



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2016

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Writ Petition (MD). No.3964 of 2016

and

WM.P.(MD).No.7977 of 2016

A.Maria Anto Melvin

... Petitioner

Vs.

1.The Regional Passport Officer,
Madurai Region,
Bharathi Ula Veethi
Race Course Road,
Madurai-02.

2.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

3.The Inspector of Police,
Valliyoor Police Station,
Tirunelveli District.

... Respondent

Prayer:-Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the 1st respondent to issue a passport to the petitioner by considering his passport application in File No.MD2068965640115 in the light of the Notification issued by the Ministry of External Affairs vide G.S.R.570(E) dated 25.08.1993 within the stipulated period as prescribed by this Court.

For Petitioner :Mr.A.Kesavan

For Respondent :Mr.N.Shanmuga Selvan for R-1
Mr.V.Muruganandham
Additional Govt. Pleader for RR-2 & 3

O R D E R

Heard both sides.

2. By consent, the main writ petition itself is taken up for final disposal.

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

3. According to the petitioner, he applied for a passport



by means of submitting an on-line application before the Passport Seva Kendra, Tirunelveli District and his application was accepted. As a matter of fact, on 26.11.2015, he personally appeared at the Passport Seva Kendra, Tirunelveli and after paying necessary charges, he submitted relevant documents before the Passport Authority concerned. His application was taken on file vide File No. MD2068965640115 and till date, his application is pending.

4. The stand of the petitioner is that his passport application was sent by the first respondent for police verification to the third respondent/Inspector of Police, Valliyoor Police Station, through the Superintendent of Police, Tirunelveli District.

5. The Learned Counsel for the Petitioner brings it to the notice of this Court that during the year 2012, an F.I.R was lodged against the petitioner in Cr.No.356 of 2012 and two others by the third respondent Police in respect of an offence under Sections 294(b), 323, 506(ii) IPC and Section 4 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act.

6. Apart from that, it appears that the petitioner is involved in a criminal case in C.C.No.279 of 2009 on the file of the Learned Judicial Magistrate, Valliyoor, Tirunelveli District and on 09.11.2012, he was acquitted from the said case, based on the judgment delivered by the trial Court.

7. The Learned Counsel for the Petitioner primarily contends that although Section 6(2)(f) of the Passport Act gives power to the Passport Authority in refusing to issue the passport, consequent to the notification issued by the Ministry of External Affairs vide G.S.R.570(E), dated 25.08.1993, the Passport Authority cannot refuse to issue the passport merely on the ground of pendency of a criminal case.

8. The Learned Counsel for the Petitioner vehemently projects an argument that in the light of notification issued by the Ministry of External Affairs vide G.S.R.570(E), dated 25.08.1993, his request for issuance of passport may ordered to be considered by the first respondent.

9. At this stage, the Learned Counsel for the Petitioner takes a prime plea that in Cr.No.356 of 2016 on the file of the Learned Judicial Magistrate, Valliyoor, charge-sheet was not filed till date and in Law, there is no impediment for the first respondent to issue the passport to the petitioner. In this connection, the Learned Counsel for the Petitioner seeks in aid of <https://hcdirects.courts.gov.in/hcdirects/> 27.06.2014 in W.P.(MD).Nos.8343 to 8350 of 2014, wherein at paragraph No.10, it is observed as under:

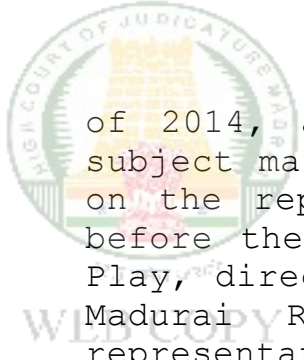


"10. For the same proposition of law, the learned counsel for the petitioners has also relied upon the judgment delivered by the Andhra Pradesh High Court reported in **1994 Cri.L.J.257 [Mathumari China Venkatareddy and others Vs. State of Andhra Pradesh]**, wherein it has been held that until the charge-sheet has been filed, a Magistrate cannot be said to have taken cognizance of any offence and that the Magistrate can take cognizance of the offence and direct the issue of process only on receipt of a police report and that till that stage is reached, he is said to be acting only as a Magistrate controlling the investigation made by the police. It has been further held in the said judgment as follows:-

"The judicial act commences only when the charge-sheet is in order and the Magistrate proceeds further under Chapter XVI. Unless the charge-sheet is in the official custody of the Court together with its accompaniments to be furnished to the accused, it cannot be construed that there is a filing of charge-sheet. Chapter XVI relates to commencement of proceedings before Magistrates, process to be issued when Magistrate takes cognizance of the offence"

Therefore, it is clear that unless the Judicial Magistrate takes cognizance of the offence, on filing of charge-sheet on completion of investigation against the applicant, it cannot be said that the proceedings are pending before the Criminal Court. Therefore, in my considered opinion, the 3rd respondent cannot mechanically refuse to issue passport to the petitioners, merely for the reasons that the FIRs are pending against the petitioners. On receipt of the application for passport, the 3rd respondent shall consider the same and pass appropriate orders.

10. In view of the fact that the petitioner in the writ petition seeks for passing of an order by this Court in directing the first respondent to issue a passport to him by considering his passport application in File No. MD2068965640115, in the light of the notification issued by the Ministry of External Affairs vide G.S.R. 570 (E), dated 25.08.1993 and also on the basis of the order dated 27.06.2014 passed by this Court in W.P.(MD).Nos.8343 to 8350



of 2014, at this stage, without expressing any opinion in the subject matter in issue and also not delving deep on the contents on the representation, dated 17.02.2016, made by the petitioner before the first respondent, in the interest of Justice and Fair Play, directs the first respondent/ The Regional Passport Officer, Madurai Region to seriously and earnestly look into the representation of the petitioner dated 17.02.2016 and to dispose of the same by passing a reasoned, speaking order in a fair, free, unbiased and dispassionate manner, within a period of six weeks from the date of receipt of a copy of this order. (Of course after providing necessary opportunity to the petitioner and others concerned, if any, by adhering to the principles of Natural Justice). The petitioner is directed to lend his assistance and co-operation to the first respondent, in disposing of his representation, dated 17.02.2016 in a complete and comprehensive manner, in the subject matter in issue.

11. With the aforesaid observations and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

1.The Regional Passport Officer,
Madurai Region,
Bharathi Ula Veethi
Race Course Road, Madurai-02.

2.The Superintendent of Police,
Tirunelveli District, Tirunelveli.

3.The Inspector of Police,
Valliyoor Police Station,
Tirunelveli District.

+1cc to M/s.N.Shanmuga Selvam, Advocate in SR.No.31200
+1cc to Special Government Pleader in SR.No.30837
+1cc to M/s.A.Kesavan, Advocate in SR.No.30614

SDR/DB/22.06.2016/4P/7C

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