



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**
W.P(MD)Nos.11659 and 11698 of 2017

WEB COPY

Vijins Suyambu

...Petitioner in W.P.(MD) No.11659 of 2017

Ilavarasan Rajapandi

... Petitioner in W.P.(MD) No.11698 of 2017

vs.

1.The State of Tamilnadu,
Represented by its Secretary to Government,
Home Department,
Fort St.George,
Chennai- 600 009.

2.The Superintendent of Police,
Thirunelveli District.

3.The Regional Passport Officer,
Madurai Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002,
Tamil Nadu.

... Respondents in both petitions

Prayer in W.P(MD)Nos.11659 of 2017: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the third respondent to issue passport to the petitioner as per application submitted dated 10.02.2017.

Prayer in W.P(MD)Nos.11698 of 2017: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the third respondent to issue passport to the petitioner as per application submitted dated 10.02.2017.

In both petitions,

For Petitioner	: Ms.S.M.Anusha
For R1 and R2	: Mr.A.Muthukaruppan, Additional Government Pleader
For R3	: Mr.A.Shanmuga Selvam

COMMON ORDER

These writ petitions have been filed for the issuance of a Writ of Mandamus directing the third respondent to issue passport to the petitioners as per application submitted by the petitioner dated 10.02.2017.



2. According to the petitioners, they applied for passport in the third respondent office on 10.02.2017. But the third respondent has not issued passport. When the petitioners approached the third respondent, they were informed that the third respondent received an information from the police verification that a criminal case is pending against the petitioners in Crime No.30 of 2015 on the file of Koodankulam Police Station under Sections 147, 341, 294(b), 323, 506(ii) of IPC and therefore, the passport cannot be issued. Hence, the petitioners filed the present writ petitions with the relief as stated supra.

3. Heard Ms.S.M.Anusha, learned counsel appearing for the petitioners, Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.A.Shanmugaselvam, learned counsel appearing for the third respondent.

4. Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the first and second respondents, on instructions, would submit that the petitioners are cited as A1 and A2 in Crime No.30 of 2015 on the file of Koodankulam Police Station, but so far the respondent police has not filed final report in this case.

5. The learned counsel appearing for the petitioners placing reliance on the decision reported in 2014(2) CWC 684 (M.Jaihar William vs. State of Tamil Nadu), would submit, mere pendency of the FIR cannot be construed as pendency of criminal proceedings, unless the Judicial Magistrate takes cognizance of offence on filing of charge sheet and investigation against accused cannot be cited to refuse passport to the petitioners.

6. This Court in the decision referred supra, taking note of various decisions rendered on the subject matter, categorically concluded that mere pendency of the FIR cannot be a bar for consideration of the claim for issuance of passport. Paragraph 10 would run thus:-

"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 judgement 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."

7. In the instant case, it is claimed by the petitioners that their applications are kept pending only due to the pendency of criminal case.

8. Considering the submissions of the learned Additional Government Pleader, this Court without going into the merits of the case, directs the third respondent to consider the applications of the petitioners dated 10.02.2017 in the light of the above decision of this Court, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above directions, both the writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



To

1.The Secretary to Government of Tamilnadu,
Home Department,
Fort St.George,
Chennai- 600 009.

2.The Superintendent of Police,
Thirunelveli District.

+1cc to Special Government Pleader, SR.No. 63147, 63139
+2cc to M/S.N.Shanmuga Selvam, Advocate SR.No. 62965, 62966
+2cc to M/S.S.M.Anusha, Advocate SR.No. 62933, 62932

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SKN/CMR
JM/SKN RSK/SAR 4/24.07.2017/4P/8C