



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.06.2016
Pronounced on : 12.07.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P(MD)No.9953 of 2016
and
W.M.P(MD)No.7859 of 2016

S.Sankaranarayanan

..Petitioner

Vs

1.The Regional Passport Officer,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

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

..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent issued in Letter No.1300059-CPC-MDU, dated 22.4.2016 and to quash the same as illegal and consequently to direct the first respondent to follow the Notification issued by the Government of India, Ministry of External Affairs in G.S.R.No.570(E), dated 25.08.1993 and in the light of the order dated 27.5.2010 passed by this Court in W.P(MD)No.6623 of 2010.

For Petitioner :M/s.Arul Vadivel @ Sekar

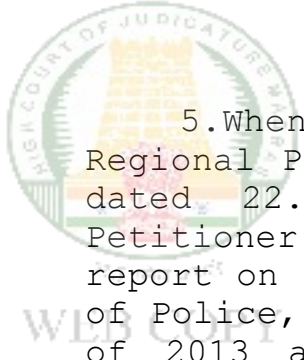
For Respondent-1 :Mr.D.Saravanan
Central Govt.Senior Standing Counsel

For Respondent-2 :Mr.S.Chandrasekar,
Government Advocate

ORDER

The Petitioner focussed the instant Writ Petition praying for the issuance of writ of certiorari by this Court in calling for the records of the First Respondent issued in Letter No.1300050-CPC-MDU, dated 22.04.2016 and to quash the same as illegal one and further he has

2. Accounting



5. When that be the facts situation, the First Respondent/The Regional Passport Officer, Madurai had issued the impugned order, dated 22.04.2016, whereby, he had refused to process the Petitioner's application on the ground that he had received report on 05.08.2015 from the Second Respondent/The Superintendent of Police, Madurai confirming that a criminal case in P.R.C.No.42 of 2013 against him is pending before the Learned Judicial Magistrate, Melur, Madurai District and the action would attract Section 6(2)(f) of the Passport Act, 1967.

6. The Learned Counsel for the Petitioner urges before this Court that the impugned order, dated 22.04.2016 passed by the First Respondent is without application of mind and only based on the recommendation of the Second Respondent and in fact, the First Respondent had not applied his mind independently.

7. The Learned Counsel for the Petitioner contends that when two Writ Petition in W.P(MD)No.15414 of 2013 and W.P(MD)No.6720 of 2016 are pending before this Court, the First Respondent had failed to apply his mind before passing the impugned order.

8. The prime contention advanced on behalf of the Petitioner is that in Law, mere pendency of the First Information Report cannot be construed as pendency of criminal proceedings in respect of the offences purported to have been committed by the Petitioner before a Criminal Court. At this juncture, the Learned Counsel for the Petitioner takes a stand that till the criminal case is taken cognizance by the Court, it cannot be construed as pendency of criminal cases to attract Section 10(3)(e) of the Passport Act, 1967. The Learned Counsel for the Petitioner submits that 'Freedom of Movement' cannot be curtailed by the First Respondent under the guise of alleged report of the Second Respondent which is violative of Article 21 and Article 19(1)(a) of the Constitution of India.

9. The Learned Counsel for the Petitioner brings it to the notice of this Court that a notification in G.S.R.No.570(E), dated 25.08.1993 was issued by the Government of India modifying certain conditions mentioned in the earlier notification and therefore, the citizens against whom criminal cases are pending are exempted from the operation of Section 6(2)(f) of the Passport Act, if they produce the orders from the Court concerned permitting them to travel abroad. In effect, the clear-cut plea of the Petitioner is that the Passport Authority cannot reject his application mechanically on the ground of pendency of a criminal case.

10. At this stage, the Learned Counsel for the Petitioner cites an order dated 27.05.2010 passed by this Court in W.P(MD)No.6623 of 2010 between Rizalee v.s. The Passport Officer, Madurai

<https://hcrivice.nic.gov.in/cases/>



Passport Office, Madurai, whereby and wherein, at Para Nos.7 to 9, it is observed and held as under:

''7.The Judgement of the Bombay High Court was followed by the Gujarat High Court in Dhiren Baxi .vs. Regional Passport Officer, Ahmedabad reported in 2003 GUJARAT 108 and the Honourable Gujarat High Court issued the following directions:

10.Considering the aforesaid notification issued by the Central Government, as well as considering the judgement of the Bombay High Court, in my view, this Petition is required to be allowed by giving opportunity to the Petitioner to approach the concerned Magistrate with an appropriate application for permitting him to go abroad for a particular time limit. If the concerned Magistrate permits the Petitioner to go abroad for a particular period on the basis of such order, it will be open for the Petitioner to request the passport authority to grant him passport for a limited period, during which he is permitted to go abroad. The Petitioner may accordingly approach the concerned criminal Court, with a prayer to permit him to go abroad and if any such application is preferred, the concerned criminal court may decide such application in accordance with law. If the concerned criminal court, before whom the criminal cases are pending, permits the Petitioner to go abroad, the passport authority may pass appropriate order in the matter of issuing passport to the Petitioner in terms of the order of the criminal Court and subject to the conditions laid down by the Notification. As observed by the Bombay High Court, the passport authority, in future cases of similar nature, may inform the applicants, against whom any criminal case is pending, about the Notification of the Central Government and may inform such applicant that they may approach the concerned and if any such order is passed by the Magistrate, permitting such applicant to go abroad, the passport authority may dispose of such applications in view of the Notification and in view of the provisions of the Passport Act. It is clarified that in case the criminal court permits the Petitioner to go abroad, the passport authority shall act on the basis of such report for the purpose of issuing passport. The passport may not be refused solely on the ground of pendency of the present criminal cases in case the Magistrate so permits. It is clarified that if the passport authority refuses the passport, it is for the authority to consider the same in accordance with law.



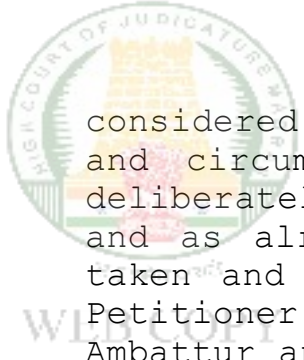
The passport may not be refused solely relying on the present criminal cases, which are pending against the Petitioner, in case permission is granted by the Magistrate as indicated above. It is also clarified that whether such application should be granted or not is within the jurisdiction of the competent criminal court and it is for the concerned Magistrate to decide such application, if at all the same is received from the present petitioner and it is for the Magistrate to decide the same in accordance with law and this Court has not expressed any opinion on the aforesaid subject.

8. Subsequently, the Bombay High Court in *Shyam Dwarkadas Chabria .vs. Regional Transport Officer* and another reported in 2000 CRL.LJ 2942, also dealt with the same issue and held as follows:

'11. The impugned order dated 5th January 1993 passed by the Regional Passport Officer, Bombay is quashed and set aside. The Petitioner will be at liberty to make an application to the Chief Judicial Magistrate, Pune, for permission to travel abroad. If such an application is made, the learned Magistrate shall decide that application as expeditiously as possible and in any event within four weeks from the date of receipt of such application. In case the learned Magistrate permits the Petitioner to travel abroad, the passport authority shall forthwith issue the passport in terms of the order of the Magistrate subject to the terms and conditions mentioned in the notification dated 25th August 1993.

9. Therefore, in view of the notification issued by the Central Government and as well as the law laid down in the above referred decisions, the renewal of the Petitioner's passport cannot be refused merely on the ground of pendency of criminal case. In fact, the Petitioner ought to have been directed to approach the Court concerned before which the criminal case is pending and move an appropriate application seeking permission of the Court for necessary directions. Hence, the stand taken by the respondent by stating that mere pendency of the criminal case would operate as a bar for seeking renewal of the passport cannot be sustained.'

11. The Learned Counsel for the Petitioner seeks in aid of the order made in W.P.No.25232 of 2014, dated 3.7.2015 between **B. Rengananthan vs. The Regional Passport Officer, Government of India and others**, wherein, it is observed that ''.....in the

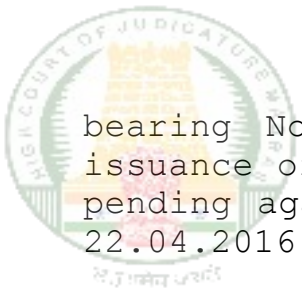


considered opinion of the Court and in the light of the said facts and circumstances, it cannot be said that the Petitioner has deliberately suppressed the pendency of criminal case against him and as already pointed only in respect of one case, cognizance taken and in that case also summons has not been served on the Petitioner as per the report of the Learned Judicial Magistrate, Ambattur and resultantly, the Writ Petition was allowed by setting aside the impugned order/Letter of the First Respondent, in Letter No.MAS/3460/0/2002, dated 25.07.2014 and further, a direction was issued to the First Respondent to consider the application submitted by the Petitioner for re-issuance of passport in accordance with Law etc.

