

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.05.2015

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH

W.P. No. 14143 of 2015

&

M.P. No. 1 of 2015

VR. Ramya @ Theiyvanai

..Petitioner

Vs.

1. The Regional Passport Officer,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Royala Towers,
No.2 & 3, IV floor,
Old No. 785, New No. 158,
Anna Salai,
Chennai - 600 002.

2. The Immigration Officer,
Shastri Bhavan,
Haddows Road,
Nungambakkam,
Chennai - 600 034.

3. The Passport Officer,
Regional Passport Office,
Coimbatore.

4. R. Murugesan

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing respondents 1 to 3 to impound the passport of the 4th respondent R. Murugesan bearing passport No. H6945897.

For Petitioner :: Mrs.A. Arulmozhi

For Respondents :: Mr.V.T. Balaji

O R D E R

This writ petition is filed for issue of a Writ of Mandamus directing respondents 1 to 3 to impound the passport of the 4th respondent, namely, R. Murugesan bearing passport No. H6945897.

2.(i) The case of the petitioner is that she is the legally wedded wife of the 4th respondent and their marriage was solemnised on 31.01.2005 according to Hindu rites and customs. Out of their wedlock, a girl child was born on 14.11.2005. The 4th respondent is a Marine Engineer, employed in a Singapore based Shipping Company. He used to be on ship for 6 months and would stay with the family for 6 months. Three months after marriage, the 4th respondent left the petitioner under the care of his parents. However, the 4th respondent's parents left the petitioner in her matrimonial home as they preferred to stay with their daughter's family. According to the petitioner, she was harassed and ill-treated by her in-laws and that the 4th respondent

remained a mute spectator. The petitioner gave birth to a girl child on 14.11.2005 and the 4th respondent stayed with the petitioner and their child for hardly 1 ½ months and thereafter, left for USA leaving the petitioner under the care of his parents.

2(ii) During August, 2006, the 4th respondent visited the petitioner and their daughter only once and then, he visited the child only on her first birthday on 14.11.2006. Thereafter, he did not turn up. All the efforts taken by the petitioner to join the 4th respondent proved futile. While so, the petitioner received a summon from Sub Court, Devakottai in H.M.O.P. No. 50 of 2008 informing that the 4th respondent has filed the petition for divorce. The petitioner filed a transfer petition in Tr.C.M.P. No. 397 of 2008 before this Court to transfer the H.M.O.P. filed by the 4th respondent to Sub Court, Tambaram and the same was ordered. Thereafter, H.M.O.P. No. 50 of 2008 was transferred to the file of Sub Court, Tambaram and renumbered as H.M.O.P. No. 584 of 2009. In the year 2008, the petitioner filed an interim maintenance petition before Sub Court, Devakottai and the same was also ordered on 07.04.2011. In the meantime, the petitioner came to know that the 4th respondent was living with one Santhakumari and had a son through her. However, during cross-examination of the 4th respondent as P.W.1 in H.M.O.P. No. 584 of 2009, he denied his illicit relationship with the said Santhakumari.

After 28.03.2012, since the 4th respondent never appeared before Sub Court, Tambaram, the divorce petition filed by him in H.M.O.P. No. 584 of 2009 came to be dismissed for non-prosecution on 09.01.2014. Therefore, the 4th respondent filed an application to restore the said H.M.O.P. along with a condone delay application during May, 2014, which is pending for enquiry.

2(iii) After the dismissal of H.M.O.P. No. 584 of 2009, when the petitioner and her daughter went to the 4th respondent's house at Coimbatore and stayed with her inlaws, the 4th respondent, who came to Coimbatore during May, 2014, filed a petition in DVA No. 28 of 2014 under the Domestic Violence Act before the Court of Judicial Magistrate No.6, Coimbatore seeking protection orders to remove the petitioner and their daughter from the house and also obtained an ex parte order dated 13.05.2014 against the petitioner, consequent to which, the petitioner and her daughter were driven out of 4th respondent's house with the help of Police. As against the ex parte order, the petitioner filed an appeal before District court, Coimbatore and the same is pending. The 4th respondent has filed a suit for bare injunction against the petitioner from entering the matrimonial home before the Principal District Munsif Court, Coimbatore and the petitioner has filed a suit for maintenance before the District Court, Chengalpattu in O.S. No. 326 of 2014, which is also pending. While so, the petitioner came to understand that the 4th respondent is planning to leave for USA, where he is presently working, along with the said

Santhakumari and her children and he has also made attempts to obtain passport for her in the capacity of his wife. Hence, the petitioner made a complaint to the 1st and 2nd respondents dated 15.10.2014, to which the 1st respondent, by his reply dated 26.11.2014 informed that unless there is an order from the Court of law, no action can be taken with regard to the complaint made by the petitioner.

2(iv) Further, according to the petitioner, O.P. No. 53 of 2014, filed by her, to appoint her as the sole guardian of her minor daughter, was referred to National Lok Adalath for amicable settlement. However, the 4th respondent did not appear and therefore, a bailable arrest warrant was issued so as to secure the presence of the respondent and thereafter, to release him on his undertaking to appear before the Permanent and Continuous Lok Adalath conducted by the High Court Legal Services Committee on 23.04.2015. Even on 23.04.2015, the 4th respondent did not appear before the Permanent and Continuous Lok Adalath and the Sub Inspector of Police, Vadavalli, informed the Court that the 4th respondent was at Singapore on duty and the Lok Adalath passed the following order on 23.04.2015:

"Counsel for the petitioner/wife is present and Mr.V. Chidambaram, the Sub-Inspector of Police, Vadavalli, Coimbatore District appeared before the Lok Adalath today and produced the letter issued from the Office of Commissioner of Police, Coimbatore City and statement made by one

N. Ramasamy, father of Thiru R. Murugesan, who is a Marine Engineer, working in United States of America and presently at Singapore on duty.

2. *The warrant issued by the Hon'ble High Court in National Lok Adalat, on 11.04.2015 could not be executed by the police authorities for want of presence of Thiru R. Murugesan. The father of Thiru R. Murugesan has given an undertaking to produce Murugesan before the Vadavalli Police authorities, immediately, on his return to his native place and the said undertaking was given on 22.04.2015. In view of the reasons given above, it is stated that the police authorities could not execute the warrant.*

3. *The reason given by the police authorities for non executing the warrant appears to be reasonable. The Assistant Registrar of Original Side of the High Court, Madras is directed to re-issue the unexecuted warrant to execute and to submit report to the Lok Adalat. The re-issued warrant is ordered to be handed over to the Sub-Inspector of Police, Thiru V. Chidambaram, Vadavalli Police Station, Coimbatore (Rural) for compliance of the direction of the High Court, Madras.*

4."

According to the petitioner, even thereafter, the warrant was not executed and therefore, the petitioner made a representation dated 03.05.2015 to respondents 1 to 3 to impound the passport of the 4th respondent. Since orders are yet to be passed on the said representation, the petitioner has filed the present writ petition seeking a direction to respondents 1 to 3 to impound the passport of the 4th respondent.

3. Heard the learned counsel on either side.

4. Though a positive direction, as sought by the petitioner, cannot be granted by this Court, considering the fact that the representation made by the petitioner, to respondents 1 to 3, in this regard, is still pending, there shall be a direction to the 3rd respondent to consider the representation of the petitioner dated 03.05.2015 and pass appropriate orders, on merits and in accordance with law, by 18.05.2015. The writ petition is disposed of accordingly. No costs. Connected M.P. Is closed.

14.05.2015

nv

(Note to Office: Issue order copy

by 15.05.2015)

To

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