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211 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) CWP-27167 of 2018
Date of Decision:14.07.2023

MOHAN LAL @ MOHNA ....Petitioner

Versus

UNION OF INDIA AND OTHERS ....Respondents

2) CWP-29981-2022

SARDOOL SINGH ....Petitioner

Versus

UNION OF INDIA AND OTHERS ....Respondents

3) CWP-21983 of 2022

PARMOD KUMAR ARORA .... Petitioner

Versus

UNION OF INDIA AND OTHERS ..... Respondents

4) CWP-7974 of 2023

KARAMJIT SINGH ......Petitioner

Versus

UNION OF INDIA AND OTHERS ....Respondents

5) CWP-8014 of 2023

NIRMALJIT SINGH ....Petitioner

Versus

UNION OF INDIA AND OTHERS ....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sarbjit Singh, Advocate
for the petitioner in CWP- 29981 of 2022.

Mr. Ish Puneet Singh, Advocate

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for the petitioner in CWP-27167 of 2018

Mr. H.S.Jugait, Advocate
for the petitioner in CWP-7974 of 2023

Mr. Nakul Sharma, Advocate
for the petitioner in CWP-8014 of 2023

Mr. K.D.S. Hooda, Advocate with
Ms. Janat Dhillon, Advocate
for the petitioner in CWP-21983 of 2022

Ms. Reeta Kohli, Amicus Curiae assisted by
Ms. Vandana Kohli, Advocate
Mr. Ankur Sharma, Sr. Panel counsel
for Union of India in CWP. 29981 of 2022
& CWP-7974 of 2023

Ms. Neha Sharma, Advocate for
Union of India in CWP- 8014 of 2023

Mr. K.K. Jund, Advocate
for UOI in CWP-21983 of 2022.

Mr. Amit Arora, Advocate
for Union of India in CWP- 27167 of 2018

Mr. Maninder Singh, DAG, Punjab

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JAGMOHAN BANSAL, J. (Oral)

1. By this common order bunch of five Writ Petitions is disposed of as issue involved in all the petitions is identical. For the sake convenience, facts are borrowed from CWP No. 27167 of 2018.

2. The petitioner through the instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents No. 1 to 3 to renew passport of the petitioner.

Brief Facts:

3. Brief facts of the case which are necessary for the adjudication of present case are that the petitioner was issued passport on 22.08.2005

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which expired on 21.08.2015. An FIR dated 13.03.2008 under NDPS Act came to be registered against him. The trial court vide judgment dated 09.10.2013 convicted the petitioner under Section 15 of NDPS Act and sentenced to imprisonment of 10 years. The petitioner assailing judgment of conviction and order of sentence preferred an appeal CRA-S-3725-SB of 2013 before this Court which came to be admitted vide order dated 25.11.2013. The sentence of the petitioner came to be suspended vide order dated 14.02.2017 passed by this Court. The petitioner on 07.07.2017 moved an application seeking renewal of his passport. The petitioner was informed vide communication dated 17.07.2017 that there is an adverse police report. The application of the petitioner came to be closed. The petitioner, in the pending appeal, preferred an application before this Court, seeking direction to respondents to renew his passport which came to be dismissed vide order dated 25.09.2018. The application was dismissed observing that relief sought for by petitioner is civil in nature and in case of denial of his application, he has remedy to file civil writ petition.

Contention of the Petitioner:

4. Ld. Counsel for the petitioner *inter alia* contends that his case is covered by clause (e) of Section 6(2) of the Passport Act, 1967 (in short "1967 Act"). As per Clause (e) of Section 6(2) of the 1967 Act, passport authority may issue passport if an applicant is convicted five years prior to the date of application or sentence is less than two years. In case an applicant is convicted for sentence of less than two years or a period of five years from the date of conviction has passed away, rigour of clause (e) of Section 6(2) of the 1967 Act is not applicable. In the case

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of petitioner, five years period from the date of conviction expired on 8.10.2018, thus, petitioner is entitled to passport and respondents have wrongly rejected application of the petitioner.

Contention of the Respondents:

5. Mr. Maninder Singh, DAG, Punjab submits that petitioner was convicted vide judgment dated 09.10.2013 passed by Special Court, Kapurthala. He was awarded sentence of 10 years, thus, adverse report was forwarded to passport authorities.

6. Ld. Counsels for the respondents No. 1 to 3 i.e. Union of India and passport authorities *inter alia* would submit that petitioner has been convicted and awarded sentence of 10 years, thus, he cannot be issued passport. An appeal is continuation of original proceedings either civil or criminal. Admittedly, appeal of the petitioner is pending before this Court, thus, case of the petitioner though is not covered by Clause (e), yet, is squarely covered by (f) of Section 6(2) of the 1967 Act. The Government in exercise of power conferred by Section 22 of the Act has issued notification No. 570(E) dated 25.08.1993 wherein it has been clarified that passport to an applicant against whom criminal proceedings are pending, can be issued only on the direction of Court. The said notification is applicable to pending appeals, thus, passport without consent of the Court cannot be issued.

In support of his contention, Learned State counsel placed reliance upon judgments of Hon'ble Supreme Court in ***Kalawati Vs. State of Himachal Pradesh (1953) 1 SCC 86*** *and* ***Ramnath Exports Pvt. Ltd. Vs. Vinita Mehta and another (2022) 7 SCC 678*** wherein it has been held that appeal is continuation of original proceeding.

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7. I have heard arguments of both sides and scrutinized record with their able assistance.

