

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.24269 OF 2023 (GM - PASS)



BETWEEN:

SANTHOSH BEEJADI SRINIVASA

... PETITIONER

(BY SRI.KARTHIK YADAV U., ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
REGIONAL PASSPORT OFFICE
BENGALURU
REPRESENTED BY
REGIONAL PASSPORT OFFICER
8TH BLOCK, 80 FEET ROAD
KORAMANGALA
BENGALURU – 560 095.
2. THE REGIONAL PASSPORT OFFICE
PASSPORT SEVA KENDRA
SAI ARCADE, SURVEY NO.56/P

DEVARABISANAHALLI
OUTER RING ROAD, BENGALURU
KARNATAKA – 560 103
REPT. BY ITS GRANTING OFFICER.

3. STATE OF KARNATAKA
BY TUMAKURU TOWN POLICE
TUMAKURU – 572 101
REPT. BY SPP, HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI SHIVAPRASAD SHANTANAGOUDAR, CGC FOR R1 AND R2;
SRI KIRAN KUMAR, HCGP FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED ACKNOWLEDGMENT DTD 20.09.2023 ISSUED BY R-2 VIDE ANNEX – A; DIRECTING THE R-1 AND 2 TO ISSUE NORMAL VALIDITY PASSPORT HAVING VALIDITY PERIOD OF TEN YEARS AS CONTEMPLATED UNDER THE RULES.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.11.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is knocking at the doors of this Court calling in question acknowledgment dated 20-09-2023 issued by the 2nd respondent/Regional Passport Office declining to issue a normal

validity passport for a period of ten years to the petitioner, on its re-issuance.

2. Facts adumbrated are as follows:-

The petitioner is an employee working in the cadre of Senior Manager (Process and Planning) at Mann+Hummel Filter Private Limited, Tumakuru. The petitioner was issued a normal passport like any citizen of the nation which was to be valid for a period of ten years from 11-04-2014 to 10-04-2024. During the said period the petitioner gets embroiled in a crime registered for offences punishable under Sections 302, 201, 120-B and 182 r/w 34 of the IPC. The petitioner is arrayed as accused No.2 and his father and wife are arrayed as accused Nos. 1 and 3. The said proceedings are pending trial in S.C.No.28 of 2017 before the VI Additional District and Sessions Judge, Tumakuru. When the crime was registered, the petitioner preferred an application under Section 439 of the Cr.P.C., before the learned Sessions Judge. The learned Sessions Judge, by an order dated 27-04-2015, imposing certain conditions permitted travel of the petitioner by directing him to obtain prior permission

at every point of travel from the Court of Sessions. It appears that the petitioner has at every point in time sought permission and travelled abroad on his work.

3. The issue in the present case is not concerning permission to travel. As observed hereinabove, the validity of the passport issued to the petitioner on 11-04-2014 would expire on 10-04-2024. The petitioner possesses a Schengen VISA which is valid up to 26-08-2014 but he is not permitted to travel on the score that validity of the passport has come down to less than six months. Therefore, he makes an application for re-issuance of the passport. The application is returned by declining re-issuance on hold on account of criminal case pending trial before the competent Court. This is communicated to the petitioner through an acknowledgement letter which is impugned in the subject petition.

4. Heard Sri U.Karthik Yadav, learned counsel appearing for petitioner and Sri Shivaprasad Shantanagoudar, learned Central Government Counsel appearing for respondents 1 and 2.