12.In response, it is the contention of the Learned Central Government Standing Counsel appearing on behalf of the First Respondent that the Inspector of Police, Investigation Officer, Melur Circle, Madurai District in the report, dated 23.08.2013 had informed that criminal cases were registered against the Petitioner in (1) Cr.No.196 of 2012 under Sections 147, 120(b), 447, 379, 406, 420, 430, 434, 465, 467, 468, 471, 304, 109, 511 of Indian Penal Code and 3(1), 4(1) of TNPPDL Act and Section 6 r/w 3 (a), 4(a) of Explosive Substances Act and (2) Crime No.187 of 2012 of Keelavalavu Police station under Sections 4 and 5(A) of the Explosive Substances Act. Further, the Inspector of Police, Investigation Officer, Melur Circle, Madurai District in the report, dated 23.08.2013 had therefore recommended for impounding the passport issued to the Petitioner based on the ground that criminal cases are pending against him. Therefore, a show-cause notice, dated 05.09.2013 was issued to the Petitioner seeking explanation as to why action should not be initiated in terms of Passport Act, 1967.As a matter of fact, the Petitioner had not responded to the First Respondent's Office to the Show-Cause Notice, dated 05.09.2013.

13.It is also represented on behalf of the First Respondent that the matter was referred to the Second Respondent/The Superintendent of Police, Madurai District on 30.10.2013 to inform about the present status of the criminal cases pending against the Petitioner in order to proceed further in accordance with the Passport Act, 1967, followed by a reminder, dated 21.07.2015. The Second Respondent/The Superintendent of Police, Madurai District in the report bearing C.No.80/DCRB-MD/2015, dated 5.8.2015 had confirmed that a criminal case in P.R.C.No.42 of 2013 to Cr.No.187 of 2012 under Sections 4 and 5(a) of Explosive Substances Act and 120(b) of IPC and 6 r/w 3(a), 4(a), 4(b), 5(a) of Explosive Substances Act, 1908 is pending against the Petitioner.

<https://hcservices.ecourts.gov.in/hcservices> 14.The Learned Central Government Senior Standing Counsel appearing for the First Respondent proceeds to take a stand that the First Respondent had refused the Petitioners application



bearing No.MD 1078706831315 and advised him to apply for re-issuance of passport facilities after completion of criminal cases pending against him before the Court of Law through Letter, dated 22.04.2016.

15.Finally, it is the submission of the Learned Central Government Senior Standing Counsel appearing on behalf of the First Respondent that if the Petitioner submits a copy of the judgement/order in respect of the pending criminal cases against him from a competent of Court or with an order from the concerned Court permitting him to travel abroad, restoration of the passport facilities would be processed in accordance with the Passport Act, 1967.

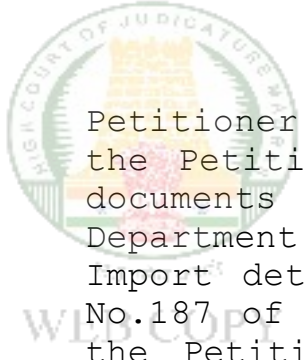
16.The Learned Additional Government Pleader appearing for the Second Respondent submits that the Writ Petitioner is one of the acting partners of the partnership firm 'Tvl.M.S.Granite and M/s.Sri Ayiswarya Rock Exports of Keelavalavu Village, Melur Taluk, Madurai District' and that the Writ Petitioner is involved in Criminal cases namely:

''(I)Keelavalavu Police Station Cr.No.187 of 2012 under Section 120(B) IPC and 6 r/w 3(a)4(a)4(b) and 5 (a) of Explosive Substances Act, 1908. This case was charged on 14.3.2013 and taken on file by the Learned Judicial Magistrate, Melur in P.R.C.No.42 of 2013, dated 24.09.2013 and the case was posted to 19.7.2016 for accused appearance.

(ii)Keelavalavu Police Station Cri.No.196/12 under Section 120(B), 447, 379, 420, 430, 434, 465, 467, 468, 471, 304(ii) r/w 109, 114, 511 IPC and 3(1), 4(1) of TNPPDL Act and 3(a) 4(a), 6 OF Explosive Substances Act. The Petitioner caused loss to the Government as per Evaluation Report is Rs.717.20 crores and damage caused to the Government land as per Damage Certificate is Rs.32,00,000/-.Total loss of Rs.717.52 crores. This case is under investigation.

(iii)DCB Cr.No.12 of 2015 under Sections 447, 379, 120(B), 420, 430, 434, 304(II) IPC r/w 511 IPC and 3 (i)(ii) of TNPPDL Act and 6 r/w 3(a)4(a) of Explosive Substances Act and 4(1), 4(1-A), 21 and 23 of MM(D&R) Act.,The Petitioner caused loss to the Government as per Evaluation Report is Rs.141.64 crores. This case is under investigation.