8. From the pleadings and arguments of both sides following question arise for the consideration of this court:

"Whether clause (f) of Section 6(2) of Passport Act, 1967 is applicable to an applicant whose criminal trial has already concluded and appeal is pending before Appellate court?"

Passport & Fundamental Rights:

8. The Passport Act, 1967 is outcome of judgment of a Constitution Bench of Hon'ble Supreme Court in ***Satwant Singh Sawhney v. D. Ramarathnam*, (1967) 3 SCR 525.** Prior to aforesaid judgment, there was no statutory provision governing passport matters. Hon'ble court adverted with the issue of refusal of passport vis-a-vis violation of fundamental rights guaranteed by Constitution of India. Majority of the judges speaking through Hon'ble Justice K. Subba Rao held:

> ***32.****The next question is whether the act of the respondents in refusing to issue the passport infringes the petitioner's fundamental right under Article 14 of the Constitution. Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This doctrine of equality before the law is a necessary corollary to the high concept of the rule of law accepted by our Constitution. One of the aspects of rule of law is that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative authority: see State of Madhya Pradesh v.Thakur Bharat Singh [Civil Appeal No. 1066 of 1965 (decided on 23-1-1967)] . Secondly, such a law would*

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be void, if it discriminates or enables an authority to discriminate between persons without just classification. What a legislature could not do, the executive could not obviously do. But in the present case the executive claims a right to issue a passport at its discretion; that is to say, it can at its discretion prevent a person from leaving India on foreign travel. Whether the right to travel is part of personal liberty or not within the meaning of Article 21 of the Constitution, such an arbitrary prevention of a person from travelling abroad will certainly affect him prejudicially. A person may like to go abroad for many reasons. He may like to see the world, to study abroad, to undergo medical treatment that is not available in our country, to collaborate in scientific research, to develop his mental horizon in different fields and such others. An executive arbitrariness can prevent one from doing so and permit another to travel merely for pleasure. While in the case of enacted law one knows where he stands, in the case of unchannelled arbitrary discretion, discrimination is writ large on the face of it. Such a discretion patently violates the doctrine of equality, for the difference in the treatment of persons rests solely on the arbitrary selection of the executive. The argument that the said discretionary power of the State is a political or a diplomatic one does not make it anytheless an executive power. We, therefore, hold that the order refusing to issue the passport to the petitioner offends Article 14 of the Constitution.

9. A seven-judge Constitution Bench in ***Maneka Gandhi v. Union of India*, (1978) 1 SCC 248** adverted with cancellation and impounding of passport vis a vis fundamental rights guaranteed by Chapter III of the Constitution. The court though upheld validity of different provisions of the Act, yet, made such observations which were having far reaching repercussions. The findings though were made with

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respect to Section 10(3) of the 1967 Act, yet, are relevant for the adjudication of present batch of matters, thus reproduced as below:

> ***25.*** *There is also another consideration which leads to the same conclusion. The right to go abroad is, as held in Satwant Singh Sawhney case, included in "personal liberty" within the meaning of Article 21 and is thus a fundamental right protected by that Article. When the State issues a passport and grants endorsement for one country, but refuses for another, the person concerned can certainly go out of India but he is prevented from going to the country for which the endorsement is refused and his right to go to that country is taken away. This cannot be done by the State under Article 21 unless there is a law authorising the State to do so and the action is taken in accordance with the procedure prescribed by such law. The right to go abroad, and in particular to a specified country, is clearly right to personal liberty exercisable outside India and yet it has been held in Satwant Singh Sawhney case to be a fundamental right protected by Article 21. This clearly shows that there is no underlying principle in the Constitution which limits the fundamental rights in their operation to the territory of India. If a fundamental right under Article 21 can be exercisable outside India, why can freedom of speech and expression conferred under Article 19(1)(a) be not so exercisable?*
>
> ***28.*** *We may begin the discussion of this question by first considering the nature and significance of the right to go abroad. It cannot be disputed that there must exist a basically free sphere for man, resulting from the nature and dignity of the human being as the bearer of the highest spiritual and moral values. This basic freedom of the human being is expressed at various levels and is reflected in various basic rights. Freedom to go abroad is one of such rights, for the nature of man as a free agent necessarily*

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involves free movement on his part. There can be no doubt that if the purpose and the sense of the State is to protect personality and its development, as indeed it should be of any liberal democratic State, freedom to go abroad must be given its due place amongst the basic rights. This right is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. It is a right which gives intellectual and creative workers in particular the opportunity of extending their spiritual and intellectual horizon through study at foreign universities, through contact with foreign colleagues and through participation in discussions and conferences. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right. Moreover, this freedom would be a highly valuable right where man finds himself obliged to flee : (a) because he is unable to serve his God as he wished at the previous place of residence, (b) because his personal freedom is threatened for reasons which do not constitute a crime in the usual meaning of the word and many were such cases during the emergency, or (c) because his life is threatened either for religious or political reasons or through the threat to the maintenance of minimum standard of living compatible with human dignity. These reasons suggest that freedom to go abroad incorporates the important function of anultimum refunium libertatiswhen other basic freedoms are refused. To quote the words of Mr Justice Douglas in Kentv.Dulles[357 US 116 : 2 L Ed 2d 1204] freedom to go abroad has much social value and represents a basic human right of great significance. It is in fact incorporated as an inalienable human right in Article 13 of the Universal Declaration of Human Rights. But it is not

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specifically named as a fundamental right in Article 19(1). Does it mean that on that account it cannot be a fundamental right covered by Article 19(1)?

