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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE V. PARTHIBAN

W.P. (MD) No.18609 of 2018

and

W.M.P. (MD) No.16473 of 2018

Sarath @ Sivasarath

... Petitioner

vs.

1.Regional Passport Officer
Madurai Bharath Ula Veethi
Race Course Road
Madurai-625 002
Tamil Nadu

2.Inspector of Police
Koodankulam Police Station
Koodankulam
Tirunelveli District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the 1st respondent to issue normal validity passport to the petitioner, making it valid for a period of 10 years as contemplated under the Passport Rules, 1980.

For Petitioner : Mr.L.P.Maurya

For Respondents : Mr.V.Kathirvelu

Assistant Solicitor General

Assisted by Mrs.V.Raghaventhree

Central Government Standing Counsel for R1

Mr.C.M.Mari Chelliah Prabhu for R2 (AGP)

O R D E R

The case of the petitioner is as follows:

(i) The petitioner has completed Diploma in Mechanical Engineering and he was aspiring to secure employment abroad. While he was hoping to secure employment abroad, he was falsely implicated in a criminal case on the file of the second respondent - Police, for which an F.I.R. was registered, on 26.08.2013, alleging that he had committed an offence punishable under Sections 147, 148, 341, 294(b), 353 and 506(ii) I.P.C. Although F.I.R. was registered as early as in the year 2013, the admitted position is that till date, no charge sheet has been filed.

(ii) In order to fulfill his ambition of going abroad, the petitioner had applied for Passport on 11.03.2015. However, his application for issuance of



Passport was not considered by the Passport Authority in view of the pendency of F.I.R. against the petitioner. Since the Passport Authority has refused to consider his application, the petitioner had approached the learned Judicial Magistrate, Valliyoor, seeking permission to go abroad and sought direction to the Passport officials to issue Passport to him. In response to the application submitted by the petitioner, the learned Judicial Magistrate, Valliyoor, passed an order, on 21.03.2018, directing the Passport Authority to issue Passport to the petitioner, subject to the condition that he shall not leave the country without obtaining prior permission from the Court. After obtaining orders from the learned Judicial Magistrate, Valliyoor, the petitioner approached the Passport Authority for issuance of Passport and finally, a Passport bearing No.S3497720 was issued to him. On receipt of the Passport, the petitioner found that the same was issued only for a period of one year i.e. from 27.06.2018 till 26.06.2019.

(iii) While matter stood thus, the petitioner received an offer of appointment from Abu Dhabi, on 24.07.2018, for appointment to the post of Site Supervisor. Unfortunately, his Visa for going to Abu Dhabi could not be processed in view of the one year period as mentioned in the petitioner's Passport. Since the petitioner has been unjustly denied the employment abroad in view of the limited period as mentioned in the Passport, he is before this Court seeking a direction to the Passport Authority to issue a regular Passport to him.

2. The learned counsel appearing for the petitioner would vehemently contend that the petitioner is entitled to a normal Passport, as issued to the other citizens of this country, for the simple reason that though F.I.R. was registered as early as in the year 2013, so far no charge sheet has been filed and therefore, as on date, no criminal case is pending as against the petitioner in any Criminal Court in India. The fact of non-filing of charge sheet till date has also been admitted by the learned Additional Government Pleader appearing for the second respondent - Police.

3. The learned counsel appearing for the petitioner would draw the attention of this Court to Section 6(2)(f) of the Passports Act, 1967, which is extracted hereunder:

"6. Refusal of passports, travel documents, etc.-

(1) ...

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign



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country under clause (c) of sub-section (2) of Section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a) ...

(b) ...

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India."

4. According to the learned counsel for the petitioner, as on date, no case is pending before any Criminal Court in India and in such an event, the petitioner is entitled for issuance of a normal Passport as issued to the other citizens of this country.

