



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.05.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

W.P. (MD) No.11418 of 2018

Deepan Chakkaravarthy Obla Balachandran

... Petitioner

-vs-

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

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus to pass a direction to the respondent to reissue my Passport No.K9949682 within a time frame as pleased by this Honourable Court.

For Petitioner : Mr.S.Chandrasekaran
For Respondent : Mrs.S.Ragaventhre, CGSC

ORDER

This writ petition has been filed, seeking a direction to the respondent to re-issue his Passport bearing No.K9949682.

Brief facts leading to filing of this writ petition:

2. It is the case of the petitioner that he was originally issued a Passport No.F3323414 dated 09.05.2005 by the Passport Officer, Tiruchirappalli with a validity period from 09.05.2005 to 08.05.2015 and subsequently, pursuant to his marriage, he applied for re-issuance of his passport after inclusion of his wife's name in it.

2.1. It is the further case of the petitioner that though he was re-issued a Passport No.K9949682 dated 04.03.2013 with a validity upto 03.03.2023, later on, he received a letter dated 19.09.2013 from the respondent, requiring him to explain with regard to the adverse police verification report in respect of a criminal case pending against him on appeal against the order passed in S.C.No.248 of 2018 by the learned VI Additional District Judge, Madurai, in which he was acquitted of the charges.

2.2. It is also the case of the petitioner that he had duly sent a reply to the respondent, stating that he was acquitted from the said case and the factum of appeal being filed against his acquittal by the defacto complainant in Crl.A.(MD) No.379 of 2016 was known to him only after receipt of notice from the High Court and as such, there is no voluntary suppression of the pendency of any appeal during the period of his representation for re-issuance of his passport.



2.3. It is submitted that though he had completed MBA Post Graduation in the year 2007 itself, he could not be able secure any job opportunities in abroad for want of passport. He further undertakes that he is ready to abide by the conditions to be imposed by this Court and he will obtain prior permission from this Court in Crl.A.(MD) No.379 of 2016 in the event of going abroad on employment or visiting visa. Therefore, he sought for a direction to the respondent for re-issuance of his passport.

3. The learned counsel appearing for the petitioner would submit that the petitioner was given total acquittal by the Trial Court and it is a well settled law that mere pendency of an appeal will not entitle the respondent to withhold the passport of an individual. The act of the respondent in impounding the passport is a deprivation of his livelihood and the same is un-sustainable under law. Though the petitioner had responded properly to the notice sent by the respondent and surrendered the passport, he is made to run from pillar to post without re-issuance of his passport. In support of his submission that mere pendency of the criminal case would operate as a bar for seeking even renewal of the passport cannot be sustained, he has relied upon an unreported judgment of this Court in the case **Riazlee vs. The Passport Officer, Madurai Passport Office, Madurai [W.P.(MD) No.6623 of 2010] decided on 27.05.2010**, wherein it has been held as under:

"8. Subsequently, the Bombay High Court in Shyam Dwarkadas Chabria Vs. Regional Transport Officer and another reported in 2000 CRI. L. J. 2942 also dealt with the same issue and held as follows:

"11. The impugned order dated 5th January, 1993 passed by the Regional Passport Officer, Bombay is quashed and set aside. The petitioner will be at liberty to make an application to the Chief Judicial Magistrate, Pune for permission to travel abroad. If such an application is made, the learned Magistrate shall decide that application as expeditiously as possible and in any event within four weeks from the date of receipt such application. In case the learned Magistrate permits the petitioner to travel abroad, the passport authority shall forthwith issue the passport in terms of the order of the Magistrate subject to the terms and conditions mentioned in the notification dated 25th in law him 1st respondent has filed a detailed counter affidavit contending that on a reference to the Superintendent of Police, it was disclosed that there were criminal cases against him and later, the petitioner produced copies of judgments in proof of his acquittal from all the charges. Hence, the matter was once again referred to the Superintendent of Police, Dindigul for re-



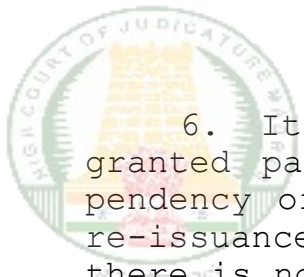
verification and on receipt of the verification report, the restoration of passport facilities would be processed in accordance with the Indian Passports Act, 1967."

