

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WP.No.25232/2014 & MP.No.1/2014

B.Ranganathan

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Petitioner

Versus

1.The Regional Passport Officer
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Rayala Towers-II & III,
New No.158, Anna Salai,
Chennai 600 002.

2.The Commissioner of Police
Egmore, Chennai 600 008.

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Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the 1st respondent in Letter No.MAS/3460/9/2002 dated 25.07.2014 and to quash the same and direct the 1st respondent to reissue the passport within the time frame ficed by this Court.

For Petitioner : Mr.Richardson Wilson for
M/s.Wilson Associates

For R1 : Mr.Su.Srinivasan, Asst. Solicitor
General

For R2 : Mr.R.Vijayakumar, AGP

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner is the former Member of the Tamil Nadu Legislative Assembly [MLA] and according to him, he was a MLA for about 20 years and was elected from Purasaiwalkam Constituency for the years 1991-1996, 1996-2000 and 2001-2006 and from Villivakkam Constituency for the year 2006-2011. The petitioner would further state that in the year between 1998 - 2001, he was holding the post of Chairman of the Tamil Nadu Cooperative Society.

2a. The petitioner is in possession of Passport from the year 1992 vide Passport No.K-966729 which was issued to him for a period of ten years and it was renewed on 03.12.2001 for the period valid upto 02.12.2011 vide Passport No.Z-082611.

2b. The petitioner was served with an order dated 26.01.2002 by the 1st respondent for revoking the passport and challenging the same, he filed WP.No.23770/2002 and during the pendency of the writ petition, the 1st respondent impounded his passport and challenging the same, the petitioner once again filed WP.No.21681/2003.

2c. Both the writ petitions were allowed by this Court vide order dated 27.01.2004 and the matter was once again remanded to the 1st respondent for fresh adjudication. The 1st respondent after conducting an enquiry, has passed an order on 30.06.2006, restoring the petitioner's passport facilities.

2d. The petitioner would further state that since the validity of his passport has expired, he applied for renewal of his passport on 03.04.2013 by way of online process by remitting necessary fees to the 1st respondent for seeking re-issuance of passport.

2e. The 1st respondent, vide letter dated 16.08.2013, has cited the report of the 2nd respondent-the Commissioner of Police, Chennai City, dated 11.05.2013 about the involvement of the petitioner in the criminal case in the Central Crime Branch Cr.No.122/2009 and CC.No.5666/2001 and sought to have projected as if the petitioner had suppressed the pendency of the about criminal cases against him and hence, issued a show cause notice as to why action should not be taken against him under the provisions of the Passport Act.

2f. The petitioner, on receipt of the show cause notice, sent a detailed reply dated 29.08.2013 stating among other things, that his name was not found in the FIR in Cr.No.122/2009 and also in the charge sheet and the final report

was filed closing the said case and subsequently, an order was passed by the jurisdictional Magistrate for re-investigation of the case and challenging the same, one of the accused, viz., Tr.Rajendra Raja has filed CrI.RC.No.1411/2011 before this Court and this Court, vide final order dated 15.06.2012, has directed the order passed by the Court of Judicial Magistrate No.1, Poonamallee ordering re-investigation, in abeyance.

2g. Insofar as CC.No.5666/2001 pending on the file of the V Metropolitan Magistrate Court, Egmore, Chennai, is concerned, the petitioner would stated that he has filed CrI.OP.No.12631/2003 and this Court vide order dated 14.09.2006, quashed the same.

2h. The 1st respondent, after receipt of the reply dated 29.03.2013 submitted by the petitioner, has once again referred back

the same to the 2nd respondent who informed the 1st respondent that one more criminal case has been registered against the petitioner and the same is pending trial before the jurisdictional Magistrate and the petitioner was once again issued with a show cause notice calling upon his explanation as to why he has suppressed the pendency of the said criminal case and in response to the same, the petitioner submitted his reply dated 09.01.2014 reiterating the stand taken by him in his earlier reply dated 29.08.2013 and also enclosed the relevant papers for fresh consideration.

2i. The 1st respondent, after receipt of the reply submitted by the petitioner, has once again referred the matter to the 2nd respondent and according to the petitioner, to his shock and surprise, the 1st respondent has passed the impugned order dated 25.07.2014 stating that as per the report of the Commissioner of Police, Chennai City, the following cases are pending against him, the details of which are as follows:-

- [1] Cr.No.122/2009 is pending before the Hon'ble
Judicial Magistrate Court, Poonamallee.
- [2] Cr.No.545/2011 is pending trial before the
Hon'ble X Metropolitan Magistrate Court.
- [3] Cr.No.188/2011 is pending trial before the
Hon'ble Judicial Magistrate Court, Ambattur.