34. *The right to go abroad cannot, therefore, be regarded as included in freedom of speech and expression guaranteed under Article 19(1)(a) on the theory of peripheral or concomitant right. This theory has been firmly rejected in the All-India Bank Employees Association case and we cannot countenance any attempt to revive it, as that would completely upset the scheme of Article 19(1) and to quote the words of Rajagopal Ayyanger, J., speaking on behalf of the Court in All-India Bank Employees Association case"by a series of ever-expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result". So also, for the same reasons, the right to go abroad cannot be treated as part of the right to carry on trade, business, profession or calling guaranteed under Article 19(1)(g). The right to go abroad is clearly not a guaranteed right under any clause of Article 19(1) and Section 10(3)(c) which authorises imposition of restrictions on the right to go abroad by impounding of passport cannot be held to be void as offending Article 19(1)(a) or (g), as its direct and inevitable impact is on the right to go abroad and not on the right of free speech and expression or the right to carry on trade, business, profession or calling.*

Constitutional requirement of an order under Section 10(3)(c):

35. *But that does not mean that an order made under Section 10(3)(c) may not violate Article 19(1)(a) or (g). While discussing the Constitutional validity of the impugned order impounding the passport of the petitioner, we shall have occasion to point out that even where a statutory provision empowering an authority to take action is Constitutionally valid, action taken under it may offend a fundamental right and in that event, though the statutory*

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provision is valid, the action may be void. Therefore, even though Section 10(3)(c) is valid, the question would always remain whether an order made under it is invalid as contravening a fundamental right. The direct and inevitable effect of an order impounding a passport may, in a given case, be to abridge or take away freedom of speech and expression or the right to carry on a profession and where such is the case, the order would be invalid, unless saved by Article 19(2) or Article 19(6). Take for example, a pilot with international flying licence. International flying is his profession and if his passport is impounded, it would directly interfere with his right to carry on his profession and unless the order can be justified on the ground of public interest under Article 19(6), it would be void as offending Article 19(1)(g). Another example may be taken of an evangelist who has made it a mission of his life to preach his faith to people all over the world and for that purpose, sets up institutions in different countries. If an order is made impounding his passport, it would directly affect his freedom of speech and expression and the challenge to the validity of the order under Article 19(1)(a) would be unanswerable unless it is saved by Article 19(2). We have taken these two examples only by way of illustration. There may be many such cases where the restriction imposed is apparently only on the right to go abroad but the direct and inevitable consequence is to interfere with the freedom of speech and expression or the right to carry on a profession. A musician may want to go abroad to sing, a dancer to dance, a rising professor to teach and a scholar to participate in a conference or seminar. If in such a case his passport is denied or impounded, it would directly interfere with his freedom of speech and expression. If a correspondent of a newspaper is given a foreign assignment and he is refused passport or his passport is impounded, it would be direct interference with his freedom to carry on his profession.

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Examples can be multiplied, but the point of the matter is that though the right to go abroad is not a fundamental right, the denial of the right to go abroad may, in truth and in effect, restrict freedom of speech and expression or freedom to carry on a profession so as to contravene Article 19(1)(a) or 19(1)(g). In such a case, refusal or impounding of passport would be invalid unless it is justified under Article 19(2) or Article 19(6), as the case may be. Now, passport can be impounded under Section 10(3)(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. The first three categories are the same as those in Article 19(2) and each of them, though separately mentioned, is a species within the broad genus of "interests of the general public". The expression "interests of the general public" is a wide expression which covers within its broad sweep all kinds of interests of the general public including interests of the sovereignty and integrity of India, security of India and friendly relations of India with foreign States. Therefore, when an order is made under Section 10(3)(c), which is in conformity with the terms of that provision, it would be in the interests of the general public and even if it restricts freedom to carry on a profession, it would be protected by Article 19(6). But if an order made under Section 10(3)(c) restricts freedom of speech and expression, it would not be enough that it is made in the interests of the general public. It must fall within the terms of Article 19(2) in order to earn the protection of that Article. If it is made in the interests of the sovereignty and integrity of India or in the interests of the security of India or in the interests of friendly relations of India with any foreign country, it would satisfy the requirement of Article 19(2). But if it is made for any other interests of the general public save the interests of "public

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order, decency or morality", it would not enjoy the protection of Article 19(2). There can be no doubt that the interests of public order, decency or morality are "interests of the general, public" and they would be covered by Section 10(3)(c), but the expression "interests of the general public" is, as already pointed out, a much wider expression and, therefore, in order that an order made under Section 10(3) (c) restricting freedom of speech and expression, may not fall foul of Article 19(1)(a), it is necessary that in relation to such order, the expression "interests of the general public" in Section 10(3)(c) must be read down so as to be limited to interests of public order, decency or morality. If an order made under Section 10(3)(c) restricts freedom of speech and expression, it must be made not in the interests of the general public in a wider sense, but in the interests of public order, decency or morality, apart from the other three categories, namely, interests of the sovereignty and integrity of India, the security of India and friendly relations of India with any foreign country. If the order cannot be shown to have been made in the interests of public order, decency or morality, it would not only contravene Article 19(1)(a), but would also be outside the authority conferred by Section 10(3)(c).