9. Therefore, in view of the notification issued by the Central Government and as well as the law laid down in the above referred decisions, the renewal of the petitioner's passport cannot be refused merely on the ground of pendency of the criminal case. In fact, the petitioner ought to have been directed to approach the Court concerned before which the criminal case is pending and move an appropriate application seeking permission of the Court for necessary directions. Hence, the stand taken by the respondent by stating that mere pendency of the criminal case would operate as a bar for seeking renewal of the passport cannot be sustained.

10. In view of the above reasons, the writ petition is disposed of by giving liberty to the petitioner to approach the learned Additional District and Sessions Court (FTC), Ramanathapuram in the pending case, in S.C.No.91 of 2005, with an appropriate application seeking permission for him to go abroad. If such application is made, the learned Additional District and Sessions Court (FTC), Ramanathapuram, may consider the same and pass orders on merits and in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the contentions raised by the petitioner in the writ petition."

4. Per contra, the learned Central Government Standing Counsel appearing for the respondent has contended that on a reference to the Station House Officer, E-3, Anna Nagar Police Station, Madurai City for post verification, it was disclosed that a criminal case is pending against the petitioner by way of an appeal before the Hon'ble High Court. It is further contended that while making an application for re-issuance of the passport, the petitioner had wantonly suppressed the factum of the pending criminal case, which is against the provisions of the Passports Act, 1967 and therefore, the petitioner was directed to surrender the passport forthwith, which act of the respondent cannot be faulted with and no leniency can be shown to the petitioner in this petition.

5. Heard the learned Counsel for the petitioner and the learned Central Government Standing Counsel appearing for the respondent. This Court also perused the material documents placed on record as well as the judgments cited by the petitioner, which is squarely applicable to the case on hand.



6. It is not disputed that the petitioner was originally granted passport and the respondent came to know of the fact of pendency of the criminal case only when the petitioner applied for re-issuance of passport for inclusion of his wife's name in it and there is no other case except the pending criminal appeal. According to the petitioner, he was acquitted from the charges by the Trial Court and at the time of submitting the application for re-issuance, he was not aware of the pendency of the criminal case and had he been aware of the pending case, he would have definitely mentioned the same in the application and therefore, according to him, there is no wilful suppression of the fact.

7. It is worthwhile to refer to a judgment of this Court passed in the case of **N.Chandrababu -vs- The Sub Inspector of Police in W.P. (MD) No. 7056 of 2017, dated 21.04.2017**, wherein this Court was pleased to observe that though the concerned Trial Court had taken cognizance of the offence, pursuant to the subsequent stay granted by this Court, which was in force at that point of time, nothing prevented the Passport authorities to issue Passport to the petitioner therein. In the said judgment, this Court had given a positive direction to issue passport to the petitioner therein even during pendency of criminal case, which was stayed by the Higher Forum.

8. In the present case on hand, though it was reported that a criminal case was pending in S.C.No.248 of 2010 on the file of the learned VI Additional District Judge, Madurai, arraying him as A3, it is not in dispute that after a full fledged trial, he was acquitted from the case by the concerned Trial Court, against which, the opposite party has preferred an appeal before this Court, which is admittedly pending for hearing. Therefore, owing to his acquittal, it can be construed that there is no criminal case pending against the petitioner till the pronouncement of judgment in the pending appeal by this Court and it is well settled that mere pendency of the criminal case cannot be cited as a reason for denial of re-issuance of Passport to the petitioner. Therefore, in the considered opinion of this Court, there cannot be any impediment for the respondent for re-issuance of passport to the petitioner, especially when the petitioner is ready to undertake that in case he wants to go abroad, he would obtain prior permission from this Court in the pending appeal.

9. In result,

a) this writ petition is disposed of, following the judgments of this Court (cited supra);

b) the respondent is directed to pass orders with regard to re-issuance of the petitioner's passport, bearing Passport No.K9949882 dated 04.03.2013, within a period of two weeks from the date of receipt of a copy of this order, in the light of the



specific observations made in the previous orders of this Court (referred to supra) and also bearing in mind the observation made hereinabove.

No costs.

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/True Copy/

Sd/-

Assistant Registrar/
Vocation Officer

Sub Assistant Registrar

To:

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

+1 cc to Ms.S.Ragaventhre, Advocate, SR.NO.66417

W.P. (MD) No.11418 of 2018
30.05.2018

NS/VSV

VE/SKN/RSK/SAR 1/04.06.2018/5P/3C