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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.06.2016
CORAM

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

Writ Petition (MD). No.11113 of 2016
and

WM.P. (MD). Nos.8547 and 8548 of 2016

A.Suresh Kumar

... Petitioner

Vs.

The Passport Officer,
Regional Passport Office,
Municipal Water Tank Building
WB Road, Trichy.

... Respondent

Prayer:-Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the respondent in WP(MD) No.6653/2016 / TR 2079031785316 dated 5.5.2016, quash the same and consequently direct the respondent herein to issue passport to the petitioner in connection with file No.TR 2079031785316 forthwith.

For Petitioner :For Mr.C.Jegannathan
Mr.Veera.Kathiravan, Sr. Counsel

For Respondent :Mr.R.Arjunarajan,
Senior Panel Counsel

O R D E R

Heard both sides.

2. According to the petitioner, he is functioning as the Clerical Secretary of the CSI Trichy-Tanjore Diocese, duly elected on 15.04.2015. He is also a Governing Board Member of Bishop Heber (Autonomous) College at Trichy and holding a very important position in religious activities as Clobal Link Officer, CSI Trichy-Tanjore Diocese.

3. The stand of the petitioner is that he is the holder of Indian Passport from the year 1984 and also not subjected to any adverse remarks. In fact, the last passport bearing No.F7609479 was issued on 12.04.2006, which was valid upto 11.04.2016. It is represented on behalf of the petitioner that considering the petitioner's responsibilities as a religious worker and the necessity for travelling abroad very frequently in connection with his religious activities, he requested his niece to send the on-line application, which was duly received by the respondent in file No.TR 2079031785316.

4. At this stage, the Learned Senior Counsel for the Petitioner brings it to the notice of this Court that a request was made to the respondent for renewal of passport of the petitioner on 04.05.2016. The reason for the request was that there was an invitation for the functions at U.K for consecration of the Bishop Dunwich on 24.02.2016. Since the petitioner was not issued with renewal of his passport, he



made a request to the respondent on 13.01.2016 to represent the meritorious and historical Diocese in the International Arena of religious activities. Later, the petitioner was called to attend an enquiry. He appeared for the enquiry and made a request on 23.02.2016 for an early disposal of the application. Subsequently, the petitioner had received a communication on 14.03.2016 from the respondent informing an adverse police report from the Superintendent of Police, Karur in furtherance of a criminal case, which was not declared in petitioner's application.

5. It comes to be known that one church employee filed a complaint before the police as regards the non-deduction of provident fund contribution from his salary as that of a permanent staff and he appeared to have given a complaint before the police and it was ultimately recorded as 'mistake of fact'. Subsequently, the said employee filed an application before this Court to register his complaint and the District Crime Branch, Karur, registered an F.I.R and filed a final report in C.C.No.836 of 2007.

6. The petitioner filed an application under Section 205 of Cr.P.C and the same was allowed by the Learned Judicial Magistrate No.I, Karur in CMP.No.3428 of 2009, dated 21.05.2009.

7. In this connection, the Learned Senior Counsel for the Petitioner submits that the respondent passed the impugned order on 05.05.2016, *inter alia* observing as under:

"In this regard, it may be mentioned that passport cannot be issued to you unless there is a clear no objection to issue passport or direction to this office to issue passport from the concerned Criminal Court where the applicant is facing trial or any higher court."

At this juncture, Learned Senior Counsel for the Petitioner projects an argument that the petitioner is occupying an important position as a Global Link Officer, Trichy-Tanjore Diocese and he has to travel frequently to foreign countries and therefore, the impugned order dated 05.05.2016, passed by the respondent to the effect that the passport cannot be issued to the petitioner, unless there is clear no objection to issue passport from the concerned Criminal Court, where the applicant is facing trial or any higher court' is *per se* invalid in the eye of Law.

8. It is to be noted that Section 10(3) (e) of the Passport Act, 1967 enjoins as under:

"If proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India."

Also, Section 6(2) (f) of the Act speaks of the following:

"that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India."

In fact, Section 6 of the Passport Act deals with 'Refusal of Passports, travel Documents etc.,'.



9. The core contention advanced on behalf of the petitioner is that the petitioner in CMP.No.3428 of 2009 in C.C.No.836 of 2007 on the file of the Learned Judicial Magistrate, No.I, Karur, considered the aspect of the petitioner travelling abroad in connection with his office work and accordingly, granted exemption from appearance in terms of the ingredients of Section 205 of Cr.P.C. It appears that the criminal case in C.C.No.836 of 2007 on the file of the trial court is in part-heard stage.

10. At this point of time, the Learned Senior Counsel for the Petitioner makes an emphatic submission that the petitioner being a very important person in his religious activities and further he is travelling abroad very frequently in connection with his religious activities, undoubtedly, requires a passport and the petitioner's right to travel abroad cannot be curtailed by any one, much less by the respondent in passing the impugned order dated 05.05.2016.

11. It is to be borne in mind that the Honourable Supreme Court in **Maneka Gandhi's** case reported in **1978 (2) SCJ at p.12**, had considered the validity of Section 10(3) (c) of the Passport Act, 1967.