SUBMISSIONS:**PETITIONER:**

5. The learned counsel appearing for the petitioner would contend that it is not for the first time the petitioner is being issued with the passport. He had a passport right from 11-04-2014 which was valid upto 10-04-2024. As the validity of the passport has come down to less than six months, he is denied permission to travel. He would submit that pendency of a criminal case cannot come in the way of re-issuance of passport to a citizen. Travel or otherwise is a different circumstance. But, merely because a criminal case is pending, the passport of the petitioner cannot be denied to be re-issued. He would seek to place reliance upon decisions rendered by coordinate Benches of this Court in ***KRISHNA CHIRANJEEVI RAO PALUKURI VENKATA v. THE UNION OF INDIA AND OTHERS¹***; ***SANJAY G.KHENY v. THE UNION OF INDIA AND OTHERS²*** and ***SRIMATI NASEEMA KHANUM v. THE UNION OF INDIA AND OTHERS³***. On placing

¹W.P.No.9141 of 2020 decided on 1-10-2020

²W.P.No.201057 of 2022 decided on 13-07-2022

³W.P.No.105735 of 2022 decided on 18-01-2023

reliance upon these judgments, he would submit that writ petition be allowed with a direction to the 2nd respondent to issue a normal validity passport for a period of ten years.

UNION OF INDIA:

6. Per-contra, the learned counsel representing respondents 1 and 2 Sri Shivaprasad Shantanagoudar would vehemently refute the submissions to contend that judgments rendered by the coordinate Benches were rendered following the judgment of the Delhi High Court. The judgment of the Delhi High Court in the case of **ASHOK KHANNA** was taken in appeal before the Apex Court and the Apex Court has restricted the findings only to the respondent therein. Therefore, it is not a precedent to be followed. He would seek to place reliance on a judgment rendered by this Bench in the case of **KAJAL NARESH KUMAR v. UNION OF INDIA**⁴ to buttress his submission that passport cannot be re-issued as long as the criminal case is pending against the petitioner.

⁴*W.P.No.20850 of 2022 decided on 16-11-2022*

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance thereof, the issue that falls for my consideration is:

"Whether pendency of a criminal case would bar issuance or renewal/re-issuance of a passport to a citizen of this nation?"

8. To consider the aforesaid issue, it would become necessary to notice certain provisions of the Passports Act, 1967 (hereinafter referred to as 'the Act' for short). The relevant provisions that are germane to be noticed are Sections 2(e), 3, 5, 6, 7, 10 and 22 of the Act and they read as follows:

"2. Definitions.—*In this Act, unless the context otherwise requires,—*

... ..

(e) *"travel document" means a travel document issued or deemed to have been issued under this Act.*

3. Passport or travel document for departure from India.—*No person shall depart from, or attempt to depart from, India unless he holds in this behalf a valid passport or travel document.*

Explanation.—For the purposes of this section,—

- (a) **"passport" includes a passport which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed under the Passport (Entry into India) Act, 1920 (34 of 1920), in respect of the class of passports to which it belongs;**
- (b) "travel document" includes a travel document which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed.

... ..

5. Applications for passports, travel documents, etc., and orders thereon.—(1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the application may be made to the passport authority and shall be accompanied by such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents.

Explanation.—In this section, 'named foreign country' means such foreign country as the Central Government may, by rules made under this Act, specify in this behalf.

(1-A) An application for the issue of—

- (i) a passport under this Act for visiting a named foreign country; or
- (ii) a travel document under this Act, for visiting such foreign country or countries (including a named foreign country) as may be specified in the application or for an endorsement on the passport or travel document referred to in this section, may be made to the passport authority and shall be accompanied by such fee (if any) not exceeding rupees fifty, as may be prescribed.

(1-B) Every application under this section shall be in such form and contain such particulars as may be prescribed.]

(2) On receipt of an application [under this section], the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,—

- (a) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or**
- (b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or**
- (c) refuse to issue the passport or travel document or, as case may be, refuse to make on the passport or travel document any endorsement.**

(3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy.

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) *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) *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.*

7. Duration of passports and travel documents.—A passport or travel document shall, unless revoked earlier, continue in force for such period as may be prescribed and different periods may be prescribed for different classes of passports or travel documents or for different categories of passports or travel documents under each such class:

Provided that a passport or travel document may be issued for a shorter period than the prescribed period—

- (a) *if the person by whom it is required so desires; or*
- (b) *if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period.*

... ..

