

**Court No.40**

**Case :-** WRIT - C No. - 29605 of 2022

**Petitioner :-** Basoo Yadav

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Ramesh Chandra Yadav, Ram Krishna Mishra

**Counsel for Respondent :-** A.S.G.I., C.S.C., Narendra Singh

**Hon'ble Siddhartha Varma, J.**

**Hon'ble Ajit Singh, J.**

*(Per : Siddhartha Varma, J.)*

The instant writ petition has been filed for the issuance of a writ of mandamus directing the respondent no.2 to issue a passport in favour of the petitioner. A further prayer has been made that the respondent no.3 i.e. the Passport Sewa Kendra, Varanasi may be directed to appropriately take action upon the application which the petitioner had filed for the issuance of his passport.

In the instant case, the petitioner on 28.6.2022 had filled-up an online application form for the issuance of a passport and he was given an appointment for appearing before the passport office on 5.8.2022 at 11.30 AM. When the petitioner reached on 5.8.2022 before the passport office, he was informed that there was a police report against the petitioner which stated that there were reports with regard to non-cognizable cases being NCR No.111/2012 and NCR No.114/2018 and therefore, the passport could not be issued to him.

Learned counsel for the petitioner states that thereafter the petitioner went back to district Azamgarh and filed an application on 11.8.2022 praying that the Court i.e. the Court of Additional Chief Judicial Magistrate may call for a report from police station Nijamabad, District Azamgarh with regard to the two NCRs being NCR No.111/2012 and NCR No.114/2018. The Court on the very same day passed an order directing the Station House Officer, Police Station, Nijamabad to submit a report with regard to the petitioner's application. On 1.9.2022, the Station House Officer submitted a report wherein it was mentioned that there was no order of the Court for investigating into non-cognizable cases which were registered against the petitioner as NCR No.111/2012 and NCR No.114/2018. Learned counsel states that since the petitioner's application for issuing a passport had already been rejected and there is no appeal provided against the order of rejection, the petitioner has filed the instant writ petition.

When the case was being argued as a fresh case, learned counsel for the petitioner had argued that as per the provisions of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C."), if there was no order of any Magistrate for investigation under section 155(1) Cr.P.C. then no police officer could investigate a non-cognizable case.

For convenience, section 155 Cr.P.C. is being reproduced here as under :-

**"155. Information as to non-cognizable cases and investigation of such cases**

.--(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

Learned counsel for the petitioner had also argued that normally non-cognizable cases had punishments which were ranging from one year to seven years and he submitted that as per section 468 Cr.P.C., if cognizance of the cases could not be taken after a lapse of limitation, then the reports of the non-cognizable cases were worthless documents. Since, learned counsel for the petitioner has relied upon section 468 Cr.P.C., the same is being reproduced here as under :

**"468. Bar to taking cognizance after lapse of the period of limitation**

.--(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be--

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

Learned counsel for the petitioner further stated that when there was no investigation ordered by the Magistrate, as was clear from the report of the Station House Officer dated 1.9.2022, then the petitioner also had no knowledge about the pendency of the case. He, therefore, submits that while he was filling the application form then also he could not have mentioned about the NCR No.111/2012 and NCR No.114/2018.

When the case was argued as a fresh case and the Court was of the view that the NCRs could not be taken cognizance of when the Magistrate had not ordered for any investigation, a direction was issued to the Director General of Police to send instructions. The orders dated 19.11.2022 and 28.11.2022 are being reproduced here as under :

**Order dated 19.11.2022**

"Learned counsel for the petitioner states that the Police had sent a report on 01.09.2022 with regard to the fact that there were two NCRs being NCR No.111 of 2012 and NCR No.114 of 2018 where no order from the Court was passed for investigation and, therefore, no investigation had taken place.

Learned counsel for the petitioner states that as per the Cr.P.C. if there was no investigation on the orders of the Magistrate for an NCR then definitely there was no case pending against the petitioner and, therefore, such a report should not have been sent.

The Director General of Police, Uttar Pradesh may send instructions in the matter. While getting the instructions he may inform the Court as to whether it was necessary for sending a report with regard to such NCRs, in which no action had been taken by the Magistrate for investigation.

Place this case on 28.11.2022 as fresh at 10.00 am."

#### **Order dated 28.11.2022**

"Instructions filed today be kept on record.

The Court had asked for instructions specifying as to whether it was necessary for sending a report with regard to an N.C.R. in which no action had been taken by the Magistrate for investigation when the period for the punishment had lapsed.

The Director General of Police was required to send the instructions but some Superintendent of Police has sent them. The Court also was not satisfied with the averments made in paragraph no. 7 of the instructions.

Place this petition as fresh on 30.11.2022 at 10:00am.

On the next date, the Director General of Police may send instructions. He would clearly specify as to whether when the police report is given for the purposes of the report asked by the passport authorities, could a report be submitted if the N.C.R. filed against an individual was for an offence in

which no action could be taken as per the provisions of Section 468 of Cr.P.C.

This order was passed in the presence of Sri Narendra Singh learned counsel for the Union of India."

