



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2018

CORAM:

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.23468 of 2017
and
W.M.P(MD)No.19728 of 2017

J.Mathanagopal

... Petitioner

vs.

1. The Regional Passport Officer,
Madurai Region, Kochadai Road,
Madurai.
2. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
3. The Inspector of Police,
Thiruthangal Police Station,
Thiruthangal,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the 1st respondent dated 02.08.2017 in 1700008-CPC-MDU and issue a consequential direction to the respondent to release the petitioner's Passport No.M3795543 and quash the same.

For Petitioner : Mr.N.Dilipkumar
For R-1 : Mr.K.Asok Kumar Ram
Central Government Standing Counsel
For R2 & R3 : Mr.J.Gunaseelanmuthiah
Additional Government Pleader

O R D E R

In view of the pendency of criminal case in C.C.No.47 of 2018, before the learned Judicial Magistrate, Sivakasi, dated 27.02.2018, the petitioner's request for return back of his passport has been kept pending.

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

2. The pendency of an F.I.R. or a charge sheet may not be impediment for return back of a Passport. This Court had an

occasion to deal with this aspect in W.P.(MD) No.20335 of 2016 and the relevant portion of the order dated 19.04.2018 of the said writ petition reads as follows:

"6. The learned Assistant Solicitor General of India, on the other hand submitted that the decision to make the petitioner's surrendering of passport was based on three police verification reports and as such, there was no illegality in passing the impugned order. He would further submit that as on date, there is a charge sheet filed and the same is pending against the petitioner in which the petitioner has been arrayed as an accused and therefore, the case squarely attracts Section 10(3)(e) of the Indian Passports Act, 1967, even otherwise, the petitioner is involved in a criminal case causing huge loss to the Government and therefore, it is for the concerned trial Court to consider the petitioner's case for granting any orders to the passport authorities permitting him to leave the country.

7. I have given careful consideration to the submissions made by the respective counsels.

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.298(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."

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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.

15. In the instant case, it is seen that the petitioner was initially not arrayed as an accused in Crime No.618 of 2012. This fact was also backed by an order of the Judicial Magistrate dated 20.11.2015 passed in Crl.M.P(MD)No.5417 of 2015. The charge sheet came to be laid only on 07.09.2016 and the petitioner was then arrayed as an accused therein. In the interregnum, this Court by an order dated 06.08.2014, passed in W.P(MD).No.12894 of 2014 had also directed the passport authorities to pass a final order after calling for report from the police station.

16. When the passport authorities had issued a letter dated 03.08.2016, they have made an observation to the effect that criminal case in Crime No.618 of 2012 against the petitioner has already been charge sheeted. Curiously, the charge sheet was actually filed after about one month later on 07.09.2016. In view of this observation, I find some force in the submission of the learned counsel for the petitioner that the passport authorities had predetermined to issue the impugned order against the petitioner.

17. Yet another ground raised by the learned counsel for the petitioner is that after the charge sheet has been filed, the concerned Sessions Court is yet to take cognizance of the offence and that it is still in the P.R.C stage in P.R.C.No.32 of 2016 on the file of the learned Judicial Magistrate Court, Melur. The matter is yet to be committed to the Sessions Court and as such, the next question that arises for consideration is as to whether criminal proceedings pending against the petitioner herein, prior to taking of cognizance, could be deemed to be a criminal case warranting an adverse report.

18. This Court had an occasion to deal with the scope of the phrase "pendency of an FIR and proceedings in pre-cognizance stage" as evidenced in Section 10(3)(e) in a judgment reported in **2014 (2) CWC 684 (W.Jaihar William and others Vs.State of Tamil Nadu)** could be termed as proceedings pending before the Court. The relevant portion of the said order is as follows:-

18. From the materials available on record, this Court finds that the Applications submitted by the petitioners for passport were not



considered by the third 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 and 307 IPC. Since the FIRs are pending against the Petitioners, the third 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:

(a) & (b).....

(f) 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.P.C, it can be construed as "proceedings pending before the Court".

19. It is not in dispute that the case that is pending before the Judicial Magistrate, is yet to be taken cognizance by the Sessions Court and the case is still pending before the Judicial Magistrate in P.R.C.No.32 of 2016 and as such, it cannot be termed to be a pendency of criminal case. In view of the same, the provisions of the Indian Passports Act, 1967 may not be attracted. While that being so, it would not be appropriate to direct the petitioner to approach the "concerned court" to obtain an order by way of a



direction to enable him to get the relief before the passport authorities."

3. In view of the above observations, the respondent may not be justified in keeping the petitioner's Passport bearing No.M3795543, indefinitely. At this juncture, the learned counsel for the petitioner submitted that the petitioner's passport has already been confiscated and it is now with the custody of the first respondent herein.

4. In the result, the writ petition is allowed and the impugned order in 1700008-CPC - MDU dated 02.08.2017 passed by the first respondent is set aside. The petitioner is granted liberty to make appropriate application seeking for issuance of No Objection Certificate and for return of his passport before the concerned Judicial Magistrate, namely the Judicial Magistrate, Sivakasi before whom C.C.No.47 of 2018, is pending and on such application, the concerned Judicial Magistrate shall pass necessary orders within two days thereafter. Consequently, the petitioner is directed to produce the No Objection Certificate, if granted by the learned Judicial Magistrate, before the first respondent and on receipt of such No Objection Certificate from the petitioner, the first respondent shall return back the passport of the petitioner forthwith. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To:

1. The Regional Passport Officer,
Madurai Region, Kochadai Road,
Madurai.
2. The Superintendent of Police,
Virudhunagar District, Virudhunagar.
3. The Inspector of Police,
Thiruthangal Police Station,
Thiruthangal, Virudhunagar District.

+ 1 CC TO Mr.N.DILIP KUMAR, ADVOCATE IN SR No. 74870
+ 1 CC TO Mr.K.ASHOK KUMAR RAM, ADVOCATE IN SR No. 74373
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 74682

DAS

TE/RP/SAR-1 : 01/08/2018 : 7P/7C