

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.12.2018

CORAM
THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.29902 of 2018
and W.M.P.No.34906 of 2018

Durai Murugan

.. Petitioner

Vs.

The Regional Passport Officer,
Rayala Towers No.2 and 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai-600 002.

.. Respondent

* * *

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the respondent's order dated 09.11.2018 returning the application of the petitioner in M.A.No.2071633278118 and quash the same and consequently direct the respondent to re-issue a passport to the petitioner, in accordance with law, within a time frame to be fixed by this Court.

* * *

For Petitioner : Mr.Richardson Wilson

For Respondent : Mr.A.Murughan,
Central Government Standing Counsel

O R D E R

Challenging the order of the respondent dated 09.11.2018, this writ petition is instituted before this Court.

2. Heard Mr.Richardson Wilson, learned counsel appearing on behalf of the petitioner and Mr.A.Murughan, learned Central Government Standing Counsel appearing on behalf of the respondent.

3. The petitioner states that the passport issued in his favour on 08.10.2013 is valid till 07.10.2023. Since the pages therein exhausted, the petitioner applied for reissue of passport on 09.11.2018 with supporting documents. The said application was returned by the respondent on the following grounds : 1) Profile Adverse ; 2) Court Case Pending ; and 3) PAC Name tally. Hence, the present petition.

4. The learned counsel for the petitioner submitted that the reasons assigned by the respondent in the impugned rejection of the application of the petitioner seeking renewal of his passport are unsustainable in law. It is his further submission that the petitioner is under medical supervision at Mount Elizabeth Hospital, Singapore, and he was invited to address the Tamil people in so many countries. It was further submitted that the respondent, without independent application of mind, only relying on the police report, rejected the request of the petitioner, which is arbitrary and illegal per se.

5. Learned Central Government Standing Counsel appearing on behalf of the respondent submitted that since there are criminal cases pending against the petitioner, his application was rightly rejected. He relied on the notification in GSR 570(E), dated 25.08.1993, issued by the Ministry of External Affairs, Government of India, in support of his contention. At this juncture, it is relevant to usefully extract the said notification as hereunder :

"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."

6. It is to be noted that the application of the petitioner was rejected by the respondent on the ground that there were criminal cases pending against the petitioner, which lead to adverse profile report. It is relevant to note that there is no material placed before this Court to show that the Magistrate concerned had taken cognizance in the alleged criminal cases in Crime No.150 of 2015 and 122 of 2015, and hence, the same cannot be stated to be the criminal proceeding pending before the Court of law.

7. In Abhijit Sen V. Superintendent (Administration), Regional Passport Officer and others, 2004 Cr.L.J. 1281, the petitioner therein questioned the action of the authorities impounding his passport under Section 10(2)(e) [sic-10(3)(e)] of the Passport Act on the allegation that the criminal case is pending before the court concerned. It is relevant to extract paragraphs 11 and 12, which read as follows :

"11. In order to decide the said question, we may look into Section 190 Cr.P.C. which prescribes the condition required for initiation of proceedings. Thus, proceedings before a Magistrate is initiated when the cognizance is taken by the Magistrate. A cognizance by a Magistrate is taken when a complaint is received by the Magistrate or upon police report of such facts or upon information received from any person other than police office or upon his own knowledge that such offence has been committed. But, when cognizance is taken upon receiving a complaint under clause

(a) of sub-section (1) of Section 190, the Court does not do anything except directing investigation under Section 156(3) by the police officer. Therefore, we cannot accept this direction to the police officer or investigation to be a proceeding taken by the Court. It may be a cognizance of the complaint but not a cognizance of the offence. Inasmuch as this is a stage for investigation as to whether the complaint lodged disclose a case to be proceeded with and for report. Therefore, Clause (a) of Section 190 Cr.P.C. does not initiate the proceeding within the meaning of section 10(2)(e) of the Passport Act. But as soon as a police report within section 190(1)(b) is taken cognizance of the proceeding is initiated before a criminal court. Since the next steps are the steps for taking evidence on oath and it makes it a judicial proceedings within the meaning of section 2(i) Cr.P.C. The proceeding referred to in section 10(2)(e) imposes a restriction on a person on his (sic-his) movement out of India. Article 19(1)(g) may not be affected if a passport is impounded, since the impounding does not prevent the citizen from moving inside India. He ceases to have any right to leave India. But this right of movement of leave India cannot be restricted except by an authority of law. A restriction on such right when the citizen wants to leave India in connection with his business definitely infringes his right to carry on business, if not wholly but partially. This fundamental right, which is being interfered with must have sanction of law. A sanction of law cannot be lightly construed. Therefore, when construing the implication of section 10(2)(e), it has to be construed in a manner so as not to incorporate or encompass each and every case and thereby interfere with the right of person to move freely outside India in connection with his business.

12. The proceeding that has been referred to in section 10(2)(e) is a proceeding in respect of an offence pending before a criminal court. A proceedings is pending before a criminal court as soon as the cognizance is taken. In case there is no delay in filing the charge sheet, the cognizance could have been taken as a matter of course and the question would have been different. But in a case where the cognizance is dependent on consideration of delay, until the delay is condoned the court is not empowered to take

cognizance. A criminal case is initiated only when the cognizance taken. The presentation of the charge sheet before a criminal court may not entitle the court to take the cognizance of the offence beyond time on the face of it. A distinction is to be drawn in the two kinds of cases (i) where cognizance can be taken where there is no delay ; and (ii) where cognizance can be taken only after condoning the delay. In the latter case, in which the delay is condoned and cognizance taken, it is a proceeding is pending before a criminal court."

7. It is well-settled principle that the pendency of the First Information Report on the file of police station cannot be equated with pendency of a criminal proceedings before the Court of law. Even after filing of the charge sheet by the police, only after the Magistrate issues process, after taking cognizance, it can be construed that the proceedings are pending before the Court.

8. There is a Crl.R.C.No.486 of 2017, which is said to be pending before this Court. The petitioner was not even served with any notice in the criminal revision case said to be pending on the file of this Court. It is the claim of the learned counsel for the petitioner that the said criminal case was filed by the State against the order of discharge of the petitioner. Hence, even admitting that a criminal revision case is pending, since the same is against discharge of the petitioner, the same cannot be put against the petitioner.

9. The Hon'ble Apex Court in Satwant Singh Sawhney Vs. D.Ramarathnam, Assistant Passport Officer and others, AIR 1967 SC 1836, 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 Articles 14 and 21 of the Constitution of India.

10. The petitioner is seeking to travel, inter alia, to undergo medical supervisory treatment at Singapore. In the light of the above facts coupled with the legal position, the impugned rejection of the petitioner's passport application cannot be sustained and it calls for interference from this Court.

11. In the result, this writ petition is allowed and the impugned rejection order dated 09.11.2018 is set aside. The respondent is directed to consider the application submitted to re-issue the passport to the petitioner, in accordance with law, if otherwise the application is in order and pass appropriate orders within a period of four weeks from the date of receipt of

a copy of this order and communicate the decision to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(IV)

//True Copy//

Sub Assistant Registrar

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To

The Regional Passport Officer,
Rayala Towers No.2 and 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai-600 002.

+1cc to Mr.Richardson Wilson, Advocate, S.R.No.33764
+1cc to Mr.A.Murugan, Advocate, S.R.No.84201

W.P.No.29902 of 2018

NA(CO)

rrs 07/12/2018



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