17.It is represented on behalf of the Second Respondent that only after perusing the records, the then Inspector of Police, Services Officer, Melur Circle, Madurai District had addressed a letter to the First Respondent/The Regional Passport Officer, Madurai on 23.08.2013 to impound the passport of the



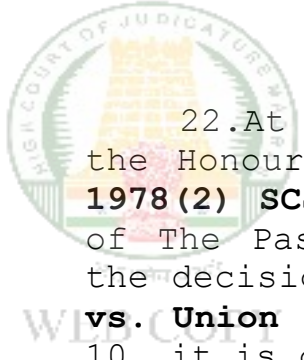
Petitioner mentioning that the aforesaid cases are pending against the Petitioner. Further, in the above pending cases, many more documents are yet to be collected from the (1) Income Tax Department (2) Sales Tax Department (3) Banks and (4) Export and Import details from the Customs Department. Also that in Crime No.187 of 2012, on the file of the Keelavalavu Police Station, the Petitioner is the first accused and a charge sheet/final report was filed against the Petitioner before the Learned Judicial Magistrate, Melur under Sections 120(B) IPC and Section 6 r/w 3(a), 4(a), 4(b) and 5(a) of Explosives Substance Act, 1908.

18. It is also represented on behalf of the Second Respondent that as a matter of fact, the Learned Judicial Magistrate, Melur, Madurai District took cognizance of the offences in P.R.C.No.42 of 2013, dated 24.09.2013 and process against the Petitioner is being issued by the Learned Judicial Magistrate, Melur, Madurai District. Added further, the Petitioner has to attend before the Learned Judicial Magistrate, Melur, Madurai District on 19.07.2016 for answering the charges against him and he has to take part in the committal proceedings. Therefore, it is projected on the side of the Second Respondent that at this stage, if the Petitioner is allowed to go to foreign countries, the entire criminal proceedings of the Government would come to a stand-still.

19. Continuing further, on behalf of the Second Respondent, it is brought to the notice of this Court that the Petitioner had filed a quash petition before this Court in respect of Cr.No.12 of 2015, on the file of the District Crime Branch, Madurai District in CrI.O.P(MD)No.5200 of 2015 to quash the First Information Report and the same was dismissed on 20.08.2015. Moreover, under Section 160 and 91 of Cr.P.C., summons was issued to the Petitioner to appear before the Investigation Officer. At that time, he had applied for the Anticipatory Bail in CrI.O.P(MD) No.19944 of 2015, which is pending before this Court.

20. This Court has given its anxious consideration to the arguments advanced on the side of the Petitioner and the Respondents and noticed their contentions.

21. It is to be noted that the notification of the Government of India, dated 25.8.2013 in G.S.R.No.570(E), issued by the Ministry of External Affairs, New Delhi speaks of exemptions being granted to the citizens of India against whom proceedings in respect of the offence alleged to have been committed by them are pending before a Criminal Court in India and should 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 Act, subject to the conditions



22. At this stage, this Court aptly points out a decision of the Honourable Supreme Court in **Menaka Gandhi's case** reported in **1978(2) SCJ at Page 312**, wherein the validity of Section 10(3)(c) of The Passports Act was considered. Also this Court recollects the decision reported in **AIR 1997 Bombay 181(Deepak Dwarkasingh . vs. Union of India)** wherein, at Special Page 185 and 186 at Para 10, it is observed as under :

"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 inspite 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.

23.As a matter of fact, the aforesaid judgement of the Bombay High Court reported in **AIR 1997 Bombay 181** was followed by the Gujarat High Court in the decision in the case of **Dhiren Baxi .vs. Regional Passport Officer, Ahamedabad** reported in **AIR 2003 Gujarat 108** and at para 10, among other things, it is observed as under:

10.....As observed by the Bombay High Court, the passport authority, in future cases of similar nature, may inform the applicants, against whom any criminal case is pending, about the Notification of the Central Government and may inform such applicant that they may approach the concerned and if any such order is passed by the Magistrate, permitting such applicant to go abroad, the passport authority may dispose of such applications in view of the Notification and in view of the provisions of the Passport Act. It is clarified that in case the criminal court permits the Petitioner to go abroad, the passport authority shall act on the basis of such report for the purpose of issuing passport. The passport may not be refused solely on



the ground of pendency of the present criminal cases in case the Magistrate so permits. It is clarified that if there are other grounds available to the passport authority to refuse the passport, it is for the authority to consider the same in accordance with law. The passport may not be refused solely relying on the present criminal cases, which are pending against the Petitioner, in case permission is granted by the Magistrate as indicated above. It is also clarified that whether such application should be granted or not is within the jurisdiction of the competent criminal court and it is for the concerned Magistrate to decide such application, if at all the same is received from the present petitioner and it is for the Magistrate to decide the same in accordance with law and this Court has not expressed any opinion on the aforesaid subject.