2j. It is further stated that in the said impugned order, since the above said criminal cases are pending against the petitioner, the 2nd respondent has not recommended for issuance of passport to the petitioner and the above said act of the petitioner would attract section 6[2][f] r/w section 12[1][b] of the Indian Passport Act and accordingly, the 1st respondent has imposed a penalty of Rs.5,000/- for suppressing the material information of the pending cases and also denied the request made by the petitioner for re-issuance of the passport.

The petitioner, challenging the legality of the said order, has filed this writ petition.

3. Mr. Richardson Wilson, learned counsel for the petitioner has drawn the attention of this Court to the typed set of documents filed by the petitioner as well as the typed set of documents filed on behalf of the respondents 1 and 2 and would submit that the 1st respondent merely went by the report of the 2nd respondent and without due, proper and independent application of mind, has passed the impugned order, which on the face of it, per se, unsustainable.

3a. It is the further submission of the learned counsel for the petitioner that as far as Cr.No.122/2009 is concerned, the Investigating Officer, after investigation, has closed the case and

subsequently, the investigation was transferred to CBCID for further investigation and such permission was granted by the Court of the Judicial Magistrate, Poonamallee in D.No.803/2010 dated 23.04.2010 and it was put to challenge by one of the accused, namely, Thiru. Rajendra Raja by filing Crl.RC.No.1411/2011 and this Court, vide order dated 15.06.2012, has kept the said order in abeyance and therefore, as on today, the case is not said to be pending.

3b. Insofar as Cr.No.545/2011 which is said to have been pending trial on the file of the X Metropolitan Magistrate Court, Chennai and the case in Cr.No.188/2011, said to be pending on the file of the Judicial Magistrate Court, Ambattur, are concerned, it is the submission of the learned counsel for the petitioner that even as per the version of the 2nd respondent, no summons have been served on the petitioner and therefore, he is not at all aware of the pendency of the said cases and consequently, he cannot have any knowledge about the pendency of the said cases and that he was not in a position to disclose about the same in his application submitted for re-issuance of the passport.

3c. Learned counsel for the petitioner also placed reliance upon 1998 SCC Online Cal 181 : [1998] 2 Cal LT 415 [Shree Pradeed Kundalia V. Union of India and others] ; 2004 Crl.L.J. 1281 [Abhijit Sen Vs. Superintendent [Administration], Regional Passport Officer and others] ; 2014 SCC Online Mad 2900 [WP [MD] No.8343/2014 etc., batch dated 27.06.2014] [W.Jaihar William and others Vs. The State of Tamil Nadu rep.by its Secretary to Government, Home Department, Fort St George, Chennai 600 009] and would submit that in the light of the ratio laid down in the said judgments, unless the cognizance is taken and charge sheet is filed by the concerned investigating agency and the summons served on the accused concerned, the case cannot be deemed to be pending and also pointing out the counter affidavit filed by the respondents 1 and 2 as well as the typed set of papers filed by them, the learned counsel submitted that even as per the version of the 2nd respondent, the petitioner is not aware of the pendency of the above said cases and therefore, the request assigned in the impugned order, on the face of it, are unsustainable and prays for quashment of the said order with an appropriate direction, directing the respondents 1 and 2 to re-issue the passport to the petitioner.

4. Per contra, Mr.Su.Srinivasan, learned Assistant Solicitor General appearing for the 1st respondent, has drawn the attention of this Court to the counter affidavit as well as the typed set filed by the 1st respondent and would contend that as per the procedure, the police verification was called for from the 2nd respondent and his report disclose the pendency of some criminal cases against the petitioner and the perusal of his application for re-issuance of passport disclose that he has suppressed the said cases and hence, the impugned order came to be passed as the petitioner is guilty of suppression of the pendency of the criminal cases.

5. Mr.R.Vijayakumar, learned Additional Government Pleader, who appears for the 2nd respondent, has invited the attention of this Court to the Counter affidavit as well as the typed set of papers filed on behalf of the 2nd respondent and would submit that the petitioner is very well aware of the pendency of the case and he has deliberately suppressed the said fact while applying for re-issuance of passport and as per the request made by the 1st respondent, the 2nd respondent has sent a report to the 1st respondent, who accordingly taken into consideration the said report and after due application of mind, has rightly rejected the application submitted by the petitioner for re-issuance of passport and prays for dismissal of the writ petition.

