

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2018

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. Nos.8618 and 8619 of 2018

Ashok Giri
Rekha Ashok

Petitioner in Crl.O.P.No.8618/2018
Petitioner in Crl.O.P.No.8619/2018

vs.

1.State of Tamil Nadu
rep. by the Inspector of Police
Central Crime Branch, Team-III
Veperiy, Chennai.

2.The Regional Passport Authority
Chennai.

3.N.Raghav Reddy Respondents in both Crl.O.Ps.

(R2 suo motu impleaded as per order of the Court dated
28.03.2018)

(R3 impleaded as per order of Court dated 03.04.2018)

Criminal Original Petitions filed under Section 482, Cr.P.C.
to set aside the order made by the learned trial Judge in
Crl.M.P.No.1021 and 1020 of 2018 respectively in C.C.Nos.7185 of
2017 in Cr.No.163 of 2012 on the file of the Metropolitan
Magistrate for exclusive trial of CCB cases (relating to
Cheating cases in Chennai) and CBCID Metro Cases, Chennai dated
13.03.2018 and direct him to to issue a no objection certificate
or permission to travel as required by the impugned order dated
01.08.2017 to the Passport authorities.

For petitioner
in Crl.O.P.8618/18

Mr.N.L.Rajah, Senior Counsel
for Mr.Thirugnanasampatha Moorthy

For petitioner
in Crl.O.P.8619/18

Mr.S.Ananthanarayanan, Senior Counsel
for Mr.S.M.Nandhie Devhan

For R1 Mrs.Kritika Kamal.P.
Government Advocate (Crl.Side)

For R2 Mr.J.Madana Gopal Rao
Senior Standing Counsel

For R3 Mr.K.Swamidoss Manokaran
for Ms.Agalya

C O M M O N O R D E R

The petitioners are facing trial in C.C.No.7185 of 2017 (Old C.C.No.1850 of 2012) before the Special Metropolitan Magistrate, CCB Cases, Egmore for the offences under Sections 406, 409, 420, 468 and 471 r/w 34 IPC. This prosecution has been initiated on the complaint lodged by Raghav Reddy (third respondent). Ashok Giri (the petitioner in Crl.O.P. No.8618 of 2018) is the holder of Indian Passport bearing No.G6271282, which expired on 27.11.2017 and Rekha Ashok (the petitioner in Crl.O.P. No.8619 of 2018) is the holder of Indian Passport bearing No.F2894191, which expired on 24.04.2015. Both of them submitted applications for renewal of their passports and in their passport applications, they disclosed the pendency of C.C.No.7185 of 2017 (Old C.C.No.1850 of 2012). Therefore, the Regional Passport Officer, sent individual communications to both of them advising them to obtain permission/No Objection Certificate from the competent Court. Therefore, Ashok Giri filed Crl.M.P.No.1021 of 2018 and Rekha Ashok filed Crl.M.P.No.1020 of 2018 before the trial Court, in which they have made a very bizarre prayer. The learned Magistrate, by the impugned orders dated 13.03.2018, has dismissed the two petitions, aggrieved by which, they are before this Court.

2. Heard Mr.N.L.Rajah and Mr.S.Ananthanarayanan, learned Senior Counsel appearing on behalf of the learned counsel on record for the petitioners, Mrs.Kritika Kamal.P., learned Government Advocate (Crl.Side) for R1, Mr.J.Madana Gopal Rao, learned Senior Standing Counsel for R2 and Mr.K.Swamidoss Manokaran, learned counsel for R3.

3. The law with regard to grant of permission for renewal of passport has been fairly settled by this Court in N.Chandrababu vs. The Sub-Inspector of Police, Palakkarai Police Station, Trichy [2017(3) CTC 493] and also in an unreported judgment of a learned single Judge of this Court in W.Jaihar William and others v. The State of Tamil Nadu and others, dated 27.06.2014 in W.P.(MD)Nos.8343 to 8350 of 2014. Therefore, it may not be necessary to recapitulate the legal propositions. Suffice it to say that when a criminal case is pending before a Court, passport can be issued or renewed only on the basis of the No Objection from the criminal Court under Section 6(2)(f)

of the Passports Act r/w Section 22 of the Passports Act r/w the Notification No.G.S.R.570(E) dated 25.08.1993. In this case, Ashok Giri and Rekha Ashok have filed Crl.O.P.No.15780 of 2014 for quashing the charge sheet in C.C.No.1850 of 2012 and this Court, by order dated 05.03.2015, has dispensed with their personal appearance before the trial Court and has ordered notice to the respondents therein. In such view of the matter, the expression "concerned Court" in the notification dated 25.08.1993 will be this Court and not the trial Court, since this Court is seized of the quash proceedings in Crl.O.P.No.15780 of 2014.

