

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.03.2018

CORAM

THE HONOURABLE MR JUSTICE M.S.RAMESH

W.P.No.5015 of 2018
and
W.M.P.No.6193 of 2018

Thangaraj

.. Petitioner

Vs.

1. The Regional Passport Officer,
First Floor
Corporation Commercial Complex
Opp. Thandumariamman Koil,
Avinashi Road,
Coimbatore - 641 018.

2. The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus, to call for the records relating to the impugned order dated 23.02.2018 made in letter reference No.PYL/306771447/18 passed by the 1st respondent, to quash the same and consequently direct the 1st respondent to issue the passport to the petitioner forthwith.

For Petitioner : M/s.C.Prabakaran

For Respondents : Mr.J.Madanagopal Rao
Central Government Standing
Counsel for R1
Mr.D.Raja,
Additional Government Pleader for R2

O R D E R

The prayer sought for in the present petition is to call for the records relating to the impugned order dated 23.02.2018 made in letter reference No.PYL/306771447/18 passed by the 1st respondent and to quash the same and consequently to direct the

1st respondent to issue the passport to the petitioner forthwith.

2. Since the petitioner was involved in criminal case in Crime No.27 of 2016 dated 22.01.2016 for the offence under Sections 279, 353 and 304(A) IPC, the first respondent herein issued Show Cause Notice dated 22.01.2018 calling for explanation as to why his request for issuance of Passport may not be denied. The said Show Cause Notice is impugned in the present writ petition.

3. The learned counsel for the petitioner submits that the petitioner's son has joined Master Degree Course in U.S.A and successfully completed the same. Since his graduation ceremony is scheduled to be held during the month of May 2018, the petitioner's son had invited him to U.S.A to witness the ceremony. It is in this background, the petitioner had applied for passport.

4. Mr.J.Madanagopal Rao, learned Central Government Standing Counsel appearing for the first respondent submitted that under Section 6 (2) (f) of the Passport Act, 1967, the authorities are empowered to refuse for issuance of Passport on the ground that the Criminal Case is pending as against the applicant. He further submitted that in case, the petitioner either produces the " Judgment of Acquittal " or "No Objection certificate" from the Jurisdictional Court, issuing a passport for a prescribed period may be considered.

5. Mr.D.Raja, learned Additional Government Pleader appearing for the second respondent submitted that the petitioner is involved in a Criminal Case in Crime No.27/2016 and since investigation is pending, " No Objection Certificate" cannot be issued at this stage.

6. I have given careful consideration to the submissions of the respective counsels.

7. The Government of India, Ministry of External Affairs, by Notification dated 25.08.1993 has issued instructions which reads as follows:

"
MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION
New Delhi, the 25th August 1993

G.S.R. 570(E). - In exercise of the powers conferred by clause(a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298(E), dated

the 14th April 1976, the Central Government being of the opinion that it is necessary in public interest to do, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the Court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely :-

(a) The passport to be issued to every such citizen shall be issued -

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year ; or

(iv) If such order gives permission to travel abroad for a period exceeding one year and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified.

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period of travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

(No.V1/401/37/79)

/sd/ "

8. In view of the aforesaid notification, the Regional Passport Officer is empowered to exempt citizens of India who are involved in criminal cases to leave the country and for which purpose, passport may be issued in their favour. In the light of the conditions in the aforesaid notification, there is no embargo for the citizens to apply for passport, even if criminal cases are pending against them. Likewise, the statutory authorities are also empowered to consider such a case, in the light of the above notification.

9. In the instant case, the petitioner and his wife intend to attend the Graduation Ceremony of their son in USA and in the background of such reason, it would be necessary for the first respondent to consider the petitioner's application expeditiously, in the light of the exemption granted by the Government by Notification dated 25th August 1993.

10. Hence, the first petitioner herein is directed to process the petitioner's Application Reference No 18-1000603889 dated 22.01.2018 pending before the Passport Seva Kendra (PSK), Coimbatore, without reference to the adverse police verification report and if it is otherwise in order, the passport shall be issued within a period of two weeks from the date of receipt of a copy of this order. It would be open to the first respondent to restrict the validity of the passport to one year for the present, if they choose to do so.

11. In the result, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

vv

To

1. The Regional Passport Officer,
First Floor
Corporation Commercial Complex
Opp. Thandumariamman Koil,
Avinashi Road,
Coimbatore - 641 018

WEB COPY

2. The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore.

+1cc to Mr.J.Madangopal, Advocate, S.R.No.21634
+2cc to Mr.C.Prabhakaran, Advocate, S.R.No.21500

W.P.No.5015 of 2018

RRK (23/03/2018)



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