

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.19375 of 2014

U.Kassim Razvi

[PETITIONER]

Vs

1 The State of Tamil Nadu
Rep. by Deputy Superintendent of Police
Economic Offences Wing II,
Chennai-40.

2 The Regional Passport Officer
Regional Passport Office
Rayala Towers 2 and 3, IV Floor
New No.158 Anna Salai
Chennai-2.

[RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records in connection with the impugned order dated 27.12.2013 passed by the second respondent herein impounding the petitioner Passport bearing No.G0850449 quash the same direct the second respondent herein to issue additional booklet in connection with his Passport bearing No.G0850449.

For Petitioner : Mr.Kumar

For Respondents : Mr.V.Jayaprakash Narayanan-R1
Special Government Pleader

Mr.N.Ramesh - R2

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mr.Kumar, learned Counsel appearing for the petitioner, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the first respondent and Mr.N.Ramesh, learned counsel appearing for the second respondent.

3.The petitioner has challenged the order passed by the second respondent dated 27.12.2013, by which the petitioner was informed that criminal cases have been lodged against him in C.C.No.11460 of 2002 and 15059 of 2005, in connection with Crime Nos. 132/96 and 16/02, and if the criminal cases have been disposed off, the petitioner was advised to submit his application in the Passport Seva Kendra, along with the copies of the Court orders.

4.The petitioner was an erstwhile employee of a company and he has been dragged into the criminal case on account of the default committed by the Company in payment of the deposit amounts to the depositors.

5.The legal issue which is involved in this Writ Petition is as to whether the second respondent can refuse to renew the passport on the ground of pendency of criminal cases pending against the petitioner. In fact the said issue was considered by this Court in the case of RIAZLEE v. THE PASSPORT OFFICER, MADURAI PASSPORT OFFICE, MADURAI [CDJ 2010 MHC 5945], and this Court after considering the notification issued by the authority, disposed of the writ petition. The operative portion of the order reads as follows:

"6. Subsequently another notification dated 25.08.1993 came up to be issued substituting the earlier notification and the effect of such notification was considered by the Bombay High Court in Deepak Dwarkasingh Chhabria Vs. Union of India reported in AIR 1997 BOMBAY 181, and it was held as follows:

"9. By the notification dated 25th August, 1993, the earlier notification was substituted granting exemption to the citizens 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 order from the Court concerned permitted them to depart from India, from the operation of the provisions of clause(f) of subsection (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 of one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order;

(b) any passport issued in terms of (a)(ii) and (a)(iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the Court is not cancelled or modified;

(c) any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh, 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 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.

10. In view of the aforesaid notification by the Central Government, it is clear that the citizens against whom criminal cases are pending are made exempt from the operation of Section 6(2)(f) provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications. In other words, an application of passport is not liable to be refused on the ground of pendency of criminal case if the applicant obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore cannot reject the application for passport mechanically on the ground of pendency of criminal case against the application. It will be the duty of the passport authority to bring the relevant notification to apply to the concerned Criminal Court for permission to travel abroad. If the applicant obtains such permission from the Criminal Court where his case is pending, the passport authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the notification."

7. The judgment of the Bombay High Court was followed by the Gujarat High Court in Dhiren Baxi Vs. Regional Passport Officer, Ahmedabad reported in AIR 2003 GUJARAT 108 and the Hon'ble Gujarat High Court issued the following directions:

10. Considering the aforesaid notification issued by the Central Government, as well as considering the judgment of the Bombay High Court, in my view, this petition is required to be allowed by giving opportunity to the petitioner to approach the concerned Magistrate with an appropriate application for permitting him to go abroad for a particular time limit. If the concerned Magistrate permits the petitioner to go abroad for a particular period

on the basis of such order, it will be open for the petitioner to request the passport authority to grant him passport for a limited period, during which he is permitted to go abroad. The petitioner may accordingly approach the concerned criminal court, with a prayer to permit him to go abroad and if any such application is preferred, the concerned criminal court may decide such application in accordance with law. If the concerned criminal court, before whom the criminal cases are pending, permits the petitioner to go abroad, the passport authority may pass appropriate order in the matter of issuing passport to the petitioner in terms of the order of the criminal court and subject to the conditions laid down by the Notification. As observed by the Bombay High Court, the passport authority, in future cases of a similar nature, may inform the applicants, against whom any criminal case is pending, about the Notification of the Central Government and may inform such applicant that they may approach the concerned and if any such order is passed by the Magistrate, permitting such applicant to go abroad, the passport authority may dispose of such applications in view of the Notification and in view of the provisions of the Passport Act. It is clarified that in case the criminal court permits the petitioner to go abroad, the passport authority shall act on the basis of such report for the purpose of issuing passport. The passport may not be refused solely on the ground of pendency of the present criminal cases in case the Magistrate so permits. It is clarified that if there are other grounds available to the passport authority to refuse the passport, it is for the authority to consider the same in accordance with law. The passport may not be refused solely relying on the present criminal cases, which are pending against the petitioner, in case permission is granted by the Magistrate as indicated above. It is also clarified that whether such application should be granted or not is within the jurisdiction of the competent criminal court and it is for the concerned Magistrate to decide such application, if at all the same is received from the present petitioner and it is for the Magistrate to decide the same in accordance with law and this Court has not expressed any opinion on the aforesaid subject.

8. Subsequently, the Bombay High Court in Shyam Dwarkadas Chabria Vs. Regional Transport Officer and another reported in 2000 CRI. L. J. 2942 also dealt with the same issue and held as follows:

"11. The impugned order dated 5th January, 1993 passed by the Regional Passport Officer, Bombay is quashed and set aside. The petitioner will be at liberty to make an application to the Chief Judicial Magistrate, Pune for permission to travel abroad. If such an application is

made, the learned Magistrate shall decide that application as expeditiously as possible and in any event within four weeks from the date of receipt such application. In case the learned Magistrate permits the petitioner to travel abroad, the passport authority shall forthwith issue the passport in terms of the order of the Magistrate subject to the terms and conditions mentioned in the notification dated 25th August, 1993."

9. Therefore, in view of the notification issued by the Central Government and as well as the law laid down in the above referred decisions, the renewal of the petitioner's passport cannot be refused merely on the ground of pendency of the criminal case. In fact, the petitioner ought to have been directed to approach the Court concerned before which the criminal case is pending and move an appropriate application seeking permission of the Court for necessary directions. Hence, the stand taken by the respondent by stating that mere pendency of the criminal case would operate as a bar for seeking renewal of the passport cannot be sustained.

10. In view of the above reasons, the writ petition is disposed of by giving liberty to the petitioner to approach the learned Additional District and Sessions Court (FTC), Ramanathapuram in the pending case, in S.C.No.91 of 2005, with an appropriate application seeking permission for him to go abroad. If such application is made, the learned Additional District and Sessions Court (FTC), Ramanathapuram, may consider the same and pass orders on merits and in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the contentions raised by the petitioner in the writ petition. No costs. Consequently, connected miscellaneous petition is also closed."

5. Following the above decision, this Writ Petition is also disposed of by giving liberty to the petitioner to approach the concerned Court, where the cases are pending and seek permission of the Court for necessary directions and if such application is filed, the Court concerned shall consider the same in accordance with law, and pass appropriate orders within a period of six weeks from the date on which the application is filed. No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1 The Deputy Superintendent of Police
Economic Offences Wing II,
Chennai-40.
- 2 The Regional Passport Officer
Regional Passport Office
Rayala Towers 2 and 3, IV Floor
New No.158 Anna Salai
Chennai-2.

+1 cc to Mr.N.Ramesh, Advocate, SR.13653

+1 cc to Government Pleader, SR.13249

+3 cc's to M/s.Kumar & Baskar, Advocate, SR.13172.

kji(co)
krd 31/3

W.P. No.19375 of 2014



WEB COPY