10. Variation, impounding and revocation of passports and travel documents.—(1) The passport authority may, having regard to the provisions of sub-section (1) of Section 6 or any notification under Section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or

cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,—

- (a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;*
- (b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf:*

Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

- (c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;*
- (d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, 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;*

- (e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;**
- (f) if any of the conditions of the passport or travel document has been contravened;
- (g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;
- (h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a 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 other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any

ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document:

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.

... ..

22. Power to exempt.—Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,—

- (a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder; and**
- (b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions."*

(Emphasis supplied)

Section 2(e) defines a 'travel document' which has been issued or deemed to have been issued under the Act. Therefore, the passport becomes a travel document for departure from India and return. Section 3 depicts what a passport would be. Section 5 deals with application for passport and the manner in which the application should be made before the Passport Authorities. Section 6 forms the fulcrum of the *lis*. Section 6(1) directs that subject to other provisions of the Act the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or (c) of sub-section (2) of Section 5 on several grounds stipulated therein. The grounds are clauses (a) to (d) of sub-section (1) and clauses (a) to (i) of sub-section (2) of Section 6. Section 7 deals with duration of passport and travel documents. A passport or a travel document unless revoked continues to be in force for such period as may be prescribed in the said travel document of each class of passport. Section 10 deals with variation, impounding and revocation of passport and travel documents. Section 22 empowers the Central Government to exempt any person or class of persons from operation of all or any of the provisions of the Act by issuance of a notification.

9. In furtherance of Section 22, Government of India in the Ministry of External Affairs, has issued a notification on 25-08-1993 in G.S.R.570(E) (for short 'GSR 570 Notification'). GSR 570 notification deals with a situation of the kind that is projected in the case at hand. Therefore, I deem it appropriate to notice the notification insofar as it is germane. It reads as follows:

"The Notification dated 25.08.1993 reads as under:

"MINISTRY OF EXTERNAL AFFAIRS NOTIFICATION

New Delhi, the 25th August, 1993

*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 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 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."

(Emphasis supplied)

GSR 570 deals with a situation of the kind in the case at hand. It permits issuance of short validity passport pursuant to the orders that would be passed by the concerned Court according to the specified period and if no period is specified, the passport would be

issued for a period of one year. Therefore, it is for the applicant against whom criminal case is pending, in any Court of law in the country, to approach the concerned Court before which the proceeding is pending, and seek for permission to travel; if such permission is granted, it will have to be in tune with the conditions in GSR 570 (*supra*).

10. Section 24 of the Act empowers the Central Government to make Rules for carrying out the purposes of the Act. Rules are promulgated in the year 1980 i.e., the passports Rules, 1980 (hereinafter referred to as 'the Rules' for short). Rule 5 deals with form of applications for issue of passport, renewal or re-issuance thereof. The form is found in Schedule-III.

11. The aforementioned form is the broad statutory framework for issuance, re-issuance, variation, cancellation, impounding of passport as also, the form in which the application for issuance or re-issuance is to be made.

APPLICABILITY OF THE ACT TO THE SUBJECT FACTS:

12. The petitioner is issued passport on 11-04-2014. Its validity is up to 10-04-2024. In the interregnum, the petitioner gets embroiled in a crime. The substance of the crime is mother of the petitioner commits suicide. Initially an unnatural death report was prepared by the Police but later when the investigation was directed to be taken up, the petitioner, his father and his wife were all arrayed as accused 1, 2 and 3. The offences were the ones punishable under Sections 302, 201, 120-B, 182 r/w 34 of the IPC. The case was committed to the Court of Sessions and presently pending trial in S.C.No.28 of 2017. Therefore, it is a case where the petitioner is one of the accused in an offence which can even result in capital punishment. The trial is in progress. The petitioner is not absolved of the crime, by any competent Court of law even to this date. It is an altogether different circumstance that the petitioner has been permitted to travel, by the Court of Sessions, intermittently for his work. That is not the issue in the case at hand. The issue is validity of the passport of the petitioner or the passport having less than six months to expire which makes the petitioner ineligible for issuance of visa and travel. Therefore, it is germane to

notice whether such ineligibility has a statutory foundation. It therefore becomes germane to notice the acknowledgment of denial issued by the 2nd respondent. It reads as follows:

"Acknowledgement Letter

REISSUE PASSPORT-Normal

File No.:BN2075801459323

SANTHOSH BEEJADI SRINIVASA

Application Status *	Service Completion zone	Fee Receipt/Reference No.	Penalty Receipt No.
On Hold	GO (Granting)	CPADBFRJW1	NA
Police Verification Mode**	Passport Validity	Cancelled Passport No.	ECR Status
NA	NA	NA	NA
<u>Documents Submitted successfully</u>	<u>Documents Requiring Re-submission/ Additional Document(s) Required</u>	<u>Documents Verified with originals, however, confirmation from issuing authority is required</u>	
1. Aadhar Card (Address Proof) 2. Scanned Application Form 3. Old passport 4.ac-f ppt-decl	Yes		
On Hold Remarks By Granting Officer: case still pending, await for court order for SVP/Permission from Court.			
Next Appointment Date and Time: 27/09/2023, 12:00PM Reporting Time: 11:45 AM"			

The remark is that the case is still pending, await court order for issuance of short validity passport/await permission from the Court.

13. Section 6 deals with grounds for refusal of passport. Sub-section (2) (e) and (f) of Section 6 quoted *supra* deal with the present situation. If the applicant at any time during the period of five years immediately preceding the date of application has been

convicted for any offence involving moral turpitude and sentenced thereof to imprisonment for not less than 2 years, passport cannot be issued or re-issued. It is not the situation in the case at hand. Clause (f) mandates that where proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India, the passport authority is empowered to deny issue of travel document as obtaining in clause (c) of Sub-section (2) of Section (5) of the Act. It is an admitted fact that proceedings against the petitioner are pending trial in S.C.No.28 of 2017 before the learned Sessions Judge for the afore-quoted offences. Denial of re-issuance of passport is thus in consonance with law.

14. The petitioner has relied on several judgments of co-ordinate Benches of this Court to contend that the issue stands answered and pendency of criminal case should not come in the way of re-issuance or renewal of passport; it can at best be at the time of issuance of passport, at the first instance. The co-ordinate Bench in the case of **KRISHNA CHIRANJEEVI RAO PALUKURI VENKATA** (*supra*) though considers Section 6(2)(f), observes that

the provision would be applicable only to issuance of a fresh passport and not for renewal or re-issuance. For such observation, the co-ordinate Bench follows the judgment rendered by the High Court of Delhi in the case of **ASHOK KHANNA**. The Delhi High Court in the case of **ASHOK KHANNA v. CENTRAL BUREAU OF INVESTIGATION**⁵ has held as follows:

“14. In the case of Ashok Kumar Sharma (Supra), the case before this court was for re-issuance of the passport wherein case in hand is for renewal of the passport.

15. As per Chapter I Schedule III of the Passport Rules, 1980, passport application Form-I EA(P)-2 is for miscellaneous services of Indian passport for (use in India) (A) Renewal (B) Additional Visa Sheet, (C) Additional Booklet, (D) Change of Address, (E) PCC, (F) Additional Endorsement, (G) Chief Inclusion/deletion (H) Any other service (specify), therefore, the case of the petitioner does not come under Form EA(P)-1 for new/re-issue/replacement of lost/damaged passport.

16. The case of the petitioner is for renewal of the passport. Neither he is asking for a new passport nor seeking re-issue or replacement of lost or damaged passport, therefore, the said applicant is not applicable in the case of the petitioner.

