



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 26.04.2017

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P(MD)No.7024 of 2017

and

W.M.P(MD)Nos.5548 and 5549 of 2017

Suriya Prakash

..Petitioner

Vs

1. The Regional Passport Officer,
Bharathi Ula Street,
Race Course Road,
Madurai - 625 002.

2. The Immigration Officer,
Anna International Airport,
Chennai.

..Respondents.

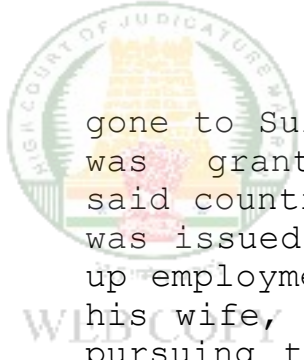
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records from the first respondent relating to the impugned order dated 8.6.2016 passed in Reference No.IMP/304107309/16 and to quash the same and consequently to direct the first respondent to return back the Petitioner's passport bearing No.M8653181 immediately.

For Petitioner	:Mr.J.Barathan for M/s.T.R.Jeyapalam
For Respondents 1 and 2	:Mr.C.Nandagopal Central Govt. Standing Counsel.

ORDER

The Petitioner has approached this Court for issuance of a Writ of Certiorarified Mandamus calling for the records from the first respondent relating to the impugned order dated 8.6.2016 passed in Reference No.IMP/304107309/16 and to quash the same and consequently to direct the first respondent to return back the Petitioner's passport bearing No.M8653181 immediately.

2.The case of the Petitioner is that he was in possession of valid passport No.M8653181 and his passport was issued on 27.4.2015 and the same is valid upto 26.4.2025.The Petitioner had



gone to Sulthanate of Oman for employment as Site Inspector and he was granted two year Visa for his stay and employment in the said country and the same is valid till 12.12.2017. The Petitioner was issued a resident card for staying in the country and taking up employment in Sulthanate of Oman. The family of the petitioner, his wife, son and three daughters joined him there and they were pursuing their school education at Muscat Indian School at Oman. The Petitioner in order to offer his condolences to one of his relatives, came to India on 9.4.2017 and all his daughters and remaining members of the family were left back in the Oman. When the Petitioner landed in Chennai International Airport, his passport was impounded on 8.4.2017 and he was informed that two criminal cases were pending against him and that the first respondent has already passed the impugned order on 8.6.2016 impounding the passport of the Petitioner.

3.While matter stood thus, the Petitioner was planning to return to Oman on 12.4.2017 to join his work and other family members living there. In view of the impounding of the passport, the Petitioner was unable to travel back to Oman. According to the Petitioner that the allegation is levelled against him in regard to the pendency of the criminal cases and they are only at FIR stage and no charge-sheet has been filed or the same was taken cognizance of under the provisions of the Code of Criminal Procedure.

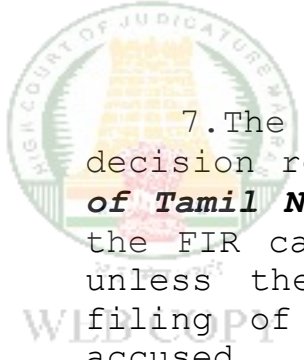
4.Upon notice, Mr.C.Nandagopal, learned Central Government Standing Counsel takes notice for the respondents 1 and 2 and filed counter affidavit on behalf of the respondents 1 and 2.

5.According to the averments contained in the counter affidavit, three criminal cases are pending against the Petitioner and in Column No.7 of Police Verification Report, which states as follows:

"Are any Proceedings against the applicant pending in any Criminal Court - is Tick marked as YES."

In view of the above, the passport was rightly impounded by the first respondent.

6.Per contra, the learned counsel for the Petitioner would submit that the criminal cases which were mentioned in the counter affidavit were actually pending for one year for investigation at FIR stage and no charge-sheet has been filed or taken cognizance of by the competent Criminal Court under the provisions of the Code of Criminal Procedure. In that view of the matter, the learned counsel for the Petitioner would contend that the impounding of the passport cannot be sustained under law.



7.The learned counsel for the Petitioner would rely on a decision 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."



9. From the above, it could be seen that the present issue is squarely covered in the above said decision rendered by the learned Judge of this Court.

10. The submissions made on behalf of the Petitioner has not been disputed either in the counter filed by the respondent or by the learned Central Government Standing Counsel for the respondents. In that view of the matter, there is no legal impediment for this Court to allow this Writ Petition as prayed for.

11. In view of the above circumstances, the Writ Petition is allowed and the impugned order, dated 8.6.2016 passed in Reference No. IMP/304107309/16 stands quashed and the first respondent is consequently directed to return the Petitioner's passport bearing Registration No. M8653181, immediately. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Regional Passport Officer,
Bharathi Ula Street,
Race Course Road,
Madurai - 625 002.

2. The Immigration Officer,
Anna International Airport,
Chennai.

+1cc to Mr. T. R. Jayapalam, Advocate Sr. No. 54192

vsn

vb/skn/rsk/sar3/28.04.2017/4p/4c

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