

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.19248 of 2019

A.Gurusamy

...Petitioner

-Vs-

- 1.The Sup Inspector of Police,
Sivagiri Police Station,
Sivagiri,
Erode District.
- 2.The Circle Inspector,
Kudumudi Police Station,
Kudumudi,
Erode District.
- 3.The Regional Passport Officer,
Regional Passport Office,
1st Floor, Corporation Commercial Complex,
Opp. Thandumarriamman Koil,
Avinashi Road,
Coimbatore-641 018. ... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 08.05.2019 made in CMP.No.1299 of 2019 in C.C.No.68 of 2016 on the file of the District Munsif Cum Judicial Magistrate Court-Kodumudi enabling the petitioner to go abroad for his treatment by appreciating the above stated facts and circumstances.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mr.C.Raghavan
Government Advocate.

WEB COPY
ORDER

This petition has been filed challenging the order passed by the Court below rejecting the application filed by the petitioner to direct the Regional Passport Officer, Coimbatore, to issue fresh passport to enable the petitioner to travel abroad for medical treatment.

2.The petitioner had approached this Court by filing W.P.No.12507 of 2019 and this Court by an order dated 26.04.2019 allowed the writ petition. The relevant portion of the order is extracted here under:

"3.The case of the petitioner is as follows:

He had obtained a passport from the respondent bearing passport No.H5463018. He lost the passport on 03.01.2019. He lodged a complaint before the Tamilnadu Police on 29.01.2019. The petitioner applied for reissue of passport in online before the respondent on 29.01.2019. on 14.02.2019, a notice was issued by the respondent stating that there has been a suppression of pending criminal proceedings in Crime No.9 of 2018 and Crime No.26 of 2016 on the file of the Sivagiri Police Station and District Cum Judicial Magistrate Court, Kudumudi, respectively. The petitioner is suffering from "Fungal Cornel Ulcer" in his left eye and undergoing treatment in Aravind Eye Hospital, Coimbatore. The recent treatment warrants the petitioner to go for further treatment to Malaysia, as the condition of the disease has worsen and the petitioner is at the verge of losing his left eye sight. Therefore, the respondent may be directed to reissue the passport to the petitioner.

4.Learned counsel appearing for the respondent submitted that since the criminal cases are pending against the petitioner, he has to obtain permission from the Court so as to enable his to reissue the passport.

5.This Court has already considered similar issue, where the criminal cases are pending and directed the petitioner therein to approach the criminal Court and seek for permission to go abroad. Therefore, in this case also, the petitioner has to only approach the Criminal Court, where the case is pending and seek for permission. Since it is sated that the petitioner is suffering with some eye problem and he needs treatment at abroad, the petitioner is granted permission to approach the concerned criminal Court, where the criminal cases are pending and file appropriate application within the period of seven days from the date of receipt of a copy of this order. If any such application is filed, the concerned Criminal Court shall dispose of the said application on merits and in accordance with law, within a period of seven days thereafter, While considering the application filed by the petitioner, the Criminal Court shall take note of the health condition as

stated by the petitioner and issue appropriate orders. Granting such liberty to the petitioner, this writ petition is disposed of. No costs."

3. Pursuant to the order passed by this Court the petitioner has filed an application before the learned Judicial Magistrate No. II, Erode, seeking for permission to go abroad for medical treatment and the same was allowed by the learned Judicial Magistrate, No. II, Erode, by imposing certain conditions, by an order dated 15.05.2019.

4. The petitioner also filed a similar application before the learned District Munsif Cum Judicial Magistrate Court-Kodumudi, and the learned Judicial Magistrate rejected the application by an order dated 08.05.2019. Aggrieved by this order, the present petition has been filed before this Court.

5. The learned counsel for the petitioner submitted that the Court below went wrong in rejecting the application filed by the petitioner. The learned counsel further submitted that the Court below did not take into consideration the fact that fresh passport can be obtained only after getting permission from the concerned Court, where the criminal proceedings are pending, in accordance with section 6 (2) (f) r/w Section 22 of the Passport Act, r/w notification No GSR 570 E, dated 25.08.1993.

6. The learned counsel in order to substantiate his submissions, brought to the notice of this Court, the reported judgment in the case of N. Chandrababu Versus The sub Inspector of Police, Trichy-620 001 reported in 2017 (3) CTC 493. The learned counsel concluded his arguments by submitting that the petitioner approached the learned Judicial Magistrate No. II, Erode, for the very same purpose, since another criminal proceeding was pending before that Court and the learned Judicial Magistrate has applied the law correctly and allowed the said application filed by the petitioner.

7. Heard, the learned Government Advocate appearing on behalf of the respondent police.

8. In the considered view of this Court, the learned District Munsif Cum Judicial Magistrate Court-Kodumudi, erred in rejecting the application filed by the petitioner. The learned Judicial Magistrate was not aware of the fact that only with the permission of the Court, the petitioner can get a new passport and can depart from India. This is very clear from the judgment that has been cited by the learned counsel for the

petitioner.

9. In view of the above, this Court has no hesitation in interfering with the order passed by the Court below and accordingly the order passed in C.M.P No.1299 of 2019, dated 08.05.2019, is hereby set aside.

10. This Criminal Original Petition is allowed and the learned District Munsif Cum Judicial Magistrate Court-Kodumudi, is directed to entertain the petition filed by the petitioner and grant necessary permission by imposing conditions. For this purpose, the learned District Munsif Cum Judicial Magistrate Court-Kodumudi, can take note of the order passed by the learned Judicial Magistrate No.II, Erode, in C.M.P.No.2562 of 2019, for the very same petitioner and pass similar orders. This process shall be completed within a period of 10 days from the date of filing of the application by the petitioner before the Court below.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif Cum Judicial Magistrate Court, Kodumudi.
2. The Judicial Magistrate II, Erode.
3. Do thro the Chief Judicial Magistrate, Erode District
4. The Sup Inspector of Police,
Sivagiri Police Station,
Sivagiri,
Erode District.
5. The Circle Inspector,
Kudumudi Police Station,
Kudumudi,
Erode District.
6. The Regional Passport Officer,
Regional Passport Office,
1st Floor, Corporation Commercial Complex,
Opp. Thandumarriamman Koil,
Avinashi Road, Coimbatore-641 018.

7. The Public Prosecutor,
High Court, Chennai - 104.

+1cc to Mr.M.Guruprasad , Advocate SR.No. 62697

CrI.O.P.No.19248 of 2019

A.SK(24/07/2019)