



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2017

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WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.(MD)No.21176 of 2017

G.Vadivel Prasanth Gnanavel

... Petitioner

Vs.

1.State of Tamil Nadu
rep. by its Secretary to Government,
Home Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Madurai City,
Madurai.

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

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the third respondent to issue passport to the petitioner in accordance with law.

For Petitioner : Mr.Babu Rajendran
For Respondents : Mr. J.Gunaseelan Muthiah,-
for R.1 & R.2
Government Advocate
: Mr.K.Asok Kumar Ram - for R.3

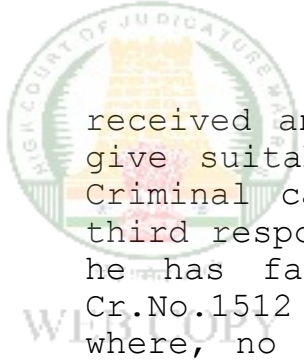
ORDER

This writ petition has been filed, seeking Writ of Mandamus to direct the third respondent to issue passport to the petitioner in accordance with law.

2. Mr.J.Gunaseelan Muthiah, learned Government Advocate, takes notice for the respondents 1 and 2 and Mr.K.Asok Kumar Ram, learned Counsel takes notice for the third respondent.

3. By consent, the writ petition is taken up for final disposal.

4. According to the petitioner, he has applied for passport before the third respondent. While so, the third respondent vide his proceedings dated 03.04.2017, has informed him that he has



received an adverse police verification report and directed him to give suitable explanation for the suppression of the pendency of Criminal case. On 02.05.2017, the petitioner appeared before the third respondent and submitted that only due to inadvertent mistake he has failed to inform the pendency of the criminal case in Cr.No.1512 of 2016 pending before the Koodal Pudur Police Station, where, no final report has been filed. Thereafter, the petitioner sent a representation dated 16.10.2017 before the third respondent seeking to issue passport, which is kept pending without any action and hence, the petitioner is before this Court.

5. Per contra, the learned Counsel appearing for the third respondent, on instructions, submitted that while processing the petitioner's application, the pendency of criminal proceedings was reported by the police officials and the petitioner himself admitted the same. Therefore, as per section 6(2)(f) of Indian Passports Act, 1967, the claim of the petitioner is not tenable.

6. However, the learned Counsel appearing for the petitioner placed reliance upon the order of this Court in the case of *W.Jaihar William and Others Vs. State of Tamil Nadu, rep. by its Secretary to Government, Chennai and Others* reported in (2014) 8 MLJ 61 [W.P.(MD)Nos.8343 to 8350 of 2014, decided on 27.06.2014], in support of his submission, wherein, 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, Tirunelveli, 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.

7. Hence, following the judgment of this Court (cited supra), this writ petition is disposed of, directing the third respondent to consider the petitioner's representation dated 16.10.2017, in the light of the order of this Court reported in *W. Jaihar William and Others Vs. State of Tamil Nadu, rep. by its Secretary to Government, Chennai and Others reported in (2014) 8 MLJ 61* and pass appropriate orders regarding issuance of passport to him, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

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

2. The Commissioner of Police, Madurai City,
Madurai.

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

+One cc to The Special Government Pleader, SR.No.94784

+One cc to M/s.K.Asok Kumar Ram, Advocate, SR.No.94163

+One cc to M/s.Babu Rajendran, Advocate, SR.No.94187

rm

RL/7C/4P/KKR/SAR1/4/1/2018

W.P. (MD) No.21176 of 2017