

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.24000 of 2015

M. Jayakumar

... Petitioner

Vs.

1. The Passport Officer,
Regional Passport Office,
Chennai 600 002.
2. The State of Tamilnadu,
represented by the Assistant
Commissioner of Police,
E2, Royapettah Police Station,
Royapettah, Chennai 600 014.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the enquiry remarks of the first respondent passed in petitioner's application proceedings File No.MA 1078428483915 dated 9.7.2015 and quash the said order dated 9.7.2015 and consequently direct the first respondent to renew the passport bearing No.G6077516.

For Petitioner : Mr.P. Anbarasan

For Respondents : Mrs. S. Meenakumari (R1)
Central Government Standing Counsel

Ms.P.Rajalakshmi (R2)
Government Advocate

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ORDER

The petitioner has come forward with this present Writ Petition challenging the enquiry remarks of the first respondent passed in petitioner's application proceedings File No.MA 1078428483915 dated 9.7.2015 and consequently direct the first respondent to renew the passport bearing No.G6077516.

2. Heard Mr. P.Anbarasan, learned counsel for petitioner and Mrs.S.Meenakumari, learned Central Government Standing Counsel appearing for 1st respondent and Mrs.P.Rajalakshmi, learned Government Advocate appearing for 2nd respondent.

3. According to the petitioner, the petitioner, who is a citizen of India has been issued with a Passport bearing No.G 6077516 by the first respondent on 19.11.2007 and the same is valid upto 18.11.2017. With the help of the said passport, the petitioner has been traveling to foreign countries such as Malaysia, Srilanka and Singapore. Whiles, the Inspector of Police, E-2, Royapettah Police Station, Chennai-14 has registered a case in Crime No.439/2014 against six persons including the petitioner for offences under sections 341, 294 (b), 324, 147, 148, 506(ii), 307 of IPC and Section 3 of Tamilnadu Public Premises (Damage and Loss) Act, alleging that on 20.4.2014, on the eve of elections, when the accused persons who belonged to DMK party were distributing money to the voters, the ADMK party workers objected and one of the accused persons Thiru.M.P.Anbudurai had attacked them with knife and also damaged a car and arrested the accused persons including the petitioner. Subsequently, the petitioner was granted bail by this Court and now a criminal case is pending against the petitioner on the file of XVIII Metropolitan Magistrate Court, Saidpaet, Chennai-15.

4. Whiles, since the papers in the passport were full, the petitioner applied for reissuance of passport on 7.4.2015 enclosing all the necessary documents and also paid necessary fees under receipt No.MAIF15320294029. But the 1st respondent has returned the application by a communication dated 9.7.2015 stating that a case is pending against the petitioner. Hence the petitioner has filed the present writ petition to quash the enquiry remarks made in the petitioner's application proceedings File No.MA 1078428483915 dated 9.7.2015 and consequently direct the first respondent to renew his passport.

5. The learned counsel for the respondent has filed a detailed counter, inter-alia stating that as per notification dated 25.8.1993 made in G.S.R 570(E), the Ministry of External Affairs had exempted the citizens of India against whom, criminal proceedings are pending trial before a criminal court in India subject to certain conditions which are extracted hereunder;

"G.S.R.570(E).- In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 (15 of 1967) and in suppression of the notification of the Government of India in

the Ministry of External Affairs No.G.S.R.298(E) dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub section (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 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)(ii) 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 court 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 issuing authority that he shall, if required by the court concerned, appear before it any time during the continuance in force of the passport so issued."

6. It is further stated in the counter affidavit that the petitioner herein did not disclose the criminal case number 430 of 2014 which is pending before the XVIII Metropolitan Magistrate Court, Saidapet in PRC. No.79 of 2014 in the passport application vide file No. MA1078428483915. The petitioner applied for reissuance of passport on 7.4.2015 vide file No.MA1078428483915 in continuation of damaged passport No.G6077516 dated 19.11.2007 valid till 18.11.2017 issued by this office. In the affidavit in Annexure "L" format duly sworn before notary public, he had stated that his passport No.G6077516 was damaged due to rust. Further, he had given an undertaking which is furnished as follows;

"I owe allegiance to the sovereignty, unity and integrity of India, and have not voluntarily acquired citizenship or travel document or any other country. I have not lost, surrendered or been deprived of the citizenship of India and I affirm that the information given by me in this form and the enclosures is true and I am solely responsible for its accuracy, and I am liable to be penalised or prosecuted if found otherwise. I am aware that under the Passports Act, 1967 it is a criminal offence to furnish any false information or to suppress any material information with a view to obtaining passport or travel document. Furthermore, I solemnly affirm that;

I have not been charged with criminal proceedings nor is there any arrest warrant or summon pending any Court of Law in India against me".

Since the petitioner had applied for reissue in continuation of his damaged passport, his file was granted on the same day itself on 7.4.2015 on the basis of pre verification mode. Hence police verification was initiated and forwarded to Commissioner of Police, Chennai. The Commissioner of Police, Chennai had sent adverse report against the petitioner vide reference No.3086/ADR/15 with remarks that a criminal case is pending before the XVIII Metropolitan Magistrate Court, Saidapet and based on the adverse report received from the police authorities, show cause notice vide reference No.SCN/302602343/15 dated 23.4.2015 was issued to the petitioner as to why passport facilities should not be refused to the petitioner. The petitioner, responded to this office show cause by calling in person on 9.7.2015. Though the petitioner's action attracts the provisions of 6(2)(f) of Passports Act, 1967, in terms of instructions contained in G.S.R.570(E) dated 25.8.1993, wherein the Ministry of External

Affairs had exempted citizens of India against whom criminal proceedings are pending trial before a criminal court in India subject to certain conditions, the petitioner was advised to obtain permission/No objection certificate from the competent court and a copy of Gazette notification No.G.S.R 570(E) was also handed over to the petitioner . Thus, he sought for dismissal of this Writ Petition.

7. When the matter is taken up for hearing, learned counsel for the petitioner submitted that the validity of the passport issued to the petitioner expires only on 18.11.2017 and because of the extensive travel, the leaves in the passport are fully exhausted and hence, it cannot be used furthermore. Hence he prayed for re issuance of passport.

8. Learned Central Government Standing counsel appearing for the 1st respondent, on the other hand, submitted that, in his affidavit, the petitioner has stated that since his passport got damaged he prayed for re-issuance of passport. She further submitted that if the petitioner approaches the authority concerned by a fresh representation, for adding additional pages in the passport, the same would be considered.

9. In view of the submissions made by the learned counsel for petitioner, this Court directs the petitioner to give a fresh representation with regard to his grievance namely adding additional pages in his passport and on receipt of the same, the 1st respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law as expeditiously as possible.

10. With the above direction, this Writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msr

To

1. The Passport Officer,
Regional Passport Office,
Chennai 600 002.

2. The State of Tamilnadu,
represented by the Assistant
Commissioner of Police,
E2, Royapettah Police Station,
Royapettah, Chennai 600 014.

+1cc to Mrs.S. Meenakumari, Advocate, S.R.No.7011
+1cc to Mr.P. Anbarasan, Advocate, S.R.No.6872
+1cc to the Government Pleader, S.R.No.7221

W.P.No.24000 of 2015

SAI (CO)
CA(24/02/2016)



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