Constitutional validity of the impugned Order:

***45.** We do not, therefore, see any reason to interfere with the impugned Order made by the Central Government. We, however, wish to utter a word of caution to the Passport Authority while exercising the power of refusing or impounding or cancelling a passport. The Passport Authority would do well to remember that it is a basic human right recognised in Article 13 of the Universal Declaration of Human Rights with which the Passport Authority is interfering when it refuses or impounds or cancels a passport. It is a highly valuable right which is a part of personal liberty, an aspect of the spiritual dimension of man, and it should not be lightly interfered with. Cases*

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are not unknown where people have not been allowed to go abroad because of the views held, opinions expressed or political beliefs or economic ideologies entertained by them. It is hoped that such cases will not recur under a Government Constitutionally committed to uphold freedom and liberty but it is well to remember, at all times, that eternal vigilance is the price of liberty, for history shows that it is always subtle and insidious encroachments made ostensibly for a good cause that imperceptibly but surely corrode the foundations of liberty.

10. From the above quoted judgments, it is evident that right to travel abroad is part of fundamental rights guaranteed by Article 21 and 14 of the Constitution of India. The state can deny right to travel subject to compliance of safeguard in the form of show cause notice, opportunity of hearing and order disclosing reasons for the denial.

Statutory Provisions/Notifications:

11. Present matter is centered around the interpretation of Section 6 of the 1967 Act which enumerates circumstances where passport may be denied to an applicant. Section 6 of the 1967 Act reads as:

"Section 6. Refusal of passport, 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

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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;

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(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."

12. In exercise of power conferred by 1967 Act, Central Government has framed Passport Rules, 1980. Rule 12 prescribes duration of validity of the passport and rule 13 provides that at one point of time only one passport can be issued. Rule 12 and 13 read as:

"12. Duration of passports or travel documents.*— (1) An ordinary passport for persons other than children below the age of 15 years, containing thirty-six pages or sixty pages shall be in force for a period of 10 years from the date of its issue.*

(1-A) An ordinary passport for a child below the age of 15 years, containing thirty-six pages shall be in force for a period of 5 years from the date of its issue or until the child attains the age of 15 years, whichever is earlier.

(4) An emergency certificate shall continue in force for a period of six months from the date of its issue.

(5) A certificate of identity shall continue in force for a period of ten years from the date of its issue.

(6) A diplomatic and an official passport shall continue in

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force for a period to be decided in each case by the Central Government or the passport authority which issues the passport:

Provided that the total life of a diplomatic or an official passport shall be ten years from the date of its issue.

13. Issue of additional passport or travel document in special circumstances.*—A person holding a passport or travel document shall not be entitled to another passport or travel document unless he surrenders to the passport authority the passport or travel document already held by him:*

Provided that separate passports or travel documents may be issued to the same person in respect of different countries if it is necessary so to do for facilitating his visits to such countries."

13. Section 22 of the 1967 Act empowers Central Government to exempt any person from the operation of all or any of the provisions of the Act. Section 22 of the Act reads as:

"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."

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14. With intent to relax rigour of inhibition contemplated by clause (f) of Section 6(2) of Passport Act, 1967, Central Government in exercise of powers conferred by clause (a) of Section 22 of the 1967 Act, has issued notification dated 25th August' 1993 which reads as:

> *"**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*

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(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."

15. Ministry of External Affairs, Government of India in reference to afore-stated notification by office memorandum dated 10th October, 2019 has issued instructions to be adopted while processing passport applications, in respect of those applicants who have pending criminal proceedings. Clause (vi) of Para 5 of memorandum No. VI/401/1/5/2019 is relevant for the present controversy which is reproduced as below:

"(vi) In case where the secondary police verification is also 'adverse', it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6 (2) (f) and that criminal proceedings

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> *would only be considered pending against an applicant if a case has been registered before any Court of law and the Court has taken cognizance of the same."*

16. By office memorandum dated 14.3.2023, Government of India has issued clarification regarding issue of passport where conviction or trial has been stayed by appellate courts. As per said memorandum, in case of stay of conviction, section 6(2)(e) of the 1967 Act would not be applicable. The relevant extracts of memorandum read as:

> *"(ii) The cases where the appellate court has stayed the conviction, the legal effect would be that in such cases Section 6 (2) (e) of the Passport Act, 1967 may not be applicable.*
>
> *(iii) The cases where trial proceedings have been stayed by the appellate court applicability of Section 6 (2) (f) which inter alia provides that the Passport Authority shall refuse to issue a passport or travel documents on the ground that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India, would depend upon the nature of stay, reasons for stay and stage at which proceedings have been stayed. No definite view of such cases can be expressed.*

Judicial Precedents:

17. A single judge Bench of Delhi High Court in ***Ashok Kumar Sharma Vs The Regional Passport Officer and others 2019 SCC OnLine Del 6480*** has elaborately adverted with Clauses (e) and (f) of Section 6(2) of the 1967 Act. The court has lucidly held that clause (f) is not applicable in case of conviction of an applicant. Relevant extracts of

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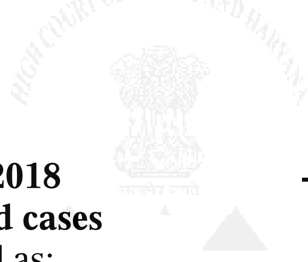

the judgment read as:

> *13. The controversy in the present case relates to interpretation of the provisions of Clauses (e) and (f) of Section 6(2) of the Passports Act and the notification dated 25.08.1993 issued by the Central Government. Respondent no. 1 and respondent no. 3 have taken somewhat divergent stands. According to respondent no. 1, the petitioner would not be entitled to a passport by virtue of Clauses (e) and (f) of Section 6(2) of the Passports Act. However, the Central Government has, in exercise of powers under Section 22 of the Passports Act, issued the notification granting certain exemptions from the operations of Section 6(2)(f) of the Passports Act by issuing a notification dated 25.08.1993. According to respondent no. 1, in terms of the said notification, a passport can be issued to the petitioner provided the petitioner secures a no objection from the concerned court where criminal proceedings against him are pending. It is contended that the petitioner's appeal before this Court (Crl. Appeal No. 1464 of 2014) is a continuation of criminal proceedings and a no objection from this Court would entitle the petitioner for reissuance of a passport. Respondent no. 3 has countered the aforesaid submission. According to respondent no. 3, the aforesaid notification is not relevant as it does not relax the application of Clause (e) of Section 6(2) of the Passports Act. Respondent no. 3 contends that a passport can be issued on the basis of an NOC by a concerned Court only where criminal proceeding for an alleged offence are pending and the said notification would have no application where an accused has been convicted of an offence.*
>
> *14. xxxx*
>
> ***15.** A plain reading of the aforesaid provision indicates that Clauses (e) and (f) refer to different situations. Clause (f) is*

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applicable only in cases where criminal proceedings are pending in respect of an allegation of an offence. Clearly, the said clause is inapplicable where the criminal proceedings have culminated in a conviction and the offence alleged to have been committed has been established. Plainly, in such circumstances, the offence cannot be described as "alleged to have been committed". Clause (e) of Section 6(2) of the Act relates to a case where an applicant has been convicted of an offence involving moral turpitude and has been sentenced in respect thereof to an imprisonment for not less than two years. It is also relevant to note that the rigor of Clause (e) is applicable only for a period of five years after such conviction.

16 to 18. xxxxxx

***19.** A plain reading of the said notification indicates that its scope is limited to exempt persons from the operation of Clause (f) of subsection (2) of Section 6 of the Passports Act. The opening paragraph of the said notification makes it amply clear that it only exempts citizens against whom proceedings, in respect of an offence alleged to have been committed by them, are pending before a Criminal Court in India.*

***20.** There is merit in respondent no. 3's contention that in case of the petitioner the matter has travelled beyond the stage of a mere allegation. Although the petitioner has preferred an appeal against his conviction, this Court has not passed any order staying the same. Thus, as it stands today, the petitioner stands convicted of an offence involving moral turpitude and has been sentenced to undergo imprisonment for a period of three years. In the aforesaid view, the notification dated 25.08.1993 has no application.*

***21.** It is also relevant to note that respondent no. 1 has not denied the petitioner's request for issuance of a passport*

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under Section 6(2)(f) of the said Act. In view of the above, this Court finds no infirmity with the decision of respondent no. 1 to deny the petitioner the facility of passport. However, the reference to the notification dated 25.08.1993 in the impugned order is misplaced.

22. *The petitioner had relied on the decisions in the case of Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi : AIR 1967 SC 1836 and Maneka Gandhi v. Union of India, (1978) 1 SCC 248 in support of his contention that the petitioner has a fundamental right to a passport and the same cannot be denied. This is without merit. Although, the petitioner has a right to a passport, the same is circumscribed by the provisions of the Passport Act. And, the validity of the said provisions have not been challenged.*

23. *Mr. Prakash, learned counsel appearing for the respondents had placed reliance on the decision of the High Court of the State of Telangana and Andhra Pradesh in Subhas Chandra Bose Mandava v. Union of India, Ministry of External Affairs : Writ Appeal No. 1026 of 2018, decided on 01.08.2018 in support of his contention that appellate proceedings would also fall within the scope of criminal proceedings as referred to in the notification dated 25.08.1993. The reliance on the said decision is misplaced, as in that case, an appeal against an order of acquittal (not conviction) was pending. Thus, clause (e) of Section 6(2) of the Passport Act was not applicable and the case of the applicant therein could be processed in terms of the notification dated 25.08.1993.*

18. A Coordinate Bench of this court in ***Shiv Nath Vs UOI and others, CWP No. 6508 of 2020*** vide order dated 20.9.2021 has held that clause (f) of Section 6(2) is applicable where criminal proceedings are pending

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and not where appeal against conviction is pending. The relevant extracts of the order dated 20.9.2021 read as:

> *"Learned counsel for the respondents submits that the matter has been considered by the Ministry of External Affairs and communication dated 26.08.2021 has been sent to respondent No.3 stating therein that Section 6(2)(f) of the Act is attracted. Since the decision has been taken by the Ministry, the application dated 11.08.2020 cannot be processed.*
>
> *A perusal of communication dated 26.08.2021 (Annexure R-4) makes it clear that even the respondents are convinced that Section 6(2)(e)of the Act is not applicable. Section 6(2)(f) of the Act applies only if criminal proceedings are pending against an applicant. The pendency of an appeal against conviction would not mean that criminal proceedings are pending as on date of application. An order of conviction has already been passed and, thus, the only relevant consideration would be the period of 5 years as provided by Section 6(2)(e) of the Act. Even in case of dismissal of the appeal, the petitioner would not suffer any further liability.*
>
> *The writ petition is accordingly allowed. Impugned orders dated 01.01.2019 and 30.07.2019 are quashed. Communications dated 06.07.2021 (Annexure R-3) and 26.08.2021 (Annexure R-4) are also quashed. The respondents are directed to consider the application dated 11.08.2020 in accordance with law and take action thereupon as early as possible."*