4. At this juncture, learned counsel for the de facto complainant submitted that apart from C.C.No.7185 of 2017 (Old C.C.No.1850 of 2012), Ashok Giri is an accused in Maduranthagam Police Station Cr.Nos.966 and 967 of 2011 and E-1 Mylapore Police Station Cr.No.1994 of 2012. Therefore, he submitted that Ashok Giri ought to have disclosed the pendency of these criminal cases also in his passport renewal application.

5. Per contra, Mr.N.L.Rajah, learned Senior Counsel for Ashok Giri submitted that the pendency of FIR cannot be construed as pendency of criminal case within the meaning of Section 6(2)(f) of the Passports Act. In support of this submission, he placed reliance upon the judgment of this Court in W.Jaihar William (supra). The proceedings in a criminal case in the context of Section 6(2)(f) of the Passports Act, is said to begin only in terms of Chapter XIV of the Code of Criminal Procedure - Conditions requisite for initiation of proceedings. Admittedly, cognizance of the offence has not been taken by the competent courts in respect of the three FIRs referred to by the learned counsel for the de facto complainant and that investigation is still pending. Therefore, it cannot be stated that Ashok Giri had committed suppression of information in his passport renewal application. Many a time, an accused may not even know about the registration of an FIR, for, it may remain dormant in the police files and will suddenly surface when the person applies for a public employment. When that being the position, one cannot expect an applicant to disclose all the FIRs which are against him pending investigation in various Police Stations.

6. Now, coming to the facts of this case, both the petitioners are seeking renewal of their passports. The allegations against the petitioners in C.C.No.7185 of 2017 (Old C.C.No.1850 of 2012) is that the de facto complainant was a Director in Vaishnavi Infrastructure Engineering Private Limited and Ashok Giri was inducted as one of the Directors. The de facto complainant resigned from the Directorship and had entered into a Memorandum of Understanding, in which, the property of

Rekha Ashok was kept as escrow property for the performance of certain obligations by Ashok Giri. Without completing the obligation, the property that was escrowed was mortgaged. This is the sum and substance of the allegations in the charge sheet.

7. It is also a fact that during the currency of the passport, Ashok Giri and Rekha Ashok had gone abroad several times and have returned. Their passports were not directed to be submitted to the trial Court as a bail condition. Since their passports had expired, they had to seek renewal of the same and in those circumstances, Ashok Giri disclosed the pendency of the case in C.C.No.7185 of 2017.

8. Taking into consideration the facts and circumstances of the case, this Court is of the view that it will serve the interest of justice, if 'no objection' is granted to the petitioners for renewal of their passports.

9. In view of the no objection granted by this Court, it is open to the passport authorities to renew the passports of the petitioners in accordance with the Rules.

10. As regards the permission to go abroad, taking into consideration the antecedents of Ashok Giri and the undertaking affidavit filed by him, this Court is of the view that permission can be granted to him to go abroad. The relevant portion of the undertaking affidavit reads as under:

"3. I state that I am to travel to the United Kingdom for my business promotion on this occasion. Hence, from the date of obtaining the visa, I will travel abroad and return within two months from the date of travel.

4. I state that I solemnly undertake to come back within two months from the date of my departure and in any case, I solemnly undertake that I will report before this Hon'ble Court before the 10th of June, 2018.

5. I state, that in compliance with the undertaking made to this Hon'ble Court, this Hon'ble court may be pleased to direct the 2nd respondent, the Passport authority to renew/issuance my passport."

11. As regards Rekha Ashok, she has filed an undertaking affidavit stating that she is not travelling abroad on this occasion with her husband Ashok Giri, the relevant portion of which reads as under:

"2. I state that I am grateful to this Hon'ble Court for granting my prayer for renewal/issuance of my passport.

