



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.04.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WEB COPY

Writ Petition (MD) No.4438 of 2017
and WMP(MD)No.3567 of 2017

1.A.Ganesan
2.S.Vijaya

... Petitioners

Vs.

The Regional Passport Office
Rep.by its Passport Officer
Madurai
Bharathi Ulla Veethi
Race Course, Madurai-625 002.

....Respondent

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to issue Passport to the petitioners based on Application Form No. ARN: 16-1002340359 and ARN: 16-1002340399 on considering the petitioners daughter's delivery would be on 16.03.2017 or any other date.

For petitioners : Mr.S.Xavier Rajini

For Respondent :Mr.K.R.Laxman
Special Government Pleader

O R D E R

This writ petition has been filed seeking for issuance of writ of mandamus directing the respondent to issue Passport to the petitioners based on Application Form No. ARN: 16-1002340359 and ARN: 16-1002340399 on considering the petitioners daughter's delivery would be on 16.03.2017 or any other date.

2. Heard the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondent.

3. According to the petitioners, they have submitted all the documents required for issuance of passport to them. The petitioners required the passport to enable them to visit their daughter, who is in Australia. However, there was no action forthcoming from the respondent with regard to the issue of passport to the petitioner. When the petitioners made an enquiry with the authorities concerned, he was informed that the passport could not be issued in view of the pendency of criminal case in Criminal Case No.151 of 2010 dated 10.05.2010 on the file of the Inspector of Police, Puliyangudi, Tirunelveli District, against the second petitioner for the offences under Sections 147, 294(b), 506(i)



IPC.

4. It appears that the said Inspector of Police had filed a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Sivagiri, Tirunelveli District. But the same was returned for some compliance and the same has not been re-presented as on date. More over, the first petitioner's name has not been included in FIR in Crime No. 151 of 2010 dated 10.05.2010. However, according to the learned Special Government Pleader appearing for the respondent the first petitioner's name has been included in the draft charge sheet. According to the petitioner, the learned Judicial Magistrate has not taken cognizance of offences as per Section 190 of Cr.P.C 1973 and therefore, it should not construed as the proceedings are pending in criminal court as stipulated under Section 6(2)(F) of Passports Act 1967. Therefore, according to the petitioner, there is no impediment for the passport issuing authority to issue passport to the petitioners, if they are otherwise eligible.

5. The learned counsel appearing for the respondent filed a counter affidavit. In the counter affidavit filed for the respondent, it is stated that adverse police verification report was issued by the respondent due to pendency of criminal case in Crime No.151 of 2010 and therefore, they refused to issue passport to the petitioners. In police verification report in column No.7, it has been held as follows:

"Are any proceedings against the applicant pending in criminal case? - Tick marked as Yes".

6. In view of the above position, the authorities was unable to issue passport to the petitioner.

7. The learned counsel for the petitioners would submit that as on date no charge sheet has been filed and the learned Judicial Magistrate concerned has not taken cognizance of the offence as per Section 190 of Code of Criminal Procedure, 1973. He would rely on the decision of this Court reported in **2014 (8) MLJ page 61 in the matter of W.Jaihar William and Others Vs. State of Tamil Nadu, rep. By its Secretary to Government, Chennai and Others**. In the said issue, the learned Judge of this Court, after adverting to various decisions and submissions of the parties, has clearly held as follows:

"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 Court. Therefore, in my considered opinion, the third 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 third respondent shall consider the same and pass appropriate orders".

8. The above decision passed by this Court is squarely applicable to the facts of this case. Even according to the respondent except pointing out that the fact that FIR is pending against the first petitioner, there was no other discrepancy stated in the counter affidavit.

9. In such circumstances, the authorities cannot refuse to issue passport to the petitioners, if they are otherwise eligible for the same.

10. In such view of the matter, I direct the respondent to consider the application of the petitioners for issuance of passport without referring pendency of FIR and issue passport to the petitioners, if they are otherwise eligible for the same and such exercise shall be done by the respondent within a period of two weeks from the date of receipt of copy of this order.

11. With the above direction, this writ petition is disposed of. No costs. Consequently, connected W.M.P.(MD) No.3567 of 2017 is closed.

Sd/-

Assistant Registrar(AD II)

/True Copy/

Sub Assistant Registrar

To,

The Passport Officer, Regional Passport Office, Madurai,
Bharathi Ulla Veethi, Race Course, Madurai-625 002.

+1cc to M/S.S.Xavier Rajini, Advocate, SR.50807

+1cc to M/S.K.R.Laxman, Advocate, SR.50179

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CM