On 30.11.2022 learned Standing Counsel Sri Manvendra Dixit produced the instructions which he had received from the Director General of Police. The same is being reproduced here as under :-

"मुख्यालय पुलिस महानिदेशक उत्तर प्रदेश  
विधि प्रकोष्ठ, प्रथम तल, टावर -2, पुलिस  
मुख्यालय, गोमती नगर विस्तार , लखनऊ-  
226002  
पत्रांक: डीजी-दस-वि०प्र०-रिट-651 / 2022

दिनांक : नवम्बर 29, 2022

सेवा में,  
मुख्य स्थायी अधिवक्ता,  
मा० उच्च न्यायालय इलाहाबाद।

**विषय:** सिविल रिट याचिका संख्या- 29605 / 2022 बासु यादव बनाम भारत संघ व 4 अन्य में मा० उच्च न्यायालय इलाहाबाद द्वारा पारित आदेश दिनांक - 28.11.2022 के अनुपालन में Instruction उपलब्ध कराये जाने विषयक।

महोदय,

कृपया उपरोक्त विषयक श्री मानवेन्द्र दीक्षित, स्थायी अधिवक्ता, मा० उच्च न्यायालय इलाहाबाद के पत्र दिनांकित 28.11.2022 का संदर्भ ग्रहण करें, जिसके द्वारा मा० उच्च न्यायालय द्वारा पारित आदेश दिनांकित 19.11.2022 तथा 28.11.2022 की छायाप्रति संलग्न करते हुए मा० न्यायालय द्वारा दिये गये निर्देशों के अनुपालन में Instruction उपलब्ध कराये जाने की अपेक्षा की गयी है।

याची बासु यादव पुत्र जाबिर यादव के पासपोर्ट आवेदन प्रार्थना पत्र पर आजमगढ़ पुलिस द्वारा प्रस्तुत रिपोर्ट में प्रश्न संख्या-2 में उत्तर में NCR संख्या-111/2012 धारा-323, 504, 506 भादवि तथा NCR संख्या-114/2018 धारा- 323, 504 भादवि अंकित करते हुए पासपोर्ट जारी न करने की संस्तुति की गयी जबकि याची के विरुद्ध पंजीकृत NCR की विवेचना नहीं की गयी थी।

पासपोर्ट के कार्यालय से प्राप्त पुलिस वेरीफिकेशन रिपोर्ट में स्पष्ट रूप से यह प्रश्न पूछा गया है कि—

Is the applicant facing any criminal charges in any Court? (If 'YES', please provide specific details of criminal case)

उपरोक्त पश्न के उत्तर में याची के विरुद्ध पंजीकृत ऐसी NCR का उल्लेख करते हुये, जिनकी विवेचना नहीं की गयी है, पासपोर्ट जारी न किये जाने की संस्तुति नहीं की जा सकती है।

कृपया उपरोक्त तथ्यों से मा० न्यायालय को अवगत कराते हये प्रकरण का निस्तारण कराने का कष्ट करें।

(देवेन्द्र सिंह चौहान)  
पुलिस महानिदेशक  
उत्तर प्रदेश"

The Director General of Police very categorically stated that such reports of non-cognizable cases which were not investigated into could not be the reason for refusing a passport to the petitioner. Learned Standing Counsel submitted that the reasons for the rejection of an application for the issuing of a passport had been enumerated in section 6 of the Passports Act, 1967 (hereinafter referred to as the "Passports Act").

For convenience, section 6 of the Passports Act is being reproduced here as under :-

**"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."

Learned Standing Counsel further submitted that with regard to pendency of criminal cases, section 6(2)(e) and (f) of the Passports Act were relevant. Learned Standing Counsel submitted that the issuance of a passport could be refused under section 6(2)(e) of the Passports Act if in the five years immediately preceding the date of the application, the applicant had 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. Learned Standing Counsel further relying upon section 6(2)(f) of the Passports Act stated that if proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India then also the passport application could be rejected. However, learned Standing Counsel submitted that as per the notification gazetted on 25.8.1993 which was issued under section 22 of the Passports Act by the Government of India, Ministry of External Affairs, passports could be issued in certain

circumstances even while a criminal case was pending if there were orders of the Court. Since, learned Standing Counsel brought to the notice of the Court the Government Order dated 25.8.1993, the same is being reproduced here as under :-

"GOVERNMENT OF INDIA  
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.

[No.VI/401/37/79]

L.K. PONAPPA, Jt. Secy. (CPV)"

In this connection, the provisions of Section 22 of the Passports Act are also relevant which read as under:-

**"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."

Having heard learned counsel for the petitioner and learned Standing Counsel and after having gone through the instructions

which have been sent by the Director General of Police, the Court is definitely of the view that no non-cognizable report which was registered could be taken into cognizance if no investigation was ordered by the concerned Magistrate. Even though in the instant case, whether the passport can be refused on the basis of the pendency of the criminal case is not the question involved, we are of the view that even during the pendency of any criminal case, passport could be issued/renewed as per the Government Order dated 25.8.1993 if the Court passes orders for that purpose. In the instant case, we do find that the application of the petitioner was rejected on the basis of the two reports of non-cognizable cases namely NCR No.111/2012 and NCR No.114/2018. The Director General of Police has also given his view that the reports with regard to the non-cognizable cases could not be made the basis for rejecting an application for issuance of passport if they had not been investigated into.

Under such circumstances, we issue the following directions :-

- (1) The passport form of the petitioner for the issuance of a passport be considered within a period of two weeks from the date of presentation of a certified copy of this order before the respondent no.2-Regional Passport Officer, Regional Passport Office, Vipin Khand, Gomti Nagar, Lucknow;

- (2) Since we are finding that in quite a few cases the reports of non-cognizable cases in which the concerned Magistrate had not even ordered for investigation were being taken into account for rejection of passport, we issue a direction to the Director General of Police to instruct his officers to give a report with regard to the pendency of reports in non-cognizable cases after appropriate and proper application of mind;
- (3) Outright the passport applications be not rejected under section 6(2)(f) of the Passports Act if orders of the Court, where the criminal case is pending, have been passed as per the Government Order dated 25.8.1993. The Director General of Police to issue notification in this regard also.

With these observations, the writ petition is, accordingly, allowed.

**Order Date :- 16.12.2022**  
**GS**

(Siddhartha Varma, J.)

(Ajit Singh, J.)