6. This Court bestowed its attention to the rival submissions and also perused the material placed on record.

7. The Calcutta High Court in the judgment reported in 1998 SCC Online Cal 181 : [1998] 2 Cal LT 415 [Shree Pradeep Kundalia V. Union of India and others], in page 418, has considered the similar issue and observed as follows:-

"7. Coming to the specific instance of the pendency, of criminal proceedings as per clause [f], it is to be noted that it is not every pendency of all types of criminal cases which would automatically disentitle an applicant to refuse a passport. Each case depends on its own merits. The passport authority therefore, in the exercise of discretion, in the light of material placed before him or made available to him has to decide as to whether the pendency of any case or cases is such an event which should disentitle the applicant to the issuance of the passport. There has to be always a link, a nexus between the criminal proceedings and the going abroad of the applicant. It is not that whenever it is brought to the notice of the passport authority that a criminal case is pending against the applicant, he would automatically refuse to grant the passport. Such decision has to be taken by him, uninfluenced by any extraneous recommendation of any outside agency, but an objective consideration, on the basis of material available to him and by due application of mind."

8. In 2004 CrL.L.J. 1281 [Abhijit Sen Vs. Superintendent [Administration], Regional Passport Officer and others], the petitioner therein challenged the order impounding the passport u/s.102[e] of the Passport Act on the allegation that the criminal case is pending before the court concerned. It is relevant to extract paragraphs 11 and 12, which reads as follows:-

"11. In order to decide the said question, we may look into section 190 Cr.P.C., which prescribes the condition required for initiation of proceedings. Thus, proceedings before a Magistrate is initiated when the cognizance is taken by the Magistrate. A cognizance by a Magistrate is taken when a complaint is received by the Magistrate or upon police report of such facts or upon information received from any person other than police officer or upon his own knowledge that such offence has been committed. But, when cognizance is taken upon receiving a complaint under clause [a] of sub-section [1] of section 190, the Court does not do anything except directing investigation under section 156[3] by the police officer. Therefore, we cannot accept this direction to the police officer or investigation to be a proceeding taken by the Court. It may be a cognizance of the complaint but not a cognizance of the offence. Inasmuch as this is a stage for investigation as to whether the complaint lodged disclose a case to be proceeded with and for report. Therefore, Clause [a] of Section 190 Cr.P.C., does not initiate the proceeding within the meaning of section 10[2][e] of the Passport Act. But as soon as a police report within section 190[1][b] is taken cognizance of the proceeding is initiated before a criminal court. Since the next steps are the steps for taking evidence on oath and it makes it a judicial proceedings within the meaning of section 2 [i] Cr.P.C. The proceeding referred to in section 10 [2][e] imposes a restriction on a person on his movement out of India. Article 19[1][g] may not be affected if a passport is impounded, since the impounding does not prevent the citizen from moving inside India. He ceases to have any right to leave India. But this right of movement to leave India cannot be restricted except by an authority of law. A restriction on such right when the citizen wants to leave India in connection with his business definitely infringes his right to carry on business, if not wholly but partially. This fundamental right, which is being interfered with must have sanction of law. A sanction of law cannot be lightly construed. Therefore, when construing the implication of section 10[2][e], it has to be construed in a manner so as not to incorporate or encompass each and every case and thereby interfere with the right of person to move freely outside India in connection with his business.

12. The proceeding that has been referred to in section 10[2][e] is a proceeding in respect of an offence pending before a Criminal Court. A proceedings is pending before a criminal court as soon as the cognizance is taken. In case there is no delay in filing the charge sheet, the cognizance could have been taken as a matter of course and the question would have been different. But in a case where the cognizance is dependent on consideration of delay, until the delay is condoned the court is not empowered to take cognizance. A criminal case is initiated only when the cognizance taken. The presentation of the charge sheet before a criminal court may not entitle the court to take the cognizance of the offence beyond time on the fact of it. A distinction is to be drawn in the two kinds of cases [i] where cognizance can be taken where there is no delay and [ii] where cognizance can be taken only after condoning the delay. In the latter case, in which the delay is condoned and cognizance taken, it is a proceeding is pending before a criminal court."

9. The Calcutta High Court placed reliance upon the decision rendered by a Full bench of the Calcutta High Court reported in AIR 1962 Cal 135 [A.K.Roy V. State of West Bengal]. It also placed reliance on the yet another Full Bench Judgment reported in AIR 1957 Cal 379 [Parulbala Sen Gupta Vs. State] and other decisions and held that

"the submission of the charge sheet is a matter culminating after the investigation by the police is over and over which the Court has no control and therefore, the presentation of a charge sheet cannot be said to initiate the criminal proceedings until cognizance is taken by the Magistrate to place the accused on trial".

