



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2018

CORAM :

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition (MD) No.8232 of 2018
and
Criminal Revision Case (MD) No.750 of 2017

N.Jeyaram Sidharth

... Petitioner in both
W.P. and CrI.R.C

Vs.

1. The Passport Issuing Authority,
(Regional Passport Office),
Madurai. ... Respondent in W.P(MD)No.8232 of 2018
2. The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai
(Crime No.375 of 2015) ... Respondent in
CrI.R.C.(MD)No.750 of 2017

Prayer in W.P(MD)No.8232 of 2018: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the proceedings of the respondent in No.1700035-CPC-MDU dated 13.12.2017 quash the same and consequently directing the respondent to issue passport to the petitioner in reference No.ARN.17-100254333/MD1069900682317 based on the notification No.G.S.R.No.570 (E) Ministry of External Affairs dated 25.08.1993 within time stipulated by this Court.

Prayer in CrI.R.C(MD)No.750 of 2017: Petition filed under Sections 397 and 401 of Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.I, Sivagangai in CrI.M.P(MD) No.704 of 2017, dated 27.02.2017.

For Petitioner : Mr.R.M.Arun Swaminathan

For Respondent : Mr.V.Kathirvelu,
(W.P(MD)No.8232 of 2018) Assistant Solicitor General of India
assisted by Ms.Ragavendhree

For Respondent : Mr.N.Shanmugaselvam,
(CrI.R.C(MD)No.750/2017) Additional Government Pleader.

**COMMON ORDER**

By the impugned order dated 13.12.2017, the respondent herein had rejected the petitioner's application in file No.1700035-CPC-MDU on the ground that the Superintendent of Police, Sivagangai District has submitted an adverse police verification report against the petitioner for his involvement in Crime No.375 of 2015 which is now pending trial in C.C.No.150 of 2015 on the file of the learned Judicial Magistrate No.1, Sivagangai.

2.This Court had an occasion to deal with the status of a person involved in a criminal offence for being considered for issuance of passport in W.P(MD)No.20335 of 2016 dated 19.04.2018. The relevant portion of the said order is as follows:

"8.Before dealing with the facts of the petitioner's case, it would be appropriate to have a glance at the legal position in a case of this nature. Section 10 (3) (e) of the Indian Passports Act, 1967 reads as follows:

"10.Variation, impounding and revocation of passports and travel documents:-

(1).....

(2).....

(3)The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

(a).....

(e)if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a Criminal Court in India."

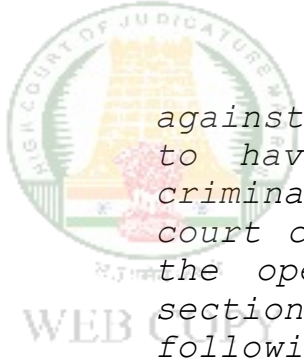
9.The word 'may impound' empowering a passport authority to impound or cause to impound or revoke the passport is apparently directory in nature and not mandatory.

10.The Ministry of External Affairs by a notification in GSR 570 dated 25.08.1993 had diluted the scope of Section 10(3) (e) of the Indian Passports Act, 1967 by exempting the persons against whom criminal proceedings are pending and who produce orders from the Court thereby permitting them to depart from the country with certain conditions. For the sake of clarity, the said notification is extracted 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 (1) of Section 22 of the Passports Act 1967 (15 of 1967) and in suppression of the notification of the Government of India in the Ministry of External Affairs No. G.S.R. 288(E), dated 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 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.

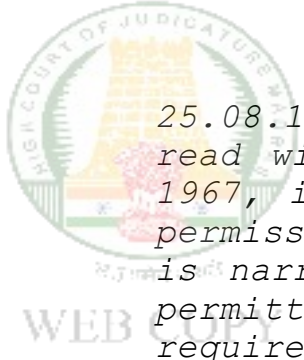
(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the Court is not cancelled or modified;

(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 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."

11. The aforesaid notification came to be further clarified through a circular issued by the Ministry of External Affairs, dated 21.08.2014, insofar it relates to the issuance of passports to an applicant against whom proceedings are pending before a Criminal Court. As per the said circular, the passport authorities were directed to process the applications for issuance of passport after obtaining an undertaking together with a letter directing them to fulfil the requirements prescribed in the gazette notification dated 25.08.1993.