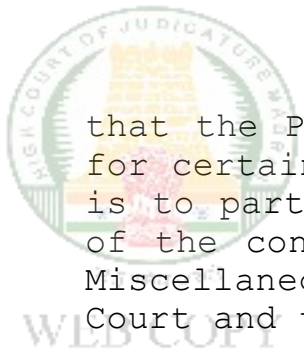
24. At this juncture, this Court points out that neither the Passports Act, 1967 nor the Rules require a passport-holder to leave the border of India. As a matter of fact, it is the duty of the Passport Authority to bring the relevant notification to the notice of an applicant, so as to enable him to apply before the concerned Criminal Court seeking permission to travel abroad.

25. In reality, the authority of an Order/Judgement is to be based on reasons assigned therein and not by anything-else as per decision of the Honourable Supreme Court in **Mohinder Singh Gill . vs. The Chief Election Commissioner, New Delhi reported in AIR 1978 SC 851.**

26. It is not out of place for this Court to make a significant mention that even without issuing notice to the concerned person and providing him an opportunity to offer his explanation, an authority cannot take steps for impounding a passport as per the decision in the case of **Hassan Ali .vs. The Regional Passport Officer reported in AIR 1998 Andhra Pradesh 232.** Moreover, impounding of a passport is not to be made by a Court of Law under Section 104 Cr.P.C., although it can impound any other document or thing.

27. One cannot brush aside a prime candid fact that after all 'the life of Law is not Logic but one of Experience'. Also, it is to be remembered that every proposition ought to be examined on the basis of 'Pragmatic Realism'.

28. It is to be borne in mind that undoubtedly, a citizen of a country has a Right to travel, but the same is not an absolute right. It is not of the same breadth, when Criminal cases are pending against the Petitioner before a concerned Criminal Court and also



that the Petitioner is to attend the Criminal Court on 19.07.2016 for certain charges against him in P.R.C.No.42 of 2013 and also he is to participate in the criminal proceedings, then this Court is of the considered view that the Petitioner has to file necessary Miscellaneous Application before the concerned Judicial Magistrate Court and to seek permission of the said Court to travel abroad.

29. Viewed in that perspective, the stand taken on behalf of the First Respondent in the impugned order, dated 22.4.2016 to the effect that the Petitioner may apply for passport facilities after completion of criminal cases pending against him before a Court of Law is also not correct in the eye of Law in the considered opinion of this Court and the same is displaced by this Court. Liberty is granted to the First Respondent to pass fresh orders in the subject-matter in issue by passing a reasoned speaking order on merits by taking note of the notification of the Central Government in G.S.R.No.570(E), dated 28.5.1993 and in accordance with Law (of course by providing necessary opportunity to the Petitioner, keeping in mind the principles of natural justice). Before parting with the case, this Court, in view of the legal position that mere pendency of criminal cases would not operate as a bar or to process the Petitioner's application by the First Respondent, at this stage, simpliciter, directs the Petitioner to approach the concerned Criminal Court within a period of one week from the date of receipt of a copy of this order and to file necessary Miscellaneous Petition seeking permission to travel abroad. If such a petition is filed by the Petitioner, then the concerned Criminal Court is directed to take the same on file and to dispose of the same on merits (of course after affording adequate opportunity to other side in the manner known to Law and in accordance with Law). After obtaining necessary permission from the concerned Criminal Court for travelling abroad, it is open to the Petitioner to submit a copy of the said order before the First Respondent/The Regional Passport Officer, Madurai for redressal of his grievance and the Officer is directed to act in accordance with the said order, subject to the notification of the Central Government, as the case may be.

30. With the aforesaid observations and directions, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS II)

/True copy/



To

1.The Regional Passport Officer,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

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

+1cc to Mr.C.Arul Vadivel @ Sekar, Advocate SR.No.35858

+1cc to Mr.D.Saravanan, Advocate SR.No.36043

+1cc to special Government Pleader SR.O.36360

sm:SKS-RR:19.07.2016:13P/6C

ORDER MADE IN

W.P (MD) No.9953 of 2016
and

W.M.P (MD) No.7859 of 2016
12.07.2016