10. A Single Bench of this Court, in the common order dated 27.06.2014 made in WP [MD] No.8343/2014 etc., batch, reported in 2014 SCC Online Mad 2900, has also considered the similar issue and taking into consideration various decisions, held that

"It is well settled legal principle that mere pendency of FIR cannot be construed as pendency of criminal proceedings in respect of the offences alleged to have been committed by the applicant before the Criminal Court. Only after the Court takes cognizance of the offence alleged to have been committed by the applicable, as stipulated under section 190 of Cr.P.C., it can be construed as "proceedings pending before the Court".

and allowed the writ petitions and directed the 3rd respondent therein, viz., the Regional Passport Officer, Chennai, to consider the application of the petitioners therein and pass appropriate orders in accordance with law.

11. This Court, keeping in mind, the ratio laid down in the above decisions, has carefully analysed the facts placed before it.

12. Insofar as CC.No.5666/2001 on the file of the V Metropolitan Magistrate, Egmore, Chennai, is concerned, the petitioner filed Crl.OP.No.12631/2003 u/s.482 Cr.P.C., and this Court, vide final order dated 14.09.2006, has quashed the said calendar case and it has become final.

13. Insofar as Cr.No.122/2009 is concerned, the investigating officer has closed the case and subsequently, it was transferred to CBCID who filed an application for re-investigation of the matter and the jurisdictional Magistrate has also directed the same and it was challenged by one of the accused by filing Crl.RC.No.1411/2011 and this Court, vide final order dated 15.06.2012, passed an order, keeping the said order of reopening the investigation in abeyance. Therefore, it cannot be said to be pending.

14. Insofar as Cr.No.188/2011 is concerned, this Court has called for the report from the Court of Judicial Magistrate, Ambattur as to the stage of the said case and the learned Magistrate has sent a report dated 18.06.2015 stating that the final report in the said case was filed against the petitioner u/s.4A[1][a] of TNOPPD Act, 1959 r/w section 71[XV] of City Police Act was filed before the said court and it was taken on file on 05.05.2011 and numbered as STC.No.660/2011. In the charge sheet, the petitioner who is arrayed as an accused is shown as an "absconding accused" and therefore, for production of the accused, the case was posted on 31.05.2011 and again on 06.05.2011, upon the request of the Sub Inspector of Police, Korattur Police Station. The report further reads that the accused was not served with summons till date in spite of several adjournments for service of summons to the accused. Therefore, in the light of the said report, it is to be construed that the petitioner is not aware of the pendency of the said case also.

15. A perusal of the impugned order would lead only to the inference that the 1st respondent merely went by the report of the 2nd respondent and failed to apply his mind independently. The petitioner, in his reply submitted to the show cause notices has clearly pointed out that the said fact and in spite of it, the 1st respondent did not apply his mind before passing the impugned order.

16. The Constitution Bench of the Hon'ble Supreme Court of India, in the decision reported in AIR 1967 SC 1836 [Satwant Singh Sawhney V.

D.Ramarathnam, Assistant Passport Officer & Others] has held that the right to transfer abroad is a Fundamental Right and a refusal of passport or withdrawal of passport, violate Articles 14 and 21 of the Constitution of India. In the considered opinion of the Court, in the light of the said facts and circumstances, it cannot be said that the petitioner has deliberately suppressed the pendency of the criminal cases against him and as already pointed out, only in respect of one case, the cognizance has been taken and in that case also, the summons has not been served on the petitioner, as per the report of the learned Judicial Magistrate, Ambattur.

17. In the light of the above facts and circumstances coupled with the legal position, this Court is of the considered view that the impugned order passed by the 1st respondent warrants interference.

18. In the result, the writ petition is partly allowed and the impugned order / letter of the 1st respondent in Letter No.MAS/3460/9/2002 dated 25.07.2014 is set aside and the 1st respondent is directed to consider the application submitted by the petitioner for re-issuance of the passport in accordance with law, if the papers or otherwise in order and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Regional Passport Officer
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Rayala Towers-II & III,
New No.158, Anna Salai,
Chennai 600 002.

2.The Commissioner of Police
Greater Chennai,
Egmore, Chennai 600 008.

+1 cc to mr.Su.Srinivasan, Advocate,SR.33181
+1 cc to M/s.P.Wilson, Advocate,SR.33566
+1 cc to Government Pleader,SR.33648.

Rj (co)
krd 14/7

WP.No.25232/2014