BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2015

CORAM

THE HONOURBLE MR.JUSTICE M.SATHYANARAYANAN

Crl.O.P.(MD).No.5833 of 2015

GANESH RAJAGOPALAN .. Petitioner/A3

Vs.

1. THE ADDITIONAL SUPERINTENDENT OF POLICE, CBI BS&FC BANGALORE,
INCHARGE ADDITIONAL SUPERINTENDENT OF POLICE,
CBI ACB HYDERABAD,
(FIR NO. RC.6(E)2007-CBI-BS&FC-BLR.YR:2007
DT:26.7.2007). .. 1STRespondent/Complainant

2. THE REGIONAL PASSPORT OFFICER,
SHASTRI BHAVAN, HADDOWS ROAD,
CHENNAI. ...Respondent

Criminal Original Petition is filed under Section 482 Cr.P.C. to direct the 2nd Respondent to issue the passport to the petitioner forthwith with usual validity period pending C.C.NO.1 of 2009 on the file of the Learned Chief Judicial Magistrate, Tiruchirappalli.

For Petitioner : Mr.A.Sasidharan

For Respondents : Mr.S.Jayakumar
Special Public Prosecutor for CBI Cases

ORDER

By consent, this Criminal Original Petition is taken up for final disposal.

2. The petitioner is the third accused in C.C.No.1 of 2009 pending on the file of the Court of Chief Judicial Magistrate, Trichirappalli. There are totally four accused in this case and the said case is being prescribed by the respondent/CBI.

3. It is the case of the prosecution that the Chief Vigilance Officer, Vijaya Bank, Head Office, Bangalore has given a written complaint dated 24.07.2007 against S.Gauthaman and eight others for the commission of the offences punishable under Sections 120(b), 467, 468 and 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

4. The sum and substance of the case projected by the prosecution is that A1 and A2 viz., S.Gowthaman and S.Mahendran has availed credit facilities with dishonest and fraudulent intention by furnishing false

documents and they have diverted the funds for the purpose other than for which the credit facilities were sanctioned and thereby causing wrongful loss of Rs.10.55 Crores to Vijaya Bank, Trichy Branch. It is further alleged by the prosecution that the bank officials/public servants entered into criminal conspiracy to cheat Vijaya Bank in the matter of taking over the credit facilities sanctioned by Union Bank of India, Trichy Branch, Trichy to M/s.Sangam Organics & Chemicals Ltd., (in short SOCL) and further sanctioning, disbursing various credit facilities to M/s.SOCL on the basis of false and fabricated documents.

5. The allegation levelled against this petitioner/A3 is that A1 and A2 had submitted audited balance sheets of M/s.SOCL and M/s.Sangam Chemicals (Trichy) Pvt. Ltd., to Vijaya Bank, Trichy Branch and it was preferred by Mr.Natarajan and Mr.Vaidyanathan, Chartered Accountants, Chennai and signed by A1 and A2 and also by this petitioner (A3) being partner of the said Chartered Accountants' Firm. The prosecution further alleged that the abridged balance sheet submitted to Vijaya Bank is different from the balance sheet submitted to the Registrar of Companies on 16.12.2003 and certain figures were deliberatly inflated in the balance sheet solely for the purpose of availing credit facilities from the bank; otherwise they were not entitled for the facilities sought for.

6. The case after investigation has culminated in a charge sheet, which was taken on file in C.C.No.1 of 2009 and it is brought to the knowledge of this Court that the prosecution had cited 28 witnesses and out of them, 26 witnesses were already examined and the trial of the case is nearing completion. The petitioner, who is the Chartered Accountant by profession was issued with a passport bearing No.E 9672866 on 03.08.2004 and it expired on 02.08.2009.

7. The petitioner submitted an application in reference No.14-1002831453, dated 31.03.2015 to the Regional Passport Office, Chennai for issuance of a new/fresh passport giving out the relevant particulars and he has also indicated that a case in C.C.No.1 of 2009 is pending against him on the file of the Court of Chief Judicial Magistrate, Trichirappalli. The Regional Passport Office, Chennai vide communication in letter reference No.CNO/302395695/15, dated 18.02.2015, has sought the following clarification:-

"Sir,

Please refer to your letter dated 02.02.2015 regarding criminal case pending against you before the Honourable Chief Judicial Magistrate, Trichy in case No.CC 1/2009. Hence, you are advised to furnish the copy of disposal of the case for us to enable further process in the matter."

