

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.12.2017
CORAM
THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU
W.P.Nos.30465 & 30466 of 2017
and
WMP.Nos.33252 & 33253 of 2017

R.Selvaraj
S/o.Ramakrishnan

... Petitioner
(in WP.No.30465 of 2017)

Thilagamani
W/o.Selvaraj

... Petitioner
(in WP.No.30466 of 2017)

versus

1. The Regional Passport Officer
Regional Passport Office, Coimbatore
1st Floor, Corporation Commercial Complex
Opp. to Thandu Mariamman Koil
Avinashi Road, Coimbatore - 641 018.

2. The Inspector of Police
Periyanaickenpalayam Police Station
Coimbatore - 641 020.

... Respondents
(in WP.Nos.30465 & 30466 of 2017)

Writ Petition No.30465 of 2017 filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the orders passed by the 1st respondent herein, in imposing the penalty of Rs.5,000/- vide the proceedings in File No.CB1060268338717 letter Ref.No.PYL/306117757/17 dated 11.10.2017 and closing the file for the issuance of passport to the petitioner vide proceeding in File No: CB1060268338717 letter Ref.No.FCL/306185851/17 dated 26.10.2017 and quash them as illegal, arbitrary, unreasonable being violative of the principles of natural justice and thereby direct the 1st respondent herein to issue passport to the petitioner based on his application in file No.CB1060268338717.

Writ Petition No.30466 of 2017 filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the orders passed by the 1st respondent herein, in imposing the penalty of Rs.5,000/- vide the proceedings in File No.CB1060268375717 letter Ref.No.PYL/306117767/17 dated 11.10.2017 and closing the file for the issuance of passport to the petitioner vide proceeding in File No: CB1060268375717

letter Ref.No.FCL/306185865/17 dated 26.10.2017 and quash them as illegal, arbitrary, unreasonable being violative of the principles of natural justice and thereby direct the 1st respondent herein to issue passport to the petitioner based on his application in file No.CB1060268375717.

For Petitioner : Mr.A.R.Suresh

For Respondents: Mr.T.V.Krishnamachari

Senior Panel Counsel for R1

Mr.P.Senthilvel, Government Advocate
for R2

C O M M O N O R D E R

The petitioner in WP.No.30465 of 2017 is the husband and the petitioner in WP.No.30466 of 2017 is the wife. Both are aggrieved against the proceedings of the first respondent dated 11.10.2017, imposing penalty of Rs.5,000/- and closing the file for the issuance of passport to the petitioners on the reason that the petitioners have not disclosed the fact with regard to a criminal case pending against them. Consequently, the petitioners are seeking for a direction to the first respondent to issue passport to them, based on their respective applications.

2. Heard the learned counsel appearing for the petitioners, learned Senior Panel Counsel appearing for the first respondent and the learned Government Advocate appearing for the second respondent.

3. The first respondent filed counter affidavits in both these writ petitions.

4. The husband is an agriculturist by profession and claims to be an illiterate. The wife also claims to be an illiterate home-maker. Their daughter, who was given in marriage is living with her husband in Boston City, United States of America and it is stated that she is pregnant and delivery is expected during 2nd week of December. Therefore, these petitioners wanted to visit their daughter at USA and assist her during delivery time. For such purpose, they applied for issuance of passport, which came to be rejected on the reason that a criminal case filed in Crime No.140 of 2015 under Sections 294(b), 323 and 506(ii) IPC is pending against them. The petitioners claim that the said case was filed against these petitioners by the brother of the petitioner/husband, out of a pure family dispute and the said case is also only at the FIR stage and therefore, that cannot be stated as a reason to reject the claim of the petitioners.

5. The learned counsel for the petitioners in support of his contention relied on an order passed by this Court in WP(MD). No.8343 of 2014 etc., batch dated 27.06.2014.

6. Mr.T.V.Krishnamachari, learned Senior Panel Counsel appearing for the first respondent re-iterated the contention raised in the counter affidavit and submitted that because of the pendency of the criminal case, the applications of the petitioners were not considered.

7. Mr.P.Senthilvel, learned Government Advocate appearing for the second respondent, based on instructions, submitted that the FIR filed against these petitioners is still in the investigation stage and not reached the filing of charge sheet. In other words, it is the contention of the learned Government Advocate that the Judicial Magistrate has not taken cognizance of the offences so far.

