



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2017

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THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P.(MD)No.16366 of 2017

M.Ravindran

: Petitioner

-VS-

1.The Regional Passport Officer,  
O/o.Regional Passport,  
Flat No.5, Salai Road and  
Sasthiri Road Junction,  
Thillai Nagar,  
Trichy District.

2.The Inspector of Police,  
Thiruverumbur Police Station,  
Trichy District.

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, to direct the respondents to issue passport on the petitioner's application No.17-1005462173 based on his representation, dated 10.08.2017.

For Petitioner : Mr.M.Subash Babu

For 1<sup>st</sup> Respondent : Mr.R.Arjunarajan

For 2<sup>nd</sup> Respondent : Mr.G.Muthukannan  
Government Advocate

O R D E R

This writ petition is filed seeking for a direction to the first respondent to issue passport on the petitioner's application No.17-1005462173, based on his representation, dated 10.08.2017.

2.The case of the petitioner is that he is a retired Government Servant and his only daughter Ponmalar resides in Australia with her husband and now, his daughter is on the family way, as she needs maternity assistance, the petitioner and his wife have decided to apply for passport on 29.05.2017 in Application No.171005462173, but the first respondent, by a <https://hcservices.mca.gov.in/hcservices> dated 02.06.2017 withheld the processing stating that a criminal case is pending. Thereafter, on 18.07.2017 the 1<sup>st</sup> respondent sought explanation from the petitioner about pendency



of the criminal case in Crime No.241 of 2013. Despite reply, dated 10.08.2017, the 1<sup>st</sup> respondent did not give passport. Hence, the writ petition.

3.Mr.M.Subash Babu, learned counsel for the petitioner would submit that a case in Crime No.241 of 2013 was registered against the petitioner based on the complaint given by one Kalaiselvan. Subsequently, the matter was compromised and the petitioner has also executed a sale deed in favour of the complainant to an extent of one Acre and 25 cents on 19.05.2015. It is further submitted that mere pendency of criminal case cannot be cited to reject the application of the petitioner for grant of passport.

4.Mr.R.Arjunarajan, learned counsel for the first respondent would submit that since an adverse report is received from the police, the first respondent sent the communication to the petitioner, dated 18.07.2017 and if the criminal case is still in FIR stage, the first respondent is ready to consider the application of the petitioner in accordance with law.

5.Mr.G.Muthukannan, learned Government Advocate for the 2<sup>nd</sup> respondent contended that the petitioner is facing a criminal case for grave offence under sections 294(b), 352, 420 and 506(ii) IPC. Though the petitioner has entered into a compromise, dated 07.11.2013 with the complainant, but later, he failed to act upon and thereby cheated the complainant second time. It is further contended that in view of talk on settlement, the police have not filed the final report and within a short period, the 2<sup>nd</sup> respondent would file a final report before the court concerned.

6.I have heard the rival submissions and perused the materials available on record.

7.In 2014(2) CWC 684 [W.Jaihar William vs. State of Tamil Nadu], this court has held 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 concerned, the criminal case has been registered under Sections 147, 148, 294(b), 353 & 307IPC.



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:-

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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.

8. In the light of the judgment of this court referred supra and the submission of the learned counsel for the first respondent, this court hereby directs the first respondent to consider the application of the petitioner and pass appropriate orders purely on merits and in accordance with law, after affording an opportunity of hearing to the parties concerned, on or before 10.11.2017.



9.The writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar.

To

1.The Regional Passport Officer,  
O/o.Regional Passport,  
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2.The Inspector of Police,  
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+1CC to the Special Government Pleader SR.No. 81094

W.P. (MD)No.16366 of 2017  
22.09.2017

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JM/SV MMS/SAR 3/20.10.2017/5P/4C