17. However, the case of the petitioner falls under application Form EA(P)-2 and according to this application, I note in Form EA(P)-1, passport application form (1) serial no. 17 (a), (b) & (c) are as under:

“17(a) Have you at any time during the period of five years immediately preceding the date of this application been convicted by a court in India for any criminal offence and sentenced to imprisonment for two years or more? If so, give

⁵ **2019 SCC OnLine Del 11080**

*name of the court, case number and relevant sections of Law.
(Attach copy of judgment)*

.....

(b) Are any criminal proceedings pending against you before a court in India? If so, give name of court, case number and relevant sections of Law.

.....

(c) If answer at (b) is (Y)es, please furnish No Objection Certificate from competent court for grant of Passport.

.....

(d) Have you been ever refused/denied passport? If yes, give details:

.....

(e) Has your passport ever been impounded/revoked? If yes, give details:

.....

(f) Have you ever applied/granted political asylum by any foreign country? If yes, give details:

.....”

18. *Whereas in Form EA(P)-2, serial number 5 is application which is reproduced as under:*

“5. Are any criminal proceedings pending against applicant in criminal court in India or any other disqualifications under section 10(3).”

19. *Thus, in EA(P)-2, there is no such condition to take certificate from the court. Thus, the respondent has misread the provisions and contents of the two applications mentioned above.*

20. *Moreover, Rule 5 is applicable for renewal of passport which is as under:*

“5. Form of applications.-[(1)] An application for the issue of a passport or travel document or for the renewal thereof or for any miscellaneous service shall be made in the appropriate Form set out therefore in Part I of Schedule III and in accordance with the procedure and instructions set out in such form:

[Provided that every application for any of the aforesaid purposes shall be made only in the form printed and supplied by-

(a) the Central Government; or

(b) Any other person whom the Central Government may notification to the condition that such complies that Government behalf:

Provided further that] in the course of any inquiry under sub-section (2) of section 5, a passport authority may require an applicant to furnish such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application.

4[(2) The price of the new application forms referred to in sub-rule (1) shall be as specified in column 3 or 4, as the case may be, of Schedule III A for that particular category:

*[***]*

[(3) The Passport Authority may authorise any person or authority to collect passport applications on its behalf for issue of a passport or travel document or for the renewal thereof or for any miscellaneous service on payment of a service charge specified by the Central Government under sub-rule (2) of rule 8 in addition to the fee payable under sub-rule (1) of rule 8 and the service charge shall be paid by the applicant to such person or authority.]

21. In view of above provisions, there is a separate provision for renewal of the passport, therefore, section 6 is not applicable in the present case.

22. Though Passport Authority is not made party in the present appeal, I exercise powers under Article 226 of the Constitution of India, accordingly, the said authority is directed

to renew the passport of the petitioner within 15 days from the receipt of this order.”

(Emphasis supplied)

The subsequent judgment by another co-ordinate Bench in **SANJAY G.KHENY** (*supra*) relies on the afore-quoted judgment of other co-ordinate Bench in the case of **KRISHNA CHIRANJEEVI RAO PALUKURI VENKATA** and allows the petition holding that it can at best be for issuance of passport and cannot be for re-issuance or renewal of passport.

15. The judgment of the High Court of Delhi upon which both the judgments of coordinate Benches placed reliance upon was tossed before the Apex Court. The Apex Court in terms of its order dated 02-05-2022 restricted the question of law only to the said case. The Apex Court has, in the case of **CENTRAL BUREAU OF INVESTIGATION v. ASHOK KHANNA**⁶ held as follows:

"1. Delay condoned.

2. In the facts and circumstances of the present case and without expressing any opinion on the question of law sought to be raised in these proceedings, we are

⁶ **SLP (Criminal) Diary No.6142 of 2022 decided on 02-05-022**

not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution. We may also clarify that the order the High Court will be restricted only to the facts and circumstances of the present case and shall have application only to the case of the respondent.