19. A single Judge Bench of Rajasthan High Court (Jaipur Bench) in ***Nilesh Heda Vs. UOI and others in CWP No.14683 of 2015***

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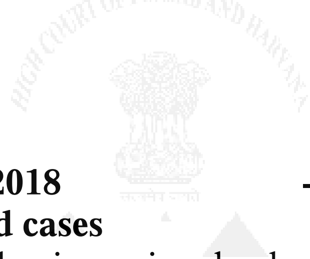

has considered the issue involved and held that High Court for the purpose of Section 6(2)(f) of the Act cannot be called as 'criminal court', thus, in case of pendency of appeal before High Court, Section 6(2)(f) of the Act cannot be invoked. The relevant extracts of the judgment read as:

> *"7. The right to travel abroad for which a passport is a sine qua non has been recognised in Maneka Gandhi's case as a fundamental right. Restraints on fundamental rights are to be strictly construed and so should Section 6(2)(f) of the Act of 1967 be. The words in the said section are that for refusal of a passport or renewal, a case against the applicant should be pending in a criminal court. Section 6(2)(f) of the Act of 1967 requires a wholistic construction, contextual with other clauses of Section 6(2) of the Act of 1967. To read into the clause (1) of Section 6(2) of the Act of 1967, a disability for an applicant to get a passport in the first instance or 'a renewal despite an acquittal would be quite absurd as Section 6(2)(e) of the Act of 1967 effectively allows for grant of passport in spite of a conviction even for an offence of moral turpitude where the sentence is less than two years. To avoid absurdity in the consequence flowing from a literal reading of Section 6(2)(f) of the Act of 1967 where on the one hand despite acquittal, pending appeal, the Passport Officer could refuse a passport for reason of the pending appeal and, on the other hand, in spite of conviction and sentence albeit of less than two years grant a passport under Section 6(2)(e) of the Act of 1967, the inevitable conclusion has to be that the words "proceedings in respect of an offence alleged to have been committed by an applicant pending before a criminal court in India" should be construed as referring only to matters before the trial court and not*

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before the appellate courts in appeals against acquittal. This construction harmonizes Section 6(2)(e) and 6(2)(f) of the Act of 1967 and eschews an otherwise obvious inexplicable contradiction in law.

8. Aside of the above, in my considered view, even otherwise, an appeal from a judgment of acquittal before the High Court cannot be said to be a proceeding within the meaning of "a proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India" under Section 6(2)(f) of the Act of 1967.

9. Section 6(2)(f) of the Act of 1967 reads as under:-

> *"That proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India."*

10. The words of import which require consideration are "pending before a criminal court in India". The question which arises is whether the High Court to which an appeal is filed against a judgment of acquittal is a "Criminal Court" for the purpose of the Act of 1967. The Act does not define the term "criminal court". The Code of Criminal Procedure, 1973 (hereinafter the Act of 1973') however defines a High Court in Section 2(e) as under:-"

> *(e) High Court means-*
>
> *(i) in relation to any State, the High Court for that state*
>
> *(ii) in relation to a Union Territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;*
>
> *(iii) in relation to any other Union Territory, the highest Court of criminal appeal for that*

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territory other than the Supreme Court of India."

11. Section 6 of the Act of 1973 describes the classes of "Criminal Courts" and provides that there will be in every state the following classes of criminal courts:-

(i) Court of Session;

(ii) Judicial Magistrates of the first class and,, in any metropolitan area, Metropolitan Magistrates;

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates.

12. The Air Force Act, 1950 defines a "criminal court" to mean a court of ordinary criminal justice in any part of India. So does the Assam Rifles Act, 2006 which also defines a "criminal court" to mean a court of ordinary criminal justice in any part of India. Ditto the Coast Guard Act, 1978. The Indo Tibetan Border Police Force Act, 1992 defines a criminal court to mean a court of ordinary criminal justice in any part of India including a court of a Special Judge appointed under Criminal Law Amendment Act, 1952. As does the National Security Guard Act, 1986. The Shastra Seema Bai Act, 2007 similarly defines a "criminal court" to mean a court of ordinary criminal justice in any part of India constituted under the Code of Criminal Procedure. The unlawful Activities (Prevention) Act, 1967 defines "a court" to mean a criminal court having jurisdiction under the Act to try offences under the Act of 1967 including the special court constituted under Section 11 or 21 of the National Investigating Agency Act, 1908. The Unlawful Activities (Prevention) Amendment

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> *Ordinance, 2004 defines a court to mean a criminal court having jurisdiction under the Act to try offences.*
>
> *13. The gamut of definitions of "criminal courts" through various statutes indicates that they are courts of ordinary criminal justice i.e. Trial court contra distinguished to appellate court. They are courts constituted under the Code of Criminal Procedure, 1973 and other enactments to try offence. The High Court exercising criminal appellate jurisdiction against a judgment of acquittal in the circumstances, to my mind, is not a court of ordinary criminal jurisdiction and for the limited purpose of Section 6(2)(f) of the Act of 1967, not be a criminal court. Consequently an appeal against acquittal pending in High Court in exercise of its criminal appellate jurisdiction would not entitle the Passport Officer to refuse an application for issue of passport or its renewal. This conclusion is based on the interpretation of the words "criminal court" limited to the manner they are referred to in Section 6(2)(f) of the Act of 1967, based on the definitions of the said words in statutes para materia, the need for a restrictive interpretation of laws impugning on fundamental rights of citizens, the need to harmonize an otherwise palpable interpretative absurdity arising from a literal and expansive reading of Section 6(2)(f) vis-a-vis Section 6(2)(e) where a convict suffering upto two years of sentence can not be refused a passport yet despite acquitted in a criminal case for reason of pendency of an appeal there against, the issue of passport can be refused.*