3. I state that that as my in-laws are old

and dependant, I am not travelling abroad on this occasion with my husband Ashok Giri, however, as per the undertaking given by my counsel, I am submitting this Affidavit about the above fact that I shall not be travelling to this Hon'ble Court.

4. I, therefore, most humbly and respectfully pray that this Hon'ble Court may be pleased to accept my affidavit and direct the passport authority to renew/issuance of my passport...."

12. In view of the above, the passport authority is directed to renew/issue the passport in terms of clause (a)(i) of the Notification dated 25.08.1993 for a period of three years on the applications that are already pending with the passport authorities. It is made clear that in compliance with the undertaking given by Ashok Giri, he shall return to India within two months from the date of travel.

These petitions stand allowed in the above terms.

Sd/-

Assistant Registrar(CS-v)

//True Copy//

Sub Assistant Registrar

gms
To

1.The Inspector of Police
Central Crime Branch, Team-III
Vepery, Chennai.

2.The Regional Passport Authority
Chennai.

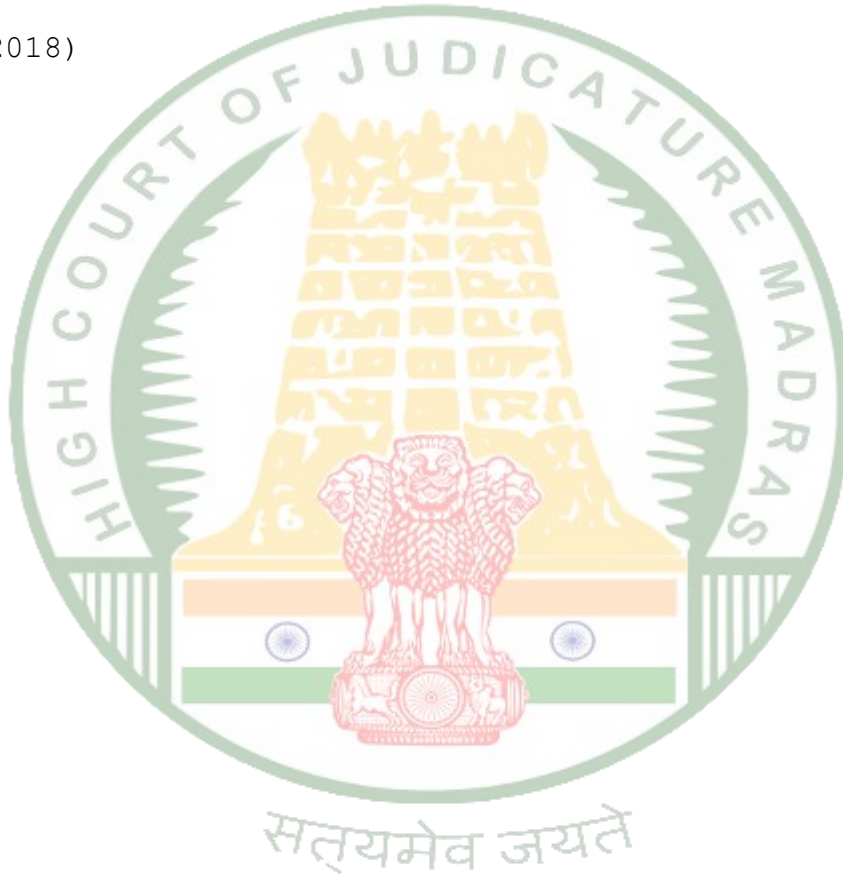
3.The Metropolitan Magistrate for exclusive trial of CCB cases
(relating to Cheating cases in Chennai)
and CBCID Metro Cases, Chennai.

4.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.S.M.NANDHIE DEVAN, Advocate, S.R.No.24691
+2cc to Mr.THIRUGNANASAMPATHAMOORTHY, Advocate,
S.R.No.24692
+1cc to Mr.J.MADANAGOPAL RAO Advocate, S.R.No.24702
+1cc to Mr.S.AGALYA, Advocate, S.R.No. 24729

CrI.O.P. Nos.8618 and 8619 of 2018

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