3. The Special Leave Petitions are disposed of, subject to the above clarification.

4. Pending application, if any, stands disposed of."

(Emphasis supplied)

The Apex Court, did not express any opinion on the question of law. Question of law, I mean would be whether an applicant against whom criminal case is pending seeks renewal/reissuance of passport, can be denied or otherwise, but restricted the law laid down by High Court of Delhi only to the facts and circumstances of the case of **ASHOK KHANNA** and will have application only to the case before the Apex Court. The Special Leave Petitions were disposed with the said clarification.

16. Therefore, the trail of judgments would go this way. The High Court of Delhi holds in the case of **ASHOK KHANNA**, that pendency of a criminal case will not come in the way of re-issuance of passport; this is followed in **KRISHNA CHIRANJEEVI RAO**

PALUKURI VENKATA's case; the said judgment is followed in **SANJAY G.KHENY**'s case. Therefore the foundation, *inter alia*, to render the finding by both the co-ordinate Benches of this Court, was the judgments rendered by the High Court of Delhi. In the light of the Apex Court restricting the findings only to the said respondent, the law declared by the co-ordinate Benches of this Court cannot mean that they have become final and would be binding on this Court to follow.

17. Reference being made to the judgment of the High Court of Andhra Pradesh in the case of **KADAR VALLI SHAIK v. UNION OF INDIA**⁷ becomes apposite, the Andhra Pradesh High Court considers the entire spectrum of the Act and orders passed by co-ordinate Benches of this Court and holds that Section 6(2)(f) would prevail. The summing up by the Andhra Pradesh High Court is as follows:

"103. *To sum up, this Court holds that;*

(i) 'Issue' of passport in Section 5 of the Passports Act includes 'renewal' of the passport as well;

⁷**2023 SCC OnLine AP 406**

(ii) While considering the renewal of the passport, the passport authority would be within its jurisdiction and authority to refuse renewal, on the same grounds as in the cases of issuance of the passport for 'the first time', provided by Section 6 (2) of the Passport Act. In other words, Section 6 (2) of the Passport Act applies to renewal of the passport, as well;

(iii) In the cases for renewal, to which Section 6 (2) (f) of the Passports Act is attracted, i.e., where the applicant is facing criminal trial in a criminal Court in India, renewal of the passport shall be refused, subject to the fulfillment of the condition under the notification of the Central Government, dated 25.08.1993, issued in exercise of the powers conferred by Section 22 of the Passports Act, upon which such applicant shall stand exempted from the operation of the provisions of Clause (f) of sub-section (2) of Section 6;

(iv) In a case where clause (f) of Section 6 (2) is attracted, the holder of the passport, for its renewal, will have to produce an order from the Court concerned, where the proceedings against him are pending trial in respect of an offence alleged to have been committed by him, permitting him to depart from India;

(v) The notification dated 25.08.1993 applies to the citizen applicants for renewal of the passport even if already departed from India under the passport of which renewal is sought.

(vi) On production of an order, from the concerned Court, as referred in the notification, the renewal of the passport shall not be refused only on the ground of Section 6 (2) (f), i.e., mere pendency of the criminal case for trial;

(vii) Condition (d) of the notification dated 25.08.1993 is an additional requirement and is not in

substitution of the requirement from those citizen/applicants who have to produce an order of the Court concerned, where the criminal case is pending, permitting him to depart from India.

(Emphasis supplied)

The Andhra Pradesh High Court holds that while considering renewal or re-issuance of passport, the authority would be within its jurisdiction to refuse renewal on the same grounds as in cases of issuance of passport for the first time provided in Section 6(2)(f) of the Act.

18. The unmistakable inference that can be drawn is that, there is no difference between renewal, re-issuance or first issuance of the passport under Section 6(2) of the Act. Every issuance, re-issuance or renewal will have to meet the requirements or pass through the rigours of Section 6. To consider the submission or contra submission, hypothetically as an illustration, at the time of issuance of passport to an applicant, the applicant is clean and no proceedings are pending against him. In the interregnum during the validity of the passport the applicant gets embroiled in a crime; trial is pending or gets convicted for an offence, it cannot be said that

those facts have to be ignored and passport should be directed to be re-issued only on the score that, it is for renewal and no rigour for issuance of a fresh passport can be insisted upon. This would sometimes result in the accused, holder of a passport, fleeing justice and frustrating trial. It may not be in all circumstances, but it is open to such circumstance. It is, therefore, the rigour under Section 6(2)(f) of the Act will have to be given credence as mandated under the statute failing which, it would render section 6(2)(f) of the Act redundant or otiose.

