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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM:

THE HON'BLE MR. JUSTICE P.D.AUDIKESAVALU

W.P. No. 28218 of 2018

Dilbet Saravana Coumar

... Petitioner

-vs-

- 1.The Regional Registration Office
Department of Immigration,
House No.1, Re-Survey No.23/6,
G Plot, 2nd Main Road, II Cross,
Navasakthi Nagar, Koundanpalayam,
Vazhuthavoor Road, Puducherry.
- 2.Foreign Regional Registration Office
Bureau of Immigration
Haddows Road, Subha Road Avenue,
Shastri Bhavan - Nungambakkam,
Chennai - 600 006.
- 3.The Superintendent of Police,
(Pondicherry East)
Jawaharlal Nehru Street
Next to Traffic Police Station
Puducherry - 605 001.
- 4.The Station House Officer
Grand Bazaar Police Station
Puducherry.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, directing the First and Second Respondents not to insist on the "Non Conviction Certificate" from the Fourth Respondent in the course of processing the petitioner's Exit Visa Papers vide Appln No.1804188FVMVO & Notarized Affidavit dt 18th July 2018.

For Petitioner : Mr. V. Raghavachari
for Mr. AR.M. Arunachalam

For Respondents : Mr. P. Ayyaswamy
Central Govt. Standing Counsel (R1&R2)
Mr. G. Bharath Chakravarthi
Public Prosecutor (Pondicherry)
(R3 & R4)



ORDER

Heard Mr. V. Raghavachari, Learned Counsel for the Petitioner, Mr. P. Ayyaswamy, Learned Central Government Standing Counsel appearing for the First and Second Respondents, and Mr. G. Bharath Chakaravarthy, Learned Public Prosecutor (Pondicherry) appearing for the Third and Fourth Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, though born in India, is a French National and holds French Passport bearing No. 14AF50756. The marriage of the Petitioner with one Dhanalakshmi was solemnized on 03.11.2014 at Puducherry during one of his visits to India. The Petitioner and the said Dhanalakshmi had come down to India on 01.05.2015 and at that time, the said Dhanalakshmi had lodged a criminal complaint in FIR No.95 of 2015 with the Fourth Respondent, viz., the Station House Officer, Grand Bazaar Police Station, Puducherry against the Petitioner alleging commission of offences under Sections 323, 324 and 506(ii) of the Indian Penal Code. After filing charge-sheet, the Petitioner was prosecuted for the said offences in C.C. No. 13 of 2016 before the Chief Judicial Magistrate, Puducherry. According to the Petitioner, during the pendency of that criminal case, the Fourth Respondent had seized his aforesaid French Passport, which was neither filed nor marked as exhibit in the proceedings in the Criminal Court. The Petitioner was ultimately acquitted in that criminal case and the appeal preferred against the same by the said Dhanalakshmi in C.A. No. 27 of 2017 was dismissed by judgment dated 11.06.2018 passed by the Principal Sessions Judge, Puducherry. The passport that had been seized by the Fourth Respondent from the Petitioner had been returned to him after an ordeal and that too, only pursuant to the order dated 19.12.2017 in CrI. O.P. No. 24152 of 2017 passed by this Court. At that stage, when the Petitioner made an application to the First Respondent, viz., the Regional Registration Officer, Department of Immigration, Puducherry, for Exit Visa so as to enable him to leave India, he was required to produce Non-Conviction Certificate duly signed and stamped by the Third and Fourth Respondents for both the addresses of his stay under the Orleanpet and Grand Bazar Police Stations clearly mentioning that there was no criminal case was pending till then. Aggrieved by that requirement, the Petitioner has filed this Writ Petition to direct the First and Second Respondent not to insist on the Non-Conviction Certificate from the Fourth Respondent for the purpose of processing his Exit Visa Papers vide Application No. 1804188 FVMVO.



3. After service of notice, the First and Second Respondents have filed Counter Affidavit dated 10.12.2018 stating that the Petitioner was required to produce the aforesaid Non-Conviction Certificate on account of the legal notice dated 04.09.2018 that had been received from one Mr. M. Vaikunth, Advocate, on the instructions from the said Dhanalakshmi, complaining that a domestic violence case in DVOP No. 4 of 2017 preferred by her against the Petitioner before the Chief Judicial Magistrate, Puducherry, was pending, apart from Crl. R.C. No. 961 of 2018 before this Court against the judgement dated 11.06.2018 in C.A. No. 27 of 2017 passed by the Principal Sessions Judge, Puducherry.

4. Learned Public Prosecutor for Puducherry appearing for the Third and Fourth Respondents has filed a Memo dated 16.09.2019 stating that Crl. R.C. No. 961 of 2018 has been subsequently dismissed by this Court by an order dated 06.09.2019 and that the complaint against the Petitioner in DVC No. 4 of 2017 before the Chief Judicial Magistrate, Puducherry, is pending at the stage of service of summons. Another memo dated 19.09.2019, has been filed by the Public Prosecutor for Puducherry, stating that all along, the Petitioner has been absent in the known address for service and had been taking up temporary employments in Hyderabad, Delhi etc., and as such his address could not be traced out to serve the summons in DVC No. 4 of 2014 before the Chief Judicial Magistrate, Puducherry.

5. Learned Counsel appearing for the Petitioner referring to para 5 of the Foreigners' Order, 1948, contends that having due regard to the facts involved in this case, the First Respondent could refuse to grant permission to the Petitioner to depart from India only if the Petitioner was required in India to answer a criminal charge or his departure had been prohibited under