



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2017

CORAM:

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.6881 of 2017

Subbiah Vellakannuswamy

: Petitioner

Vs.

1.The Regional passport Officer,
The Regional Passport Office,
Bharathi Ula road,
Racecourse Salai,
Madurai-625 002,
Tamil Nadu.

2.The Superintending Enquiry Officer,
Regional Passport Office Madurai,
Bharathi Ula road,
Racecourse Salai,
Madurai-625 002,
Tamil Nadu.

: Respondents

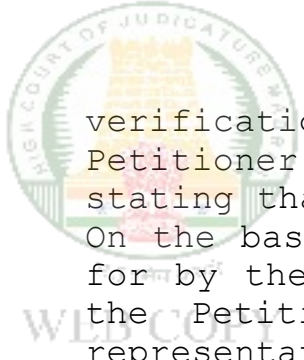
Prayer : Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus directing the first respondent to issue passport on the Petitioner's application No. MD 2069993748917 based on his reply dated 20.03.2017.

For Petitioner	: M/s.M.S.Jeyakarthick
For Respondents	: Mr.Paulpandi
1 and 2	Central Govt.Standing Counsel.

O R D E R

This writ petition has been filed for the issuance of a Writ of Mandamus directing the first respondent to issue passport on the Petitioner's application No. MD 2069993748917.

2.The case of the Petitioner is that he had submitted an application for getting passport and his application number being No. MD 2069993748917. Subsequent to the application submitted by the Petitioner, the first respondent sought police



verification about the character and antecedents of the Petitioner. It appears that the Police had given an adverse report stating that the Petitioner is an accused in Crime No.351 of 2012. On the basis of the above said report, a clarification was sought for by the respondent on 18.03.2017 and in response to the same, the Petitioner gave his explanation on 21.03.2017. In the representation, it was pointed out by the Petitioner that Crime No.351 of 2012 was registered in the year 2012 and thereafter, nothing had happened for five long years and no final report has been submitted as on date and according to him, no charge-sheet has been filed or taken cognizance of by the competent court, in terms of the provisions of the Code of Criminal Procedure. Even the said Crime Number was in relation to the mass people protest which had taken place in Koodankulam against installation of nuclear power plant. According to the Petitioner, villagers from all the nearby villages of Koodankulam were booked further for the protest against the nuclear power plant and in fact, the Government subsequently had issued orders withdrawing the cases filed against the people in and around Koodankulam.

3.Upon notice Mr.Paulpandi, Central Government Standing Counsel entered appearance on behalf of the respondents 1 and 2 and a counter affidavit has been filed by the respondents.

4.According to the learned counsel for the respondent, he would submit that there was adverse Police Verification Report by the Superintendent of Police, Tirunelveli District in Cr.No.351 of 2012 under various provisions of the TNPPDL Act. Further, in column No.5 of Police Verification Report submitted by the Superintendent of Police, Tirunelveli District, which reads as follows:

''Is the applicant facing any criminal charges in any Court? - is Tick marked as YES.''

5.In view of the above, the application for issuance of passport was not favourably considered. The Petitioner was informed to approach the respondents after disposal of the criminal case pending against him.

6.Heard the learned counsel for the Petitioner as well as the learned Central Government Standing Counsel appearing on behalf of the respondents 1 and 2 and perused the materials placed before this Court.

7.The case of the Petitioner is squarely covered by the decision of this Court reported in 2014(2) CWC 684 (M.Jaihar William vs. State of Tamil Nadu). According to the said decision, 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 of complaint and investigation against accused.



8. The learned Judge of this Court 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. The learned Judge has clearly held in paragraph 10 of the said decision as follows:-

"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."

Following the above said decision, it must be concluded that there is no legal impediment for issuance of passport to the petitioner.



9.The version of the Petitioner that no final report has been filed in the criminal case has also not been disputed by the respondents in their counter affidavit.

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10.In the said circumstances, the respondents are directed to consider the application of the Petitioner for issuance of passport in application No. MD 2069993748917 without reference to Crime No.351 of 2012, if he is otherwise eligible, in terms of the provisions of the Indian Passport Act. This direction shall be complied with by the respondents within a period of four weeks from the date of receipt of a copy of this order.

11.With the above direction, the Writ Petition is allowed.
No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1.The Regional passport Officer,
The Regional Passport Office,
Bharathi Ula road,
Racecourse Salai,
Madurai-625 002,
Tamil Nadu.

2.The Superintending Enquiry Officer,
Regional Passport Office Madurai,
Bharathi Ula road,
Racecourse Salai,
Madurai-625 002,
Tamil Nadu.

+One cc to Mr.P.Paulpandi, Advocate, SR.No.54897
+One cc to Mr.M.S.Jeyakarthik, Advocate, SR.No.55008
vsn
RL/5C/4P/SKN/SAR4/3.5.2017

W.P.(MD) No.6881 of 2017