19. This Bench in the case of **KAJAL NARESH KUMAR** (*supra*) has held as follows:

"8. The afore-narrated facts are not in dispute. The petitioner was in possession of a passport which had expired at the relevant point in time. The petitioner seeks re-issuance of his passport on its expiry. On the basis of the documents submitted, the respondent-Regional Passport Officer reissues the passport in favour of the petitioner. Later when the police verification is done as a routine in every case, it comes to the knowledge of the respondents that the petitioner is involved in a criminal case in Crime No.16 of 2021. Noticing the fact that the petitioner had suppressed the factum of pendency of a criminal case against him and had secured the passport by misrepresentation, issued a notice directing him to surrenders the passport. The involvement of the petitioner as an accused in Crime No.16 of 2021 is not in dispute. 'B' report is yet to be considered by the learned Magistrate. Therefore, the 'B' report

being filed will not absolve the petitioner of the crime. Section 6 of the Act 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)

Section 6 deals with refusal of passport and travel documents etc. Section 6(2)(f) mandates that if proceedings are pending in respect of an offence alleged to have been committed by the applicant before a criminal Court in India, the passport authority would have the right to refuse issue of passport or travel documents for visiting any foreign country. Therefore, issuance of passport or re-issuance of passport is subject to Section 6(2)(f) of the Act.

9. It is an admitted fact in the case at hand that a crime in Crime No.16 of 2021 is pending against the petitioner. The Police having filed a 'B' report in the matter would not mean that proceedings against the petitioner have culminated in her acquittal. The rigour of Section 6(2)(f) of the Act gets evaporated only when the applicant who is facing criminal proceedings or a FIR is acquitted, discharged or the proceeding against the said

applicant is quashed by a competent Court of law, in exercise of its powers under Section 482 of the Cr.P.C. None of these circumstances exist in the case at hand. All that has happened is, the Police have filed a 'B' report. Mere filing of 'B' report would not mean that the petitioner becomes allegation free qua Section 6(2)(f) of the Act.

(Emphasis supplied)

20. On a coalesce of the provisions of the Act, the Rules, the judgments rendered by the co-ordinate Benches, its restriction by the Apex Court and the judgment rendered by this Bench, would all lead to an unmistakable conclusion that Section 6(2)(f) and GSR 570 Notification makes a person ineligible for issuance of passport. The issuance would include renewal or re-issuance. Separate yardstick is nowhere indicated in the Act or the Rules. The Rules cannot be rendered flexible to such circumstances by a stroke of pen or a fiat of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. As long as Section 6(2)(f) stares at any application, be it for fresh, renewal or re-issuance, such application cannot be directed to be granted diluting the rigor of Section 6(2)(f). *The applicant is under a cloud, "if an applicant of the kind in the case at hand, wants to walk over the clouds; the cloud over such applicant must walk away."*

21. For the aforesaid reasons, the following:

ORDER

- (i) The prayer for issuance of a regular passport/normal validity passport for 10 years is rejected.
- (ii) The impugned acknowledgement rejecting issuance of regular passport stands sustained.
- (iii) The petitioner shall approach the concerned Court seeking issuance of a short validity passport and the concerned Court shall consider such application strictly in consonance with the Act, GSR-570 and its requirements.
- (iv) The Court shall not reject the application/permission for issuance of a short validity passport on the ground of pendency of criminal case before it.
- (v) The petitioner, in the application, shall clearly indicate the reason and the intended date of travel from the shores of this nation and his return to the shores of the nation.

**Sd/-
JUDGE**

bkp
CT:MJ