



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.301 of 2018

WEB COPY

Arumugam

: Appellant

Vs.

The Regional Passport Officer,
Madurai Region Passport Officer,
Bharathi Ula Veethi, Race Course Road,
Madurai - 625 002, Tamil Nadu.

: Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 29.01.2018, passed in W.P(MD) No.1626 of 2018.

Prayer in WP(MD). 1626/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Mandamus directing the respondent to issue Passport to the petitioner.

For Appellant

: Mr.B.Muthuprakash

For Respondent

: Mr.V.Kathirvelu

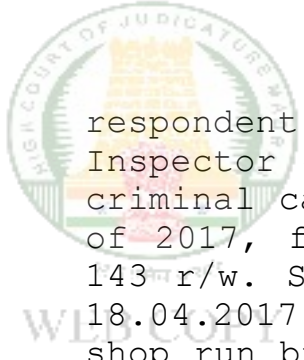
Assistant Solicitor General
assisted by Mr.C.Nanda Gopal

JUDGMENT

[Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**]

The appellant is the writ petitioner and he filed W.P.(MD) No.1626 of 2018, praying for issuance of writ of mandamus, directing the respondent to issue passport and vide impugned order dated 29.01.2018, the writ petition came to be dismissed, on the ground that no writ petition can be entertained in order to issue any directions directing the authorities to issue passport to the petitioner as prayed for and Article 226 of the Constitution of India, is not a remedy to scrutinise the materials in order to consider the claim as raised in the writ petition. Challenging the legality of the order in and by which his writ petition came to be dismissed, has filed this writ appeal.

2.The learned Counsel appearing for the appellant / writ petitioner would submit that the petitioner is a Diploma holder in Electrical and Electronic Engineering and he has submitted the passport application bearing File No.MD2060772696117 to the



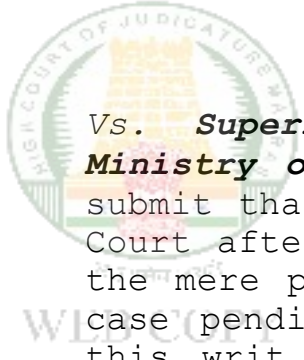
respondent office and even earlier to that, on 18.04.2017, the Inspector of Police, Sattur Taluk Police Station has registered a criminal case against the petitioner and 17 others in Crime No.117 of 2017, for the alleged commission of the offence under Section 143 r/w. Section 188 of IPC, that he along with other persons on 18.04.2017 at about 03.30 p.m. had assembled in front of a wine shop run by the Tamil Nadu State Marketing Corporation and shouted slogan for closing the said shop and thereafter, the petitioner has received the communication from the respondent dated 09.01.2018 in letter Ref.No.SCN/306578951/18, calling upon him to submit his explanation within thirty days as he has suppressed the material information in the passport application form with regard to the registration of the above said case.

3.It is the submission of the learned Counsel appearing for the appellant that mere registration of the case does not amount to pendency of the case and therefore, it is not necessary to disclose the said fact and even otherwise, he has only submitted the online application form, which does not contain the said call. Alternately, it is submitted by the learned counsel appearing for the appellant that even otherwise there are no merits in the case registered by the Sattur police and that the petitioner was said to be arrested with regard to the agitation for closing down the liquor shop run by TASMAC and as such since, right to travel abroad is declared as a fundamental right, he is eligible to get passport subject to fulfilment of the relevant norms and prays for interference.

4.Per contra, Mr.V.Kathirvelu, learned Assistant Solicitor General appearing for the respondent has invited the attention of this Court to the counter affidavit of the respondent dated 27.03.2018 and would submit that the show cause notice was issued on 09.01.2018, informing the petitioner about the registration of the case and non-disclosure of the same and it is open to the petitioner to appear before the respondent and put forth his explanation and if it satisfactory, further process would follow and however, the petitioner has immediately rushed to the Court and as such the writ petition is pre-mature.

5.It is the further submission of the learned Assistant Solicitor General that once the case is registered, the petitioner is under obligation to disclose the said fact and eventhough, he is very well aware of the said fact, he has not disclosed the said material fact and in the light of Sections 10(a), 10(2)(b) and 10(3)(b) of the Passport Act, 1967, the petitioner is not entitled to get the passport.

6.In response to the same, the learned Counsel appearing for the respondent, by placing reliance upon the judgment rendered by the High Court of Calcutta, in **Kamal Kumar Narottam Dash Parekh**



Vs. Superintendent (Administration) Regional Passport Office, Ministry of External Affairs, reported in **2010 1 CHN 834**, would submit that in similar facts and circumstances, the Calcutta High Court after placing reliance upon very many decisions, found that the mere pendency of a criminal proceedings does not amount to a case pending and since the facts and circumstances projected in this writ petition are similar in nature, appropriate direction may be issued to the respondent to process the application for passport, in accordance with law.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. A Single Bench of this Court (**M. SATHYANARAYANAN, J.**) has considered the similar issue and after placing reliance upon the following judgments:

(i) 1998 SCC Online Cal 181 : [1998] 2 Cal LT 415 [Shree Pradeed Kundalia V. Union of India and others];

(ii) 2004 Crl.L.J. 1281 [Abhijit Sen Vs. Superintendent [Administration], Regional Passport Officer and others];

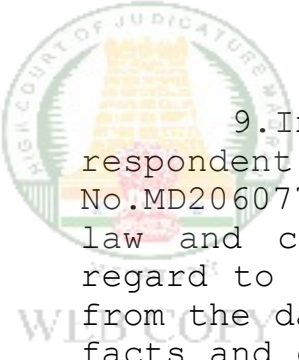
(iii) 2014 SCC Online Mad 2900 [WP [MD] No.8343/2014 etc., batch dated 27.06.2014] [W.Jaihar William and others Vs. The State of Tamil Nadu rep. by its Secretary to Government, Home Department, Fort St George, Chennai 600 009];

(iv) AIR 1962 Cal 135 [A.K.Roy V. State of West Bengal];

(v) AIR 1957 Cal 379 [Parulbala Sen Gupta Vs. State]; and

(vi) AIR 1967 SC 1836 [Satwant Singh Sawhney v. D.Ramarathnam, Assistant Passport Officer & Others];

has concluded that mere pendency of the criminal proceedings cannot be construed as pendency of the criminal proceedings. The decisions relied on for reaching the said conclusion in the above cited decision, would also disclose that unless cognizance is taken by the concerned Magistrate, it does not amount to pendency of the criminal proceedings. Admittedly, in the case on hand, the case is in FIR stage and even for the sake of arguments, subsequently, the charge sheet has been filed, as on the date of submission of the application for passport, only FIR is pending and it cannot be construed as pendency of a criminal and it cannot be said that the petitioner has suppressed the material fact of pendency of the criminal case.



9. In the result, the writ appeal is disposed of and the respondent is directed to process the passport application No. MD2060772696117, submitted by the petitioner in accordance with law and communicate the decision taken to the petitioner with regard to the issuance of passport within a period of eight weeks from the date of receipt of a copy of this order. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Regional Passport Officer,
Madurai Region Passport Officer,
Bharathi Ula Veethi, Race Course Road,
Madurai - 625 002, Tamil Nadu.

2. The Inspector of Police,
Sattur Police Station,
Virudhunagar District.

+1cc to R. Murugappan, Advocate Sr.No. 58631
+1cc to Mr. C. Nanda Gopal, Advocate SR.No. 59136

MR

VB/SV/MMS/SAR4/05.04.2018/4P/5C

JUDGMENT MADE IN
W.A (MD) No. 301 of 2018
27.03.2018