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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st AUGUST, 2023

IN THE MATTER OF:

+ **W.P.(C) 9294/2021, CM APPL. 28883/2021**

DR MANJOJ KUMAR VASHISHTH

..... Petitioner

Through: Mr. Danish Chowdhury, Advocate

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Bharathi Raju, SPC for R-1/UoI.
Ms. Hetu Arora Sethi, ASC for
R-2/GNCTD.
SI Seema, PS Najafgarh.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. Vide the present Writ Petition the Petitioner seeks to challenge the Show Cause Notices dated 02.06.2021 and 05.08.2021, issued by the Respondent No.1 asking the Petitioner herein to explain as to why his Passport should not be impounded under Sections 10(3)(b) and 12(1)(b) of the Passport Act, 1967.
2. The facts, in brief, leading to the present Writ Petition are as under:
 - a) On 30.11.2012 the Petitioner got married to one Nidhi Mudgil as per Hindu rites and rituals. It is stated that the Petitioner went to Yunnan, China to pursue his MBBS course on 01.09.2014.
 - b) It is stated that an FIR being FIR No.236/2016 was registered against the Petitioner at Police Station Najafgarh for offences



under Sections 406/498-A IPC at the instance of his wife. It is stated that Non-Bailable Warrants were issued against the Petitioner on 11.07.2016 and when the Petitioner did not appear before the Investigating Authorities, an application under Section 82 of the Cr.P.C was filed against the Petitioner to declare him as a Proclaimed Offender. It is stated that vide Order dated 29.11.2016, the learned Metropolitan Magistrate declared the Petitioner herein as a proclaimed offender.

c) It is stated that on 02.06.2021 and 05.08.2021 the Petitioner herein received the impugned Show Cause Notices asking the Petitioner herein to show cause as to why his Passport should not be impounded under Sections 10(3)(b) and 12(1)(b) of the Passport Act, 1967 for suppression of material facts.

d) The Petitioner has thereafter approached this Court.

3. It is stated that on 11.08.2021 the Petitioner herein filed his reply to the Show Cause Notices stating that he has already approached the Revisional Court challenging the Order dated 29.11.2016. It was also stated in the said reply that the Petitioner was in China when the FIR was lodged and he was completely unaware of the proceedings. It is also stated in the reply that there is no case pending against the Petitioner because the investigation in the abovementioned FIR has yet not concluded and, therefore, there is no suppression of material facts on his part.

4. It is well settled that the Writ Courts must be extremely slow in interfering with the Show Cause Notices. The Apex Court in Union of India v. VICO Laboratories, (2007) 13 SCC 270, has held as under:

“31. Normally, the writ court should not interfere at the



stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.”

5. Similarly, in Union of India v. Coastal Container Transporters Assn., (2019) 20 SCC 446, the Apex Court has held as under:

“30. On the other hand, we find force in the contention of the learned Senior Counsel, Shri Radhakrishnan, appearing for the appellants that the High Court has committed error in entertaining the writ petition under Article 226 of the Constitution of India at the stage of show-cause notices. Though there is no bar as such for entertaining the writ petitions at the stage of show-cause notice, but it is settled by a number of decisions of this Court, where writ petitions can be entertained at the show-cause notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice. The High Court ought not to have



entertained the writ petition, more so, when against the final orders appeal lies to this Court.”

6. In CCE v. Krishna Wax (P) Ltd., (2020) 12 SCC 572, the Apex Court has held as under:

“14. It has been laid down by this Court that the excise law is a complete code in itself and it would normally not be appropriate for a writ court to entertain a petition under Article 226 of the Constitution and that the person concerned must first raise all the objections before the authority who had issued a show-cause notice and the redressal in terms of the existing provisions of the law could be taken resort to if an adverse order was passed against such person. For example in Union of India v. Guwahati Carbon Ltd. [Union of India v. Guwahati Carbon Ltd., (2012) 11 SCC 651] , it was concluded; “The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under Article 226 of the Constitution”, while in Malladi Drugs & Pharma Ltd. v. Union of India [Malladi Drugs & Pharma Ltd. v. Union of India, (2020) 12 SCC 808] , it was observed:

“... The High Court, has, by the impugned judgment held that the appellant should first raise all the objections before the Authority who have issued the show-cause notice and in case any adverse order is passed against the appellant, then liberty has been granted to approach the High Court ...

... in our view, the High Court was absolutely right in dismissing the writ petition against a mere show-cause notice.”

15. It is thus well settled that writ petition should normally not be entertained against mere issuance of show-cause notice. In the present case no show-cause



notice was even issued when the High Court had initially entertained the petition and directed the Department to prima facie consider whether there was material to proceed with the matter.”

7. Material on record indicates that the day the Petitioner left the country there was no criminal case pending against the Petitioner and, therefore, the Petitioner cannot be said to have suppressed the facts for obtaining his Passport. Further, the question as to whether the Petitioner is a proclaimed offender or not is a matter which is under consideration before the authorities.

8. At this juncture, where only Show Cause Notices have been issued and the Petitioner herein has given his reply to the Show Cause Notices, this Court is not inclined to interfere under Article 226 of the Constitution of India. Respondent is directed to consider the reply given by the Petitioner to the Show Cause Notice before passing final orders under Sections 10(3)(b) and 12(1)(b) of the Passport Act, 1967.

9. With these observations, the Writ Petition is dismissed. Pending applications, if any, also stands dismissed.

10. It is made clear that this Court has not made any observations on the merits of the case. The Petitioner is at liberty to give further representations to the Passport office which shall be taken into account by the authorities before passing any final order.

SUBRAMONIUM PRASAD, J

AUGUST 31, 2023

Rahul