

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.4474 of 2018
and
Crl.M.P.No.2134 of 2018

Jeeva

...Petitioner

Vs.

1. The Regional Passport Officer,
Regional Passport Office,
Thiruchirapalli.

2. The Inspector of Police,
Nagapattinam Police Station,
Nagapattinam District.

...Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to direct the first respondent to re-issue the petitioner's Passport bearing Passport No.G 8156923 by renewing it.

For Petitioner : Mr.S.Saravanakumar

For Respondent : Mr.J.Madana Gopal Rao (CGSC) for R1
Mr.C.Iyyapparaj for R2
Additional Public Prosecutor

O R D E R

This petition is filed to direct the first respondent to re-issue the petitioner's Passport bearing Passport No.G 8156923 by renewing it.

2. When the petitioner herein had made an application on 31.08.2017 seeking for re-issuance of passport, notice dated 02.02.2018 was sent to the petitioner by the first respondent herein stating that he has suppressed the pendency of the criminal case in Crime No.333 of 2017, which has been registered against him for the offence under Sections 147, 148, 294(b), 323, 324, 506(ii), 397, 307 of IPC and 3(1) of TNPPDL Act.

3. The learned counsel for the petitioner submitted that the criminal case was registered on 03.09.2017 and that on the date of the application i.e., 31.08.2017, the complaint was not registered. Therefore, it could not be considered as suppression of fact.

4. The learned Additional Public Prosecutor submitted that in respect of the criminal case in Crime No.333 of 2017, charge sheet has been laid and now taken on the file vide SC.No.192 of 2018 on the file of learned Chief Judicial Magistrate, Nagapattinam. With regard to power of the authorities to re-issue the passport, this Court in an order passed in W.P.(MD). No.14808 of 2018 dated 26.07.2018, had relied upon the Notification of the Ministry of External Affairs dated 21.08.2014 and held that pendency of the criminal case will not be an embargo for issuance of passport No.G8156923. The relevant portion of the order reads as follows:

"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 Passport 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 14.04.1976, 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 21.08.2014 read with Section 10(3)(e) of the Indian Passport 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 criminal 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."

5. In the light of the above observation, this Court is of the view that the refusal to re-issue the passport cannot be sustained on the ground that a criminal case is pending.

6. Even without reference to the aforesaid position, the first respondent herein has filed a counter affidavit dated 16.03.2018 in which, it has been specifically stated that the passport facilities shall be restored to the petitioner on his submitting a fresh application for re-issuance of the original passport No. G8156923 dated 17.04.2008 with correct particulars. In view of the above averments made in the counter affidavit, the petitioner is granted liberty to submit a fresh application for re-issuance in continuation of his passport No. G8156923 with correct particulars and on receipt of such application, the first respondent shall consider the same, as expeditiously as possible, in any event, within a period of four weeks from the date of receipt of a copy of this order. While issuing such passport, the first respondent shall insist necessary affidavit

of undertaking in writing by the petitioner or impose any other reasonable restrictions.

7. Accordingly, the Criminal Original Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vkr/ssr

To

1. The Regional Passport Officer,
Regional Passport Office,
Thiruchirapalli.
2. The Inspector of Police,
Nagapattinam Police Station,
Nagapattinam District.
3. The Additional Public Prosecutor,
High Court of Madras.

+1 cc to Mr.J.Madana Gopal Rao, Advocate, S.R.No.83026

+1 cc to M/s.S.Saravana Kumar, Advocate, S.R.No.82177

Crl.O.P.No.4474 of 2018
and
Crl.M.P.No.2134 of 2018

LN(CO)
SSM(23/10/2019)

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