5. The learned counsel for the petitioner would submit that when the issue, as raised in this writ petition, came up for consideration before this Court on earlier occasions, this Court has consistently held that mere pendency of F.I.R. cannot be a basis for denial of Passport to the citizens of this country. One of such decision relied on by the learned counsel for the petitioner is W.Jaihar William v. State of Tamil Nadu, reported in (2014) 8 MLJ 61. In the said decision, the learned Judge of this Court has dealt with the legal position in extenso and the learned counsel for the petitioner has also drawn the attention of this Court to Paragraph Nos.8 to 11, which are extracted hereunder:

"8. From the materials available on record, this Court finds that the applications submitted by the petitioners for passport were not considered by the 3rd respondent for the reason that FIRs are pending against them. The Superintendent of Police, Tirunelveli, has filed counter affidavits stating that First Information Reports have been filed against the petitioners for the alleged offences, stated supra, since they are involved in the agitation against the Koodankulam Nuclear Project. So far as the petitioner in W.P.(MD) No.8349 of 2014 is concerned, the criminal case has been registered under Sections 147, 148, 294(b), 353 & 307 IPC. Since the FIRs are pending against the petitioners, the 3rd respondent has not considered the applications of the petitioners, by placing reliance on Section 6(2)(f) of the Passports Act, 1967. Section 6(2)(f) reads as follows:

"6. Refusal of passports, travel documents etc

(1).....

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of Section 5 on any one or more of the following grounds, and on no other ground, namely



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(a) & (b)

(c) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before the criminal Court in India.

It is well settled legal principle that mere pendency of FIR cannot be construed as pendency of criminal proceedings in respect of the offences alleged to have been committed by the applicant before the Criminal Court. Only after the Court takes cognizance of the offence alleged to have been committed by the applicant, as stipulated under Section 190 of Cr.PC., it can be construed as "proceedings pending before the Court".

9. In this regard, a reference could be placed in the judgment relied upon by the learned counsel for the petitioner reported in Kamal Kumar Narottam Dash Parekh v. Superintendent (Administration), Regional Passport Office, Ministry of External Affairs and Others (supra). In that case, a criminal case was registered against the petitioner therein under Sections 20(B), 420, 409, 467, 468, 471, 477A of IPC and he was arrested and subsequently, released on bail. When his application for passport was not considered, he approached the High Court and in that case, the Calcutta High Court has held that the proceedings that reaches the Court in the course of investigation cannot be held to be "proceedings pending in Court" and such proceedings remain still at the stage of investigation, and gets transformed into a proceeding pending in a Court" only, and if cognizance thereof is taken by the Court.

10. For the same proposition of law, the learned counsel for the petitioners has also relied upon the judgment delivered by the Andhra Pradesh High Court reported in Mathumari China Venkatareddy and Others v. State of Andhra Pradesh (supra), wherein it has been held that until the charge-sheet has been filed, a Magistrate cannot be said to have taken cognizance of any offence and that the Magistrate can take cognizance of the offence and direct the issue of process only on receipt of a police report and that till that stage is reached, he is said to be acting only as a Magistrate controlling the investigation made by the police. It has been further held in the said judgment as follows:



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proceeds further under Chapter XVI. Unless the charge-sheet is in the official custody of the Court together with its accompaniments to be furnished to the accused, it cannot be construed that there is a filing of charge-sheet. Chapter XVI relates to commencement of proceedings before Magistrates, process to be issued when Magistrate takes cognizance of the offence."

Therefore, it is clear that unless the Judicial Magistrate takes cognizance of the offence, on filing of charge-sheet on completion of investigation against the applicant, it cannot be said that the proceedings are pending before the Criminal Court. Therefore, in my considered opinion, the 3rd respondent cannot mechanically refuse to issue passport to the petitioners, merely for the reasons that the FIRs are pending against the petitioners. On receipt of the application for passport, the 3rd respondent shall consider the same and pass appropriate orders.

