



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.06.2017

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P. (MD) No.4684 of 2017

and

WMP (MD) No.3759 of 2017

Ratha Krishnan

: Petitioner

-vs-

1.The Regional Passport Officer,
Regional Passport Office,
Melakkal Main Road,
Kochadai,
Madurai-625 016.

2.The Inspector of Police,
Rajakkamangalam Police Station,
Kanyakumari District.

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the impugned order passed by the first respondent herein in his proceedings in his Letter Ref. No.IMP/304312225/16, dated 02.08.2016 and quash the same as illegal.

For Petitioner : Mr.V.Meenakshisundaram

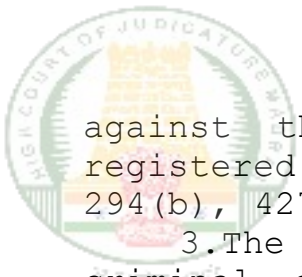
For 1st Respondent : Mr.C.Nandagopal

For 2nd Respondent : Mr.A.Muthukaruppan
Additional Government Pleader

O R D E R

The writ petition is filed to call for the records of the impugned order passed by the first respondent, in his proceedings in Letter Ref. No.IMP/304312225/16, dated 02.08.2016 and quash the same as illegal.

2.According to the petitioner, one Ravikumar is his close relative and family friend. The said Ravikumar borrowed a sum of Rs.67,500/- on various dates for his family necessities, but due to the failure in repaying the loan, on 04.05.2016 the petitioner gave a complaint to the 2nd respondent against the said Ravikumar and his wife and as a tit for tat, the said Ravikumar's wife namely Barundhini, issued a legal notice to the petitioner and his brother, on 10.05.2016 and thereafter lodged a criminal complaint



against the petitioner before the 2nd respondent, which was registered in Crime No.171 of 2016 for the offences under Sections 294(b), 427 and 506(i) IPC.

3.The petitioner would state that after registration of the criminal case, the first respondent initiated proceedings for impounding the petitioner's passport and though the criminal case was closed as 'Mistake of Fact' by the 2nd respondent, the first respondent has passed the impugned order, impounding the passport of the petitioner. Hence, the writ petition has been filed.

4.Mr.V.Meenakshisundaram, learned counsel appearing for the petitioner, by placing reliance on the decision of this court reported in 2015 Writ L.R. 1022 [*B.Ranganathan vs. The Regional Passport Officer & another*], would submit that mere registration of the criminal case cannot be a ground to impound the passport and that the first respondent has got power to initiate proceedings to impound the passport only after the court takes cognizance of the offence alleged to have been committed by the petitioner.

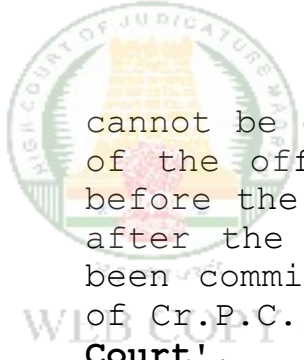
5.Per contra, Mr.C.Nandagopal, learned counsel appearing for the first respondent, by referring to the counter, would submit that the first respondent initiated proceedings against the petitioner under sections 10(3)(e) and 12(1)(b) of the Indian Passport Act and that the petitioner can approach the first respondent only after the disposal of the criminal case and after re-verification with the concerned police, the first respondent could make the passport facilities to the petitioner in accordance with the Indian Passport Act.

6.The learned counsel would further submit that before passing the impugned order, the first respondent issued a show cause notice to the petitioner, on 07.06.2016, but the petitioner has not chosen to give any reply for the same and on the other hand, he suppressed the fact in the affidavit and therefore, as per section 12(1)(b) of the Indian Passport Act, the first respondent is competent to impound the passport of the petitioner.

7.Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the 2nd respondent would submit that the 2nd respondent has closed the criminal case filed against the petitioner in Crime No.177 of 2016 as 'Mistake of Fact'.

8.Heard both sides and perused the materials available on records.

9.In the decision reported in **2015 Writ L.R.1022 [*B.Ranganathan vs. The Regional Passport Officer & another*]** this court, after considering the common order passed by this court, dated 27.06.2014 in W.P[MD]No.8343/2014 etc., batch, reported in 2014 SCC Online Mad 2900, has observed 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. It has been further observed that only after the Court takes cognizance of the offence alleged to have been committed by the applicant, as stipulated under section 190 of Cr.P.C., it can be construed as '**proceedings pending before the Court**'.

10. Section 10(3)(e) and 12(1)(b) of the Passport Act, 1967, reads as follows:-

"10. Variation, impounding and revocation of passports and travel documents.-

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel documents,-

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document re pending before a Criminal Court in India;

12. Offences and penalties. - (1) Whoever-

(a)...

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or"

11. It is not in dispute that in the case on hand, a criminal case was registered against the petitioner, in Crime No.171 of 2016 and the 2nd respondent has now closed the case as 'Mistake of Fact' after investigation. The main contention of the petitioner is that when the show cause notice was issued, the petitioner was in Dubai and hence, he was not in a position to give any reply to the show cause notice and therefore, it cannot be construed as suppression of material fact. The other contention of the petitioner is that section 12(1)(b) of the Passport Act would not apply to the facts of this case.

12. I find force in the contentions of the learned counsel appearing for the petitioner, as the 1st respondent has not attributed any valid ground to impound the passport of the petitioner. Further, it is to be noted that in the impugned order, the respondent has referred to section 10(3)(e) of the Act and at the time of argument, the learned counsel for the



respondent submitted that section 12(1)(b) would also apply to this case.

13. Considering the above facts, the provisions of law and keeping in mind the decision referred to supra, I am of the considered view that the reasons assigned by the 1st respondent for impounding the passport of the petitioner cannot be countenanced.

14. In the result, the writ petition is allowed and the impugned order passed by the first respondent is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

15. It is represented by the learned counsel for the petitioner that the visa issued to the petitioner would expire on 09.06.2017. In view of the above submission made by the learned counsel for the petitioner, the first respondent is directed to release the passport of the petitioner forthwith.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To,

1. The Regional Passport Officer,
Regional Passport Office,
Melakkal Main Road,
Kochadai,
Madurai-625 016.

2. The Inspector of Police,
Rajakkamangalam Police Station,
Kanyakumari District.

+1cc to Mr.D.Nallathambi, Advocate, SR.58980

+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO.59070

W.P. (MD) No.4684 of 2017
07.06.2017

ER

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