12. In the light of the notification dated



25.08.1993 and the subsequent circular dated 21.08.2014 read with Section 10(3) (e) of the Indian Passports Act, 1967, it can only be concluded that the scope for denying permission to issue a passport or initiate steps to impound is narrowed down to the effect that such persons may be permitted to leave the country on fulfilment of certain requirements. On a cogent reading of the gazette notification along with Section 10(3)(e) of the Indian Passports Act, 1967, it can only be held that the provisions of the Indian Passports Act will not be an absolute embargo for a person to leave the country or otherwise be disentitled for issuance of passport.

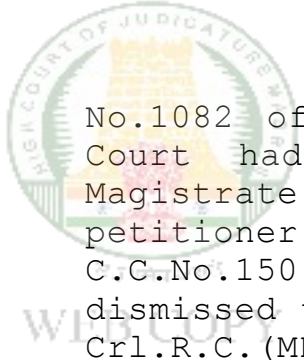
13. Yet another aspect that could be relevant in the circumstances of the present case, is the status of a person being accused or charged for criminal offences. One of the cardinal principles of criminal jurisprudence is the principle of presumption of innocence. The general principle is that a person accused of a criminal offence is presumed to be innocent until he is proved to be guilty has been reiterated in various judgments of the Apex court as well as the High Courts. The right of a person to move in and out of the country is a personal liberty protected under Article 21 of the Constitution of India. The requirement of natural justice is implicit in Article 21. While a person's personal liberty is protected under the Constitution of India, when such a person is yet to be proved guilty of a criminal offence, the passport authorities deriving their powers under Section 10(3)(e) of the Indian Passports Act, 1967, which is only directory in nature may not be justified in arbitrarily invoking the provision for impounding or attempting to impound or revoking the passport on the ground that the criminal case is pending.

14. In the light of the above observations, it can only be concluded that the respondent's action in creating an embargo to the personal liberty of the petitioner to move in and out of the country, is arbitrary.

3. It is further seen that the proceedings in C.C.No.150 of 2015 pending on the file of the learned Judicial Magistrate No.I, Sivagangai in which the petitioner has been arrayed as an accused has been challenged before this Court in CrI.O.P.(MD) No.17534 of 2015 and by an order dated 09.09.2015, this Court had stayed the proceedings which is said to be still in force. While that being so, quoting the pendency of the criminal case which has been stayed by this Court is another illegality and the respondent is not justified in relying upon the same particularly when the petitioner claims to have brought to the notice of the respondent about the interim order granted by this Court.

<https://hcservices.ecourts.gov.in/hcservices/>

4. Incidentally, the petitioner had earlier approached this Court seeking for remedy through a writ petition in W.P(MD)



No.1082 of 2017 and it is claimed by the petitioner that this Court had directed him to approach the concerned Judicial Magistrate seeking for permission. Consequently, when the petitioner had filed a petition in CrI.M.P(MD)No.704 of 2017 in C.C.No.150 of 2015 seeking for permission, the same came to be dismissed through an order dated 27.02.2017 which is challenged in CrI.R.C.(MD)No.750 of 2017.

5.In the light of the earlier observations, the order passed by the learned Judicial Magistrate dated 27.02.2017 requires to be set aside.

6.In the result, the impugned proceedings of the respondent in proceedings No.1700035-CPC-MDU, dated 13.12.2017 is quashed and the order passed by the learned Judicial Magistrate No.1, Sivagangai, in CrI.M.P(MD)No.704 of 2017, dated 27.02.2017 is also set aside. Consequently, the respondent in W.P(MD)No.8232 of 2018 is directed to issue passport to the petitioner, within two weeks from the date of receipt of this order.

7.With the above observation, the writ petition stands allowed and CrI.R.C.(MD)No.750 of 2017 is also allowed. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai.

+ 1 cc TO Mr.S.Ragaventhre , Advocate in SR No. 62596
+ 2 ccs TO Mr.RM.Arun Swaminathan, Advocate in SR No. 62341,62342

sms

AE/SKN RSK/SAR4/07.06.2018/5P/5C

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