11. For the foregoing reasons, the writ petitions are allowed and a direction is issued to the 3rd respondent to consider the applications of the petitioners and to pass appropriate orders regarding issuance of passports to them, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs."

6. The learned counsel for the petitioner would submit that the issue involved in this writ petition is directly covered by the legal principles as enunciated in the above cited decision and therefore, he would pray for allowing the writ petition.

7. Per contra, Mr.V.Kathirvelu, learned Assistant Solicitor General, appearing for the first respondent would resist the claim of the petitioner on the ground that there was an F.I.R. pending against the petitioner and therefore, the Passport was issued to him for a limited period of one year, in pursuance of the directions issued by the learned Judicial Magistrate, Valliyoor. Since the first respondent has merely followed the orders passed by the learned Judicial Magistrate, Valliyoor, the same cannot be faulted with. The substance of the resistance put up by the first respondent, as stated in Paragraph No.14 of the counter affidavit, is extracted hereunder:

"(14) It is submitted that since the no period was specified either for the issue of the passport or for the travel abroad, in the Order of the Judicial Magistrate, Valliyoor, in Cr.M.P.No.1241 of 2018, as per a (ii) of GSR 570(E), the petitioner's application



for passport was processed and a passport bearing No.S3497720 Dt.27.06.2018 valid till 26.06.2019 was issued to the petitioner."

8. According to the above averments, Passport was issued to the petitioner in terms of GSR 570(E) mentioning the instructions issued by the Government of India under the provisions of the Passport Act, 1967.

9. At this juncture, the learned counsel for the petitioner would submit that GSR 570(E) itself, in clear terms, indicates that in case of pendency of criminal case alone, a person would be exempted from obtaining a regular Passport. But, in the present case, from the facts, as disclosed and as admitted by the second respondent - Police, no criminal case is pending as against the petitioner.

10. As rightly held by this Court, in the decision cited supra, mere pendency of F.I.R. cannot be a legal basis for denial of issuance of a regular Passport to the petitioner. Though the petitioner has approached the learned Judicial Magistrate, Valliyoor, seeking issuance of Passport, this Court is unable to understand as to what prompted the petitioner to approach the learned Judicial Magistrate, Valliyoor, when no criminal case is pending against him. In any event, though ill-advisedly the petitioner had approached the learned Judicial Magistrate, Valliyoor, nevertheless the first respondent cannot issue Passport to the petitioner only for a limited period of one year, which resulted in negation of right of the petitioner to have a regular Passport in order to secure employment abroad.

11. This Court is also unable to appreciate the conduct of the first respondent in issuing Passport to the petitioner only for a limited period of one year and by which action, the first respondent has practically prevented the petitioner from pursuing his career option. Further, this Court is unable to appreciate as to why the learned Judicial Magistrate, Valliyoor, has passed a conditional order stating that the petitioner shall not leave the country, without obtaining prior permission from the Court, when no criminal case is pending against him. In the facts and circumstances of the case, denial of regular passport to the petitioner is in violation of the fundamental rights bestowed upon the citizens of this country under the Constitutional Scheme.

12. In any event, from the materials as placed before this Court and the pleadings made available, this Court is of the considered view that the petitioner has made out a clear case for issuing a regular Passport. Therefore, there shall be a direction to the first respondent to issue a regular Passport to the petitioner, as issued to the other citizens of this Court, within a period of four weeks from the date of receipt of a copy of this order.



13. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

Sub Assistant Registrar (CS-II)

To:

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

2.The Inspector of Police,
Koodankulam Police Station,
Koodankulam,
Tirunelveli District.

+1CC TO MR.L.P.MAURYA ADVOCATE IN SR.No.82087.

+1CC TO SPECIAL GOVERNMENT PLEADER IN SR.No.82517.

KRK
DS SV SAR-2;07.09.2018; 7P/5C

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and
W.M.P.(MD) No.16473 of 2018
04.09.2018