport authority and represented his case. He stated that his case was pending since about 6 to 7 years and the Court had permitted him to go abroad for his business. However, respondent No. 1 by his letter dated 5th January 1993, which was received by the petitioner on 20th January 1993, informed him that the petitioner was required to furnish the Court order stating that he was granted permission to go abroad with an undertaking that no case was pending against

him in any Court in India. What obviously weighed with respondent No. 1 were the provisions of section 6(2)(f) of the Passport Act, 1967 which say that passport authority shall refuse to issue a passport or a travel document if the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India. It is the said order dated 5th January 1993, which is challenged in this Court.

6. I have heard Shri A.P. Mundargi, the learned Counsel for the petitioner, Shri R.M. Agarwal, the learned Counsel for respondent No. 1 and Shri P. Singhal, learned Addl. Public Prosecutor appearing for the State. My attention has been drawn by the learned Counsel to a judgment of this Court reported in Deepak Dwarkasingh Chhabria Vs. Union of India and another, . The petitioner in the said case is a brother of the present petitioner and original accused No. 7. The factual matrix is also identical. In that case similar order passed by the Regional Passport Officer was challenged. This Court, after considering the relevant provisions of the Passport Act, 1967 and the judgment of the Supreme Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , issued certain directions. This Court referred to the relevant portion of section 6(2) of the Passport Act. The relevant provision of said section reads as follows :

"6(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 grounds namely :

(a).....

(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)"

7. This Court also considered Notification dated 25th August, 1993 whereby an earlier Notification dated 16th August, 1979 was substituted. The Notification dated 25th August, 1993 grants exemption to the citizens 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 order 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 Passport Act, subject to the following conditions. The said conditions may be quoted for reference.

"(a) The passport to be issued to every such citizen shall be issued :

(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 of 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 than, 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, 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 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,"

8. A bare reading of this Notification makes it clear that an application for passport is not liable to be refused on the ground of pendency of criminal case if the applicant obtains permission from the concerned Criminal Court. After noting the said Notification, this Court observed as under :

"In view of the aforesaid notifications by the Central Government, it is clear that the citizens against whom criminal cases are pending are made exempt from the operation of section 6(2)(f) provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications. In other words, an application of passport is not liable to be refused on the ground of pendency of criminal case if the applicant obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore cannot reject the application for passport mechanically on the ground of pendency of criminal case against the application. It will be the duty of the passport authority to bring the relevant notification to apply to the concerned Criminal Court for permission to travel abroad. If the applicant obtains such permission from the Criminal Court where his case is pending, the passport authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the notification. In the present case the passport authority has failed to bring the relevant notification to the notice of the applicant inspite of the fact that the application was pending before the authority for more than one-and-half years. In fact it is doubtful whether the passport authority himself was aware of the notification granting exemption to the citizens from the operation of section 6(2)(f). It is matter of regret that applications are kept pending by the passport authority for such a long time particularly, when it affects the fundamental right of the citizen. At no point of time the passport authority had informed the petitioner that he

was entitled to passport subject to orders of the Criminal Court. The passport authority has also failed to give information or particulars about the pending criminal case. It is an admitted position that till today the petitioner is not served with the summons of the pending criminal case. In such a situation, it was all the more necessary for the passport authority to inform the petitioner of his right to apply to the Criminal Court for permission to travel abroad. In my opinion, it is necessary to issue specific directions to the passport authority in order to ensure that the citizens' application for passport are not unnecessarily delayed on account of pending criminal cases."

9. In view of the said Notification dated 25th August 1993, this Court directed that in all cases covered by section 2(f), the passport authority shall forthwith inform the applicant about his right to apply to the concerned Criminal Court for permission to travel abroad in terms of the Notification dated 25th August 1993. In case the applicant demands a copy of the Notification, this Court directed that the same shall be supplied by the passport authority subject to payment of charges. It was observed that the applicant can approach the Criminal Court, where Criminal Case against him is pending, for permission to travel out of India. It was further observed that even if he has not received summons from the Criminal Court, it will be open for the applicant to apply to that Court for a limited purpose of issuing the necessary orders for grant and/or renewal of passport. Considering the fact that the matter involves the fundamental right of the applicant, this Court directed the concerned courts to decide such application as expeditiously as possible and preferably within four weeks from the date of receipt of such application, after notice to the prosecution. The passport authority was directed that in case the Criminal Court passes an order for issuance of passport, the passport authority shall forthwith issue the passport to the applicant subject to the terms and conditions mentioned in the Notification but without making any endorsement on the passport about the pending criminal case. After quashing the order of the passport authority rejecting the petitioner's application, the Court granted liberty to the petitioner in that case to make an application to the Pune Court for permission to travel abroad.

10. Since the Counsel agree that the facts of the present case are identical with those which were before this Court in the aforesaid judgment, I see no difficulty in passing a similar order in the present case. In the result, the following order is passed:

11. The impugned order dated 5th January 1993 passed by the Regional Passport Officer, Bombay is quashed and set aside. The petitioner will be at liberty to make an application to the Chief Judicial Magistrate, Pune for permission to travel abroad. If such an application is made, the learned Magistrate shall decide that application as expeditiously as possible and in any event within four weeks from the date of receipt such application. Incase the learned Magistrate permits the petitioner to travel abroad, the passport authority shall forthwith issue the passport in terms of the order of the Magistrate subject to the terms and

conditions mentioned in the notification dated 25th August 1993.

12. The Concerned Magistrate to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

13. The petition is disposed of in the aforestated terms.

14. Petition allowed.