8. Now, the petitioner came forward to file this present petition, praying for appropriate directions directing the second respondent/Regional Passport Officer, Chennai to issue the passport, stating among other things that he is a practicing Chartered Accountant since the year 1996 and he owns extensive properties in and around his native place viz., Kumbakonam and also in Chennai and he is also an income tax assessee for the past several years. He would further state that his elder son after completing his Engineering decree from SASTRA University, Thanavur went to US and obtained his Master's degree and now he is

employed in New York City in United States of America and he and his wife want to visit his son for a period of 4 to 6 weeks and for that purpose, he requires for issuance of new passport and the only impediment is the pendency of the above said criminal case.

9. Mr.A.Sasidharan, learned counsel for the petitioner has drawn the attention of this Court to the materials available on record in the form of typed of documents and would submit that the petitioner is a Chartered Accountant by profession and he owns extensive properties in this State and only for the purpose of visiting his son, who is employed in New York City, USA along with his wife, he requires passport and his wife being a home maker cannot visit USA without his aid and assistance. The said fact may be sympathetically taken into consideration and appropriate direction may be issued to the second respondent for issuance of a new passport subject to fulfillment of the necessary conditions/formalities. It is further submitted by the learned counsel for the petitioner that sufficient conditions may also be imposed for issuing such a direction.

10. Per contra, Mr.S.Jayakumar, learned Special Public Prosecutor appearing for CBI cases, has drawn the attention of this Court to the counter affidavit filed by the respondent and would submit that the prosecution has cited 28 witnesses and out of them 26 witnesses were already been examined and the trial is nearing completion and in the event of the petitioner allowed to go to abroad, the trial of the proceedings may also get stalled and there is a likelihood of postponement of questioning of the accused under Section 313(1)(b) Cr.P.C and there is every possibility of the petitioner may not return to India also and strongly opposed this petition.

11. This Court has carefully considered the rival submissions and also perused the materials available on record.

12. The fact remains that the passport bearing No.E9672866 was issued to the petitioner on 03.08.2004 and it expired on 02.08.2009 and in the interregnum, the petitioner was involved in the criminal prosecution in C.C.No.1 of 2009 on the file of the Chief Judicial Magistrate, Trichirappalli, in which he is arrayed as accused No.3. A perusal of the application submitted to the second respondent for issuance of the passport would also indicate that the petitioner is a Chartered Accountant by profession and as per his averments made in the petition, he owns number of properties in this State and he is also an income tax assessee and also having family settled at Chennai and hence, he has a deep root in this State. It is not in serious dispute that the son of the petitioner is employed in New York City at USA and the petitioner as well as his wife want to visit him.

13. It is very pertinent to point out at this juncture that the earlier passport issued to the petitioner has got expired on 02.08.2009 and was not impounded and the petitioner in his application submitted to the second respondent for issuance of a fresh passport has not suppressed the fact of pendency of the criminal case. It is a well settled position of law that impounding of a passport cannot be done by a Court of Law and it can be done only by the competent authority as prescribed under the Passport Act, 1967.

14. As already pointed out, the earlier passport issued to the petitioner has not been deposited by the petitioner during pendency of the present criminal case and was also not impounded. Therefore, this Court, taken into consideration the above facts and circumstances, is of the view that the petitioner is entitled to be issued with a new passport subject to the fulfillment of the conditions prescribed under the Passport Act, 1967 and Rules framed thereunder.

15. In the result, the Criminal Original Petition is disposed of and the second respondent is directed to consider the application in reference No.14-1002831453, dated 31.03.2015 submitted by the petitioner for issuance of a new/fresh passport in accordance with law/norms/procedure and issue the same as expeditiously as possible and not later than four weeks from the date of receipt of a copy of this order.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To

1. THE ADDITIONAL SUPERINTENDENT OF POLICE, CBI BS&FC BANGALORE,
INCHARGE ADDITIONAL SUPERINTENDENT OF POLICE,
CBI ACB HYDERABAD,
(FIR NO. RC.6(E)2007-CBI-BS&FC-BLR.YR:2007
DT:26.7.2007).

2. THE REGIONAL PASSPORT OFFICER,
SHASTRI BHAVAN, HADDOWS ROAD,
CHENNAI.

3. THE CHIEF JUDICIAL MAGISTRATE,
TRICHIRAPPALLI.

+1cc to M/S.S.PALANI VELAYUTHAM, Advocate in SR.No. 15951

TS/06.04.2015/2P-5C

Crl.O.P.(MD)No.5833 OF 2015

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