

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.03.2019
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
WP. No.18482 of 2017

Zubair Hassan

...Petitioner

Vs

The Regional Passport Officer,
Regional Passport Office,
Chennai Royalla Tower,
No.2 & 3, 4th Floor Annasalai,
Chennai - 600 002.
... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Mandamus to direct the respondent to take into record the reply sent by the petitioner dated 16.06.2017 and to issue passport to the petitioner within a stipulated period framed by this Court.

For Petitioner : Mr.S.A.Shuhaibb for
Mr.A.Raja Mohamed
For Respondent : Mr.B.Ramaratnam,
Central Government Standing Counsel

O R D E R

The Writ petitioner has sought the issuance of a Passport by filing of an appropriate application on 30.03.2017 before the Regional Passport Officer/respondent.

2. A Passport bearing No.J5773677 was issued on 02.06.2011, valid till 28.05.2015. Upon expiry, the petitioner sought renewal of the Passport before the respondent through online application dated 30.03.2017 with all necessary annexures and fee. Personal verification was completed, pursuant to which the petitioners' application was forwarded for police verification

3. The respondent vide communication dated 02.06.2017 brought to the notice of the petitioner, the adverse Police Verification Report stating 'Facing Criminal Charges' corresponding to the petitioners' application dated 06.04.2017. The explanation of the petitioner was called for, to be filed

within 30 days. The petitioner filed reply dated 16.06.2017 as follows:

'Furthermore, I solemnly affirm that:

I have not been charged with criminal proceedings nor is there any arrest warrant or summon pending before any court of law in India against me.

During the 5 years immediately preceding the date of this application, I have not been convicted by any court of Law in India for any criminal offence and sentenced to imprisonment for two years or more.'

4. It appears that on 23.12.2015, there was a clash between two groups of person, one led by the petitioners' father and the other by a third party, concerning a religious issue. Consequent thereupon, a First Information Report (FIR) was registered against all those involved in the quarrel. The FIR has been registered on 23.12.2015 in Crime No.1662/2015 under Sections 147, 148, 117, 153A, 295A, 355, 353 and 506-II IPC.

5. According to the petitioner, the investigation is still under progress. Pursuant to the registration of FIR, no charge sheet has been filed and no proceedings have been taken up by the concerned police officials. This fact has also been confirmed in counter filed by the respondent wherein, at page 3, Cr. No.1662 of 2015, is referred to. It is thus clear that the only proceeding pending before the police is a FIR which is preliminary, and cannot, at any event, be constituted as pendency of criminal proceedings. This position is settled by a series of decisions as follows:

'(i) 1998 SCC Online Cal 181: [1998] 2 Cal LT 415 (Shree Pradeed Kundalia V. Union Of India and others];

(ii) 2004 Crl.L.J.1281 (Abhijit Sen Vs. Superintendent (Administration), Regional Passport Officer and others);

(iii) 2014 SCC Online Mad 2900 [WP (MD) No.8343/2014 etc., batch dated 27.06.2014] [W.Jaihar William and others Vs. The State of Tamil Nadu rep. by its Secretary to Government, Home Department, Fort St. George, Chennai 600 009];

(iv) AIR 1962 Cal 135 [A.K.Roy V. State of West Bengal];

(v) AIR 1957 Cal 379 [Parulbala Sen Gupta Vs.

State]; and

(vi) AIR 1967 SC 1836 [Satwant Singh Sawhney v. D.Ramarathnam, Assistant Passport Officer & Others];'

A Division Bench of this Madras Bench of this Court in the case of Arumugam Vs. The Regional Passport Officer, Madurai Region Passport Officer, [W.A(MD) No.301 of 2018] takes into consideration the aforesaid judgments coming to the conclusion that mere pendency of an FIR cannot be construed as pendency of Criminal Proceedings. Until & unless cognizance has been taken by the concerned Magistrate, it cannot be said that criminal proceedings are pending.

6. In the light of the admitted position in the present case that only an FIR has been registered, that too, as early as on in 2015 and no further progress is seen in the matter, the petitioner is entitled to succeed in this Writ Petition.

7. Accordingly, the Writ Petition is disposed of directing the respondent to process the passport application in the light of the observations above and communicate the decision within a period of four (4) weeks from the date of receipt of the copy of this order. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1.The Regional Passport Officer,
Regional Passport Office,
Chennai Royalla Tower,
No.2 & 3, 4th Floor Annasalai,
Chennai - 600 002.

2.Inspector of Police, H6 Police Station, R.K. Nagar,
Vannarapettai.

+3ccs to Mr.A.Raja Mohamed, Advocate sr.no.26913

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nr 27/03/2019