

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.24949 of 2018
and W.M.P.No.28997 of 2018

R.Chandrasekar

... Petitioner

Versus

1.The Regional Passport Officer,
Regional Passport Office,
Municipal Water Tank Building,
W.B.Road,
Trichirappalli - 620 008.

2.The Inspector of Police,
Nagore Police Station,
Nagapattinam District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of Writ of Mandamus, directing the first respondent to Re-issue the petitioner passport bearing Passport No.H9235892 dated 07.10.2010 with additional pages.

For Petitioner : Mrs.Greetha Senthilkumar

For Respondents : Mr.Adithya Reddy (R1)
Mr.V.Shanmuga Sundar (R2)
Special Government Pleader

O R D E R

This Writ Petition is filed seeking for a direction to the first respondent to re-issue the petitioner's passport bearing Passport No.H9235892 dated 07.10.2010 with additional pages.

2. The case of the petitioner is that he is doing business relating to the harbour construction sectors and entered into agreement with several countries and is travelling very often abroad. In the meanwhile, a criminal case has been registered against him by the District Crime Branch, Nagapattinam in Crime No.5 of 2006 and a charge sheet has been filed before the Chief Judicial Magistrate, Nagapattinam in C.C.No.1 of 2013 and finally he was acquitted from charges on 24.04.2015, as

against which an appeal was preferred by the Government. It is further stated that one more case in C.C.No.613 of 2010, is pending before the learned Judicial Magistrate No.II, Nagapattinam. While so, the first respondent asked the petitioner to surrender his passport and the petitioner also surrendered his passport on 11.03.2014.

3. It is further stated that even though, the petitioner was acquitted from the charges, the first respondent has not issued the passport to the petitioner and hence, the petitioner filed CrI.O.P.No.633 of 2018 before this Court and this Court by an order dated 29.01.2018, directed the first respondent to return his passport bearing passport No.H 9235892 and also permitted him to travel abroad, pursuant to which, the petitioner also travelled to Malaysia. It is his further case that since the pages in the passport are completed, the petitioner submitted an application before the first respondent on 21.03.2018, seeking to re-issue of his passport by providing additional pages. But, the first respondent has asked for explanation from the petitioner regarding the pendency of C.C.No.613 of 2010, before the learned Judicial Magistrate No.II, Nagapattinam, for which the petitioner has admitted that the said case is pending trial before the said Judicial Magistrate.

4. The first respondent vide letter dated 25.06.2018, rejected the request of the petitioner, due to the pendency of the criminal case in C.C.No.613 of 2010 and further stated that the application of the petitioner will be considered, after the production of the acquittal order from the Court or the order permitting him to travel abroad from the court concerned.

5. The main grievance of the petitioner is that since he was not issued with the passport, he was not able to go to abroad to sort out his business problems and hence the petitioner has filed this Writ Petition seeking for the aforesaid relief.

6. Heard the learned counsel for the petitioner, the learned Standing Counsel appearing for the first respondent as well as the learned Special Government Pleader appearing for the second respondent and perused the materials available on record.

7. The learned standing counsel for the first respondent has drawn the attention of this Court to the circular No.VI/401/1/3/2014 dated 21.08.2014 of the Ministry of External Affairs, stating that as per the said circular, the applicant, against whom the proceedings before the criminal court are pending, is required to furnish the acquittal order from the concerned court or produce any order of the concerned court permitting him to depart from India or any higher

court as well as undertaking in writing as provided at para 1 (d) of GSR 570 (E) and hence the petitioner was asked to furnish acquittal order from the court concerned.

8. The notification in G.S.R.570(E), dated 25.08.1993 issued by the Ministry of External Affairs, Government of India, mandates certain conditions for permitting a citizen of the country, against whom proceedings are pending before a criminal court in India to fly abroad. At this juncture, it is relevant to usefully extract notification issued by the Ministry of External Affairs, Government of India, in this regard :

"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 so, 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 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

(v) 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 for 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."

9. The circular mentioned above also clearly mentions that renewal of the passport of person, against whom criminal case is pending before the court can be done by the order of the court. Admittedly, the earlier passport is valid till 2020 and only the pages were exhausted. In the counter affidavit filed by the respondents, it is mentioned that the system of adding additional pages was abolished long back and therefore, the only option available to the petitioner is to seek fresh passport, as the petitioner intends to go abroad on a business tour, for which, it is necessary for him to have a passport.

10. In *Satwant Singh Sawhney V. D.Ramarathnam*, Assistant Passport Officer, AIR 1967 SC 1836, it is specifically held that travelling to a foreign country is also a fundamental right and refusal to issue passport or withdrawal of the same would certainly violate Article 14 and 21 of the Constitution of India.

11. Accordingly, this Writ Petition is disposed of by directing the petitioner to approach the authority concerned with an undertaking that he will appear before the Court concerned as and when required and on such undertaking the authority concerned shall issue fresh passport to the petitioner, in terms of GSR 570(E), dated 25.08.1993. It is open to the respondents to impose any other conditions in this regard. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. The petitioner is also directed to submit such undertaking before the concerned Court. The petitioner is also directed to inform the Judicial Magistrate No.II, Nagapattinam, where

the criminal case is pending, about his itinerary well in advance and he should make himself available before the said Court on the effective dates of hearing without fail. No Costs. Consequently, the connected Writ Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

arr/arb

To

1.The Judicial Magistrate,No.II,Nagappattinam

2.The Regional Passport Officer,
Regional Passport Office,
Municipal Water Tank Building,
W.B.Road, Trichirappalli - 620 008.

3.The Inspector of Police,
Nagore Police Station,
Nagappattinam District.

+1cc to Mr.Adithya Reddy, Advocate SR.No. 79087

+1cc to Mrs.Greetha Senthilkumar , Advocate SR.No. 78593

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ASK(12/12/2018)

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