20. A two-judge Bench of Hon'ble Supreme Court in ***Vangala Kasturi Rangacharyulu Vs. Central Bureau of Investigation 2021 (4)***

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RCR (Crl) 402 has held that Section 6(2)(f) relates to a situation where the applicant is facing trial in a criminal court. The relevant extracts of the order read as:

> *"The refusal of a passport can be only in case where an applicant is convicted during the period of 5 years immediately preceding the date of application for an offence involving moral turpitude and sentence for imprisonment for not less than two years.*
>
> *Section 6.2 (f) relates to a situation where the applicant is facing trial in a criminal court.*
>
> *Admittedly, at present, the conviction of the appellant stands still the disposal of the criminal appeal. The sentence which he has to undergo is for a period of one year. The passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal.*
>
> *The passport authority is directed to renew the passport of the applicant without raising the objection relating to the pendency of the criminal appeal in this Court. Subject to the other conditions being fulfilled, the Interlocutory Application stands disposed of."*

<u>Discussion and Findings:</u>

21. Conclusion of above cited judgements can be culled out as below:

i) Clause (f) is applicable to proceedings pending before trial court,

ii) Clause (f) is not applicable where trial has already concluded,

iii) High Court in terms of Section 6 (2) (f) of 1967 Act is not a criminal court,

iv) Clause (e) comes into play as soon as trial is concluded.

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v) Clause (e) can be invoked if conditions mentioned therein are present.

22. With respect to criminal proceedings, legislature by inserting different clauses i.e. clause (e), (f) and (g) has contemplated different situations and given different treatment. If it is concluded that clause (f) can be invoked even after conclusion of trial, clause (e) and (g) would become redundant. As per respondents, clause (f) can be invoked as soon as trial commences and it operates till matter is finally settled by all courts including highest court. It is settled proposition of law that court cannot interpret a particular provision in such a manner which would make other provisions otiose or redundant. No word used by legislature can be declared superfluous. Courts are meant to interpret the law and can declare any provision invalid, however, cannot interpret one provision in a way that another becomes redundant. Every word leaving aside clause is equally important. As per principles of interpretation, law must be interpreted in a way which avoids to make any provision redundant.

In the case in hand, if it is held that clause (f) is omnipresent as soon as criminal proceedings commence against any person, clause (e) and (g) of Section (6)(2) would lose their significance. It was sufficient for the legislature to insert clause (f) and there was no necessity to insert clause (e) and (g). If it is held that different clauses are contemplating different stages of criminal proceedings, it would be in consonance with purport of the Act as well as seems meaningful and logical interpretation of law.

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23. In clause (f), legislature has used expression '**an offence alleged to have been committed**'. As soon as a person is acquitted or convicted, stage of allegation of commission of an offence comes to an end. Judgement of conviction holds a person guilty of commission of offence and judgment of acquittal holds that he has not committed the offence. There is always possibility of appeal against acquittal. If contention of respondent is countenanced, even in case of appeal against acquittal or discharge from offence, an applicant would not be entitled to passport. Acquittal or discharge from offence would become meaningless.

In case, an accused is awarded sentence of less than two years or there is no involvement of moral turpitude, however, appeal is filed by State or complainant against the conviction, though, rigour of clause (e) cannot be invoked, yet, on account of clause (f), an applicant as per respondent would not be entitled to passport. This would make clause (e) redundant which cannot be approved by Court.

23.1 In the clause (e), the legislature, as per its wisdom has enjoined three pre-requisites namely:

(i) conviction should be within 5 years preceding the date of application,

(ii) conviction should be for any offence involving moral turpitude and

(iii) sentence awarded must be not less than 2 years.

There seems reason for all the three afore-contemplated conditions. It is well known fact that conclusion of trial in India takes quite long time. Passing of 5 years period post-conviction, primarily though not

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absolutely, makes possibility of the applicant to flee from justice abysmally low.

Sentence of less than 2 years indicates that accused is not involved in a serious offence. Similarly, the legislature has found offences not involving moral turpitude less serious and non-prejudicial to public at large.

Expression 'moral turpitude' has neither been defined under Passport Act, 1967 nor under Criminal Procedure Code. Hon'ble Supreme Court in **State Bank of India and others Vs P. Soupramaniane (2019) 18 SCC 135** has adverted with expression moral turpitude. Court has held:

> ***13.*** *Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:*
> *(a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;*
> *(b) Whether the motive which led to the act was a base one, and*
> *(c) Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society. [Mangali v. Chhakki Lal, 1962 SCC OnLine All 215:AIR 1963 All 527]*
> ***14.*** *The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are : the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society. [Jorabhai Hirabhai Rabari v. Distt. Development Officer, 1995 SCC OnLine Guj 117: AIR 1996 Guj 3]*

In the absence of any one of three afore-stated pre-requisites, clause (e) cannot be invoked. It has been noticed that authorities while denying passport consider period of conviction and period spent from the date of conviction, however, question of involvement of moral turpitude

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in the offence is not examined. The authorities must consider this aspect apart from other issues.

