

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2016

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THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.54 of 2016

M.Haneef Mohammed
S/o.M.A.MMideen

... Petitioner

vs.

State represented by
The Inspector of Police,
Central Crime Branch,
Chennai.

... Respondent

Criminal Revision filed under section 397 & 401 of the Code of Criminal Procedure, against the order of learned III Metropolitan Magistrate, George Town, Chennai, passed in M.P.No.1731 of 2015 in C.C.No.5175 of 2004 on 17.11.2015.

For Petitioner : Mr.N.Anand Venkatesh

For Respondent : Mr.C.Iyyapparaj,
Government Advocate [Crl.side]

O R D E R

This revision arises against the order of learned III Metropolitan Magistrate, George Town, Chennai, passed in M.P.No.1731 of 2015 in C.C.No.5175 of 2004 on 17.11.2015.

2. Heard learned counsel for petitioner and learned Government Advocate [Crl.side].

3. Petitioner has had many a difficulty viz-a-viz., his passport. The order of this Court passed in W.P.No.21555 of 2014 on 05.09.2014 afforded him a right to move an application for a fresh passport without production of his earlier passport since it was found that the same ought to have been in the hands of either the passport authorities or this Court, but was not. In applying for a fresh passport in keeping with the order of this Court in W.P.No.21555 of 2014, the petitioner was required to pass one further hurdle in that he faces a charge for offence u/s.420 r/w 34 IPC and 24 of the Emigration Act in case pending in C.C.No.5175 of 2004 on the file of learned III Metropolitan Magistrate, George Town, Chennai. Section 6(2)

(f) of the Passports Act permits refusal of issue of a passport or travel document by the passport authority where proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Court in India. Column 17(c) of the Passport Application Form indicates that a passport may be issued to a person covered by Section 6(2)(f) of the Act where a 'No Objection Certificate' for grant of passport is issued by a competent Court. A co-joint reading of Column 17(b) and 17(c) of the Passport Application Form would inform that the competent Court would be the Court before whom the criminal proceedings are pending as Column 17(b) and 17(c) of the Passport Application Form reads thus:

"17(b) Are any criminal proceedings pending against you before a court in India? If so, give name of court, case number and relevant sections of Law.

17(c) If answer at (b) is (Y)es, please furnish No Objection Certificate from competent court for grant of Passport."

4. Petitioner moved M.P.No.1731 of 2015 in C.C.No.5175 of 2004 on the file of learned III Metropolitan Magistrate, George Town, Chennai, seeking permission to apply for passport. In dismissing the petition, the Court below has noted that the proceedings before it have been delayed by five years and three months owing to petitioner having absconded. On two occasions, non-bailable warrants have been issued against the petitioner and in the second instance, he had surrendered pursuant to an order of this Court and had the same recalled. This Court notes that the Court below has failed to consider the undertaking of the petitioner that he will not leave India without the permission of the Court. Taking note of the submissions of learned counsel for petitioner that the petitioner will surrender his passport immediately upon obtaining the same and also file an affidavit of undertaking not to leave the country till the disposal of the case pending in C.C.No.5175 of 2004 on the file of learned III Metropolitan Magistrate, George Town, Chennai, this Court would allow this revision.

This Criminal Revision shall stand allowed. The order of learned III Metropolitan Magistrate, George Town, Chennai, passed in M.P.No.1731 of 2015 in C.C.No.5175 of 2004 on 17.11.2015, shall stand set aside. The Court below is directed to issue a 'No Objection Certificate' upon the petitioner filing an affidavit of undertaking not to leave the country till the disposal of the case pending in C.C.No.5175 of 2004 on the file of learned III Metropolitan

Magistrate, George Town, Chennai. Petitioner shall deposit the passport before the Court below within a period of two weeks of the receipt of the same. On query and upon instructions, learned Government Advocate [Crl.side] submits that necessary witnesses are available and trial in C.C.No.5175 of 2004 on the file of learned III Metropolitan Magistrate, George Town, Chennai, will be completed at an early date. In such circumstance, this Court directs the Court below to dispose of C.C.No.5175 of 2004 on the file of learned III Metropolitan Magistrate, George Town, Chennai, within a period of three months from the date of receipt of this order.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1.The III Metropolitan Magistrate,
George Town,
Chennai.

2.The Inspector of Police,
Central Crime Branch,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

1 cc to Mr. Anand Venkatesh, Advocate, Sr. 2888

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