12. At this stage, this Court aptly points out the decision reported in **AIR 1997 Bombay at p.181 (Deepak Dwarkasingh Chhabira V. Union of India and another)**, wherein at special page Nos.185 and 186 at paragraph No.10, it is observed as follows:

"10. In view of the aforesaid notifications 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 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. In the present case, the passport authority has failed to bring the relevant notification to the notice of the applicant in spite of the fact that the application was pending before the authority for more than one -and -half years. In fact, it is doubtful whether the passport authority himself was aware of the notification granting exemption to the citizens from the operation of Section 6(2) (f). It is matter of regret that applications are kept pending by the passport authority for such a long time particularly, when it affects the



fundamental right of the citizen. At no point of time, the passport authority had informed the petitioner that he was entitled to passport subject to orders of the Criminal Court. The passport authority has also failed to give information or particulars about the pending criminal case. It is an admitted position that will today the petitioner is not served with the summons of the pending criminal case. In such a situation, it was all the more necessary for the passport authority to inform the petitioner of his right to apply to the Criminal Court for permission to travel abroad. In my opinion, it is necessary to issue specific directions to the passport authority in order to ensure that the citizens' application for passport are not unnecessarily delayed on account of pending criminal cases.

Accordingly, it is directed that in all cases covered by Section 6(2) (f), the passport authority shall forthwith inform the applicant about his right to apply to the concerned Criminal Court for permission to travel abroad in terms of the notification dated 25th August, 1993. In case, the applicant demands a copy of the notification, same shall be supplied by the passport authority subject to payment of charges. Needless to mention that it will be open for the applicant to approach the Criminal Court, where criminal case against him is pending, for permission to travel out of India. Even if he has not received summons from the Criminal Court, it will be open for the applicant to apply to that Court for a limited purpose of issuing the necessary orders for grant and/or renewal of passport. Considering the fact that the matter involves the fundamental rights of the applicant, the concerned Court shall decide such application as expeditiously as possible and preferably within four weeks from the date of receipt of such application, after notice to the prosecution. In case, the Criminal Court passes an order for issuance of passport, the passport authority shall forthwith issue the passport to the applicant subject to the terms and conditions mentioned in the notification but without making any endorsement on the passport about the pending criminal case."

13. It is to be relevantly pointed out that impounding of a passport is not to be made by a Court of Law under Section 104 of Cr.P.C, although, it can impound any other document or thing.

14. One cannot ignore a vital fact that an application for passport is not to be refused on the ground of pendency of criminal case, if the applicant obtains necessary permission from the competent Criminal Court concerned for travelling abroad.

15. If an applicant obtains permission from competent Criminal Court, where the case is pending, the passport authority is to act in accordance with the said order, subject to the notification of the Central Government, as the case may be.

<https://hcservices.ecourts.gov.in/hcservices/>

16. It is true that a citizen of a country has a 'right to travel', but the same is not an absolute right, in the considered



opinion of this Court. In the same breath, when the criminal case in C.C.No.836 of 2007 is pending against the petitioner on the file of the Learned Judicial Magistrate, No.I, Karur, then, it is incumbent on the part of the petitioner to file necessary miscellaneous application before the said Court and to seek permission of the said court to travel abroad. Viewed in that perspective, this Court, without displacing the impugned order dated 05.05.2016 of the respondent, in furtherance of substantial cause of Justice, simpliciter, directs the petitioner to approach the Court of the Learned Judicial Magistrate, No.I, Karur, within a period of 3 days from the date of receipt of a copy of this order and to file necessary application seeking permission to travel abroad. If such an application is filed by the petitioner, the Learned Judicial Magistrate, No.I, Karur is directed to take the same on file without any delay whatsoever and to dispose of the same on merits, of course, after providing necessary opportunity to other side in the manner known to Law and in accordance with Law, within a period of three days thereafter.

17. Before parting with the case, this Court also points out that it is open to the petitioner to cite the order dated 21.05.2009 in CMP.No.3428 of 2009 in C.C.No.836 of 2007 before the concerned Criminal Court.

18. After obtaining necessary permission from the trial court for travelling abroad, it is open to the petitioner to submit a copy of the said order before the Passport Officer, Regional Passport Office, Trichirapalli and to seek redressal of his grievance. Since it is represented before this court that the petitioner is travelling abroad in the first week of July 2016, the Passport Officer of the Regional Passport Office, Trichirapalli is to act on the receipt of copy of the orders passed by the Criminal Court in the subject matter in issue expeditiously and diligently, considering the proposed visit of the petitioner to a foreign country.

19. With the aforesaid observations and directions, the writ petition stands disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To
The Passport Officer, Regional Passport Office,
Municipal Water Tank Building, WB Road, Trichy.

+1cc to M/S.C.Jegannathan, Advocate in SR.No.32396
+1cc to M/S.J.R.Arjunarajan, Advocate in SR.No.32395

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vs

PA/GSV-PM/SAB III/24.06.2016/5P/4C(IT)