24. Rajasthan High Court has considered different provisions of Criminal Procedure Code as well various other enactments and come to a conclusion that High Court is not a criminal court, thus, pendency of appeal in High Court, would not attract clause (f). This court finds itself in complete agreement with reasons and findings recorded by Rajasthan High Court and hold that High Court is not a criminal court as contemplated under clause (f) of Section 6(2) of 1967 Act, thus, clause (f) would not be applicable where appeal is pending in High Court.

25. Central Government by notification dated 25.08.1993 has exempted citizens against whom proceedings in respect of an offence alleged to have been committed are pending before criminal court, from the operation of provisions of clause (f) of Section 6(2) of 1967 Act. Government has further issued instructions dated 10.10.2019. As per Clause (vi) of Para 5 of the instructions, mere registration of FIR would not attract clause (f) and it would be attracted if case has been registered before any court and court has already taken cognizance of the same.

From the perusal of 1993 notification and 2019 instructions, it transpires that government has exempted citizens from clause (f) against whom criminal proceedings are pending. Government has not contemplated pendency of appeal before lower appellate court or high court. The respondent is wrongly relying upon aforesaid notification to argue that appeal is continuation of original criminal proceedings, thus, procedure prescribed under aforesaid notification would be strictly applicable to every case where appeal is pending. The notification is a

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piece of beneficial delegated legislation. It has been issued to grant exemption to citizens and not to enlarge the scope of grounds to deny passport and that too contrary to statutory provisions. It is settled law that no rule, notification, circular, instruction which is handmade of executive can run contrary to mandate of legislature i.e. statutory provisions. In the controversy in hand, from the reading of different clauses of Section 6(2) and aforesaid judicial precedents, it, beyond the pale of doubt, stares that scope, ambit and applicability of clause (e) and (f) is altogether different. There is clear dichotomy between both the clauses. Thus, 1993 notification and 2019 instructions are not applicable to pending appeals.

26. Matter further needs to be examined in the light of changed social, scientific and economic scenario vis a vis human and fundamental rights. A Constitution Bench in **Maneka Gandhi** (supra), more than 4 decades back, though held that right to travel is not part of fundamental rights adumbrated in Article 19(1) of the Constitution, however, contemplated various examples where denial of passport would amount to violation of right to freedom of speech or freedom of business contemplated by Article 19(1) of the Constitution.

With the advancement of technology, improvement of means of communication, globalization of economy, opening of economy for foreign investors, improvement of financial status of public at large, attraction to study and thereafter work out of country, increase in volume of international trade, availability of flights, unprecedent increase in the number of tourists across the world; travelling to abroad has substantially increased and it has become part of life. Presence of number of persons at

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one point of time at airports and daily international flights speak itself. Umpteen number of persons are travelling abroad for the sake of business or employment. If these persons are mechanically denied passport or permission to visit abroad, without allaying fear to flee from justice, not only would deprive them from their right to earn livelihood but also violate their fundamental right to freedom of business and profession, guaranteed by Article 19(1)(g) of the Constitution of India. Youngsters are getting life time golden opportunities to work abroad. If a young boy/girl who has got life time opportunity to work abroad is mechanically denied passport, no one would be able to compensate and it would be travesty of justice. Thus, denial of passport not only amounts to violation of fundamental rights guaranteed by Article 14 & 21 but also freedom of speech, business and trade contemplated by Article 19(1)(a) and (g) of the Constitution unless and until procedure prescribed by law is followed.

Conclusion:

27. In view of above facts and findings, this court concludes and further holds:

i) Clause (f) of Section 6(2) of Passport Act, 1967 is inapplicable to post conviction or post acquittal proceedings.

ii) As soon as a person is convicted or acquitted, he would be governed by Clause (e) of Section 6(2) of 1967 Act.

iii) Notification dated 25.8.1993 is applicable to criminal proceedings pending before trial court and as per instructions dated 10.10.2019, mere registration of FIR is not sufficient whereas a case should be registered before Court and Court must have taken cognizance.

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iv) Clause (e) of Section 6(2) can be invoked if an applicant; within 5 years preceding the date of application, for the commission of an offence involving moral turpitude has been sentenced to imprisonment of not less than 2 years.

v) High Court is not criminal court in terms of Section 6(2)(f) of the 1967 Act.

28. In view of above conclusion, all the petitions deserve to be allowed and accordingly allowed.

CWP No. 27167/2018

The Petitioner had filed application seeking passport prior to expiry of 5 years from the date of conviction. Period of 5 years from the date of conviction expired on 08.10.2018. The Respondent No. 3 is directed to decide application of the petitioner within 8 weeks from the date of fresh application, if any filed by the petitioner.

CWP No. 29981/2022

Impugned order dated 19.01.2022 (Annexure P-6) is hereby quashed and respondent No. 2 is directed to pass fresh speaking order within 8 weeks from today.

CWP No. 21983/2022

The Respondent No. 3 is directed to consider and decide afresh application of the petitioner within 8 weeks from today.

CWP No. 7974/2023

The Respondent No. 2 is directed to consider and decide afresh application of the petitioner within 8 weeks from today.

CWP No. 8014/2023

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The Respondent No. 3 is directed to consider and decide afresh application of the petitioner seeking renewal of the passport within 8 weeks from today.

29. To minimize litigation relating to passport issues, before parting with this judgment, this court would hasten to direct all passport authorities falling within jurisdiction of this court to consider observations and findings of this court while processing pending and subsequent applications.

(JAGMOHAN BANSAL)
JUDGE

14.07.2023
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*

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