8. Upon considering the above stated facts and circumstances and submissions made by both parties, this Court is of the considered view that the issue involved in this case is squarely covered by the decision made in WP(MD).No.8343 of 2014 etc., batch dated 27.06.2014, wherein the learned Judge considered those cases arising out of the facts and circumstances which are similar to the case on hand. In Paragraph Nos.8 to 11, the learned Judge has observed as follows:

"8.From the materials available on record, this Court finds that the applications submitted by the petitioners for passport were not considered by the 3rd respondent for the reason that FIRs are pending against them. The Superintendent of Police, Tirnelveli, has filed counter affidavits stating that First Information Reports have been filed against the petitioners for the alleged offences, stated supra, since they are involved in the agitation against the Koodankulam Nuclear Project. So far as the petitioner in W.P.(MD).No.8349 of 2014 is concerned, the criminal case has been registered under Sections 147, 148, 294 (b), 353 & 307 IPC. Since the FIRs are pending against the petitioners, the 3rd respondent has not considered the applications of the petitioners, by placing reliance on Section 6(2)(f) of the Passports Act, 1967. Section 6(2)(f) reads as follows:-

6.Refusal of passports, travel documents, etc_
(1)

(2)Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under Clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other

ground, namely_

(a) & (b)

(c) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before the criminal Court in India; It is well settled legal principle that mere pendency of FIR cannot be construed as pendency of criminal proceedings in respect of the offences alleged to have been committed by the applicant before the Criminal Court. Only after the Court takes cognizance of the offence alleged to have been committed by the applicant, as stipulated under Section 190 of Cr.PC., it can be construed as #proceedings pending before the Court.

9. In this regard, a reference could be placed in the judgment relied upon by the learned counsel for the petitioner reported in CDJ 2010 Cal HC 344 [(Kamal Kumar Narottam Dash Parekh Vs. Superintendent (Administration), Regional Passport Office, Ministry of External Affairs & other)]. In that case, a criminal case was registered against the petitioner therein under Sections 20(B), 420, 409, 467, 468, 471, 477A of IPC and he was arrested and subsequently, released on bail. When his application for passport was not considered, he approached the High Court and in that case, the Calcutta High Court has held that the proceedings that reaches the Court in the course of investigation cannot be held to be #proceedings pending in Court and such proceedings remain still at the stage of investigation, and gets transformed into a #proceeding pending in a Court only, and if, cognizance thereof is taken by the Court.

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.

11. For the foregoing reasons, the writ petitions are allowed and a direction is issued to the 3rd respondent to consider the applications of the petitioners and to pass appropriate orders regarding issuance of passports to them, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs."

9. In view of the findings rendered by this Court earlier in the order referred to supra, which squarely applies to the present case as well, I am of the view that the petitioners are entitled to succeed in these writ petitions. But, at the same time, the petitioners, in all fairness, should have disclosed the factum of pendency of the criminal complaint against these petitioners in their respective applications. Admittedly, they have not done so. As it is only at the stage of complaint and not reached the stage of criminal case, in order to attract Section 6 of the Passport Act, 1967, such non-disclosure cannot be strictly construed as willful concealment of fact. In any event, as such fact was not disclosed, the first respondent imposed a fine of Rs.5,000/-. Unfortunately, the petitioners have not paid the same so far. Therefore, these writ petitions are allowed and the first respondent is directed to consider the applications of the petitioners for issuance of the passport subject to condition that the petitioners pay the fine amount of Rs.5,000/- each to the first respondent, immediately on receipt of a copy of this order. The first respondent shall consider the applications of the petitioners and issue passports to them,

if the applications are otherwise in order. Such exercise shall be done by the first respondent, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mk

To

1. The Regional Passport Officer
Regional Passport Office, Coimbatore
1st Floor, Corporation Commercial Complex
Opp. to Thandu Mariamman Koil
Avinashi Road, Coimbatore - 641 018.

2. The Inspector of Police
Periyanaickenpalayam Police Station
Coimbatore - 641 020.

+2cc to Mr.T.V.Krishnamachari, Advocate SR.No.85792 & 85793

+1cc to Mr.A.R.Suresh, Advocate SR.No.86003

+1cc to Government Pleader SR.No.86884

W.P.Nos.30465 & 30466 of 2017

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