

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17410 of 2016

Dr.L.Prakash

... Petitioner

-vs-

Union of India rep by
Regional Passport Officer
RPO, Royala Towers
Anna Salai
Chennai 600 006

... Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondent to issue passport in application no.MA2078560239915 dated 29.5.2016.

For Petitioner::Mr.B.Natarajan

For Respondent::Mr.D.Simon
Central Government Standing Counsel

ORDER

This writ petition has been filed by Dr.L.Prakash seeking issuance of a mandamus directing the Regional Passport Officer, Anna Salai, Chennai to issue a passport to the petitioner on the basis of his application dated 29.5.2016.

2. Learned counsel for the petitioner submitted that an application dated 23.5.2015 with necessary payment was made before the respondent for issuance of passport in File No.MA2078560239915. The respondent also sent a letter dated 27.11.2015 seeking certain clarifications regarding adverse police report. Accordingly, the petitioner also approached the respondent in person and explained the details as asked for. Since the respondent had to rely upon the police verification report, again directed the police to do another verification. It was found that the petitioner was convicted in two cases i.e., in the year 2008 (6.2.2008) and in the year 2009 (21.5.2009). However, the conviction and sentence passed in the first case, namely, C.C.No.217 of 2002 were set aside by the

appellate Court in Crl.A.No.3198 of 2009 dated 23.6.2010. But in the second case, namely, S.C.No.9 of 2004, on being challenged, the conviction and sentence were modified by this Court in Crl.A.No.770 of 2011 dated 24.4.2015 directing the payment of fine amount of Rs.1,19,000/-. Citing the said reason, the respondent is not coming forward to consider the petitioner's application, as a result he has been put to grave prejudice and irreparable loss. As the conviction and sentence passed by the trial Court in the second case have been modified by the appellate Court into one of fine/penalty, it cannot be construed as an adverse order. Therefore, a direction be issued to the respondent to consider the petitioner's application for issuance of passport, he pleaded.

3. A counter affidavit has been filed by the respondent. The learned Central Government Standing Counsel for the respondent submitted that it is an admitted case that the petitioner was repeatedly convicted by the trial Court in the two cases. Although the conviction and sentence passed in C.C.No.217 of 2002 were set aside in Crl.A.No.3198 of 2009 on 23.6.2010, in respect of the second case in S.C.No.9 of 2004, the conviction and sentence were only modified by the appellate Court on 24.4.2015 in Crl.A.No.770 of 2011 directing the payment of fine amount of Rs.1,19,000/-. Hence, by virtue of Section 6(2)(e) of the Passports Act, the petitioner is not entitled to the relief as sought for in the writ petition.

4. To answer the prayer made by the petitioner, it is relevant to extract Section 6(2)(e) of the Passports Act, 1967 as follows:-

"6. Refusal of passports, travel documents, etc.--(1)....

(a) to (d)....

(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) to (d)....

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) to (i)..."

5. A perusal of the same clearly shows that if an applicant seeking passport has suffered any conviction at any time during the period of five years immediately preceding the date of his application by a Court in India for any offence involving moral turpitude and sentenced in respect thereof for not less than two years, the application made by such person cannot be considered. In the present case, the order passed by this Court in Crl.A.No.770 of 2011 on 24.4.2015, which is extracted herein below,

"1. that the conviction of, and the sentence passed upon the said accused namely Dr.L.Prakash, 50 years S/o T.S.Lakshmanan, be and hereby are modified and the said accused acquitted upon payment of fine amount Rs.1,19,000/- (Rupees one lakh and nineteen thousand only);
2. that the said Accused Dr.L.Prakash S/o T.S.Lakshmanan be forthwith discharged from custody unless he is liable to be detained in custody for some other cause.",

clearly shows that the conviction and sentence were modified upon payment of fine amount of Rs.1,19,000/-. Besides the petitioner was also acquitted upon payment of the fine amount of Rs.1,19,000/-. Therefore, this Court is inclined to accept the prayer made by the petitioner. Accordingly, the writ petition is disposed of directing the respondent to consider the application of the petitioner for issuance of passport on merits and in accordance with law, without reference to Section 6(2)(e) of the Passports Act, 1967. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Regional Passport Officer
Regional Passport Office
Royala Towers
Anna Salai
Chennai 600 006

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2.The I Additional District and Sessions Judge,
(FTC-5), Chennai.

3.The Assistant Commissioner of Police (L & O),
T.Nagar Range,
R-8, Vadapalani Police Station,
Chennai.

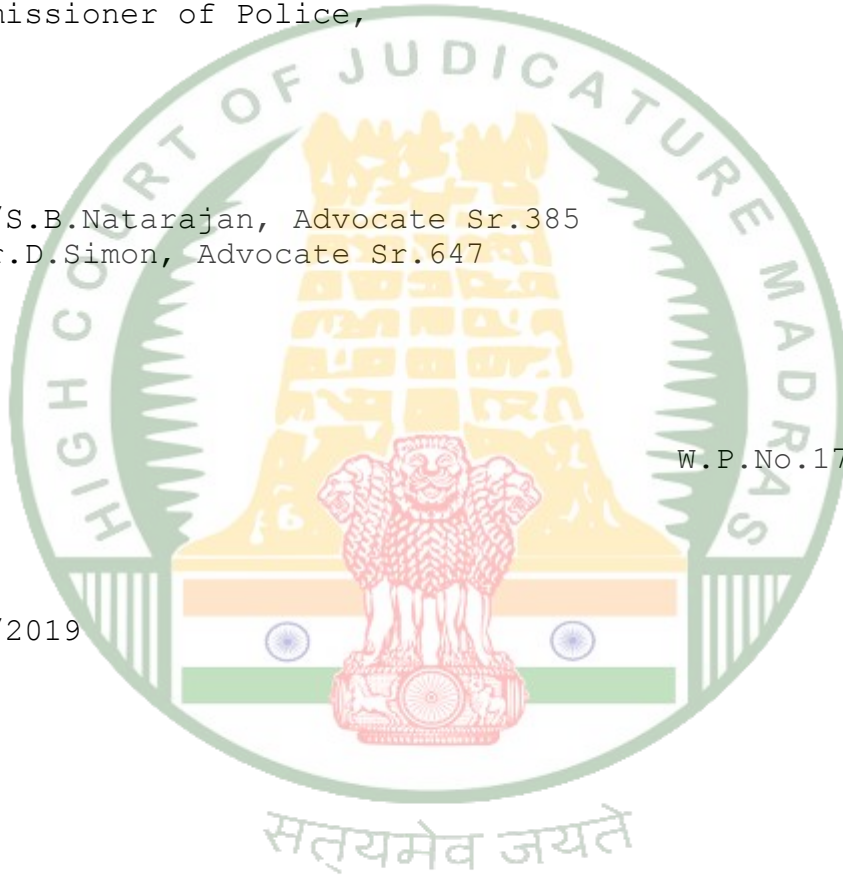
4.The Public Prosecutor,
High Court, Madras.

5.The Commissioner of Police,
Chennai.

+lcc to M/S.B.Natarajan, Advocate Sr.385
+lcc to Dr.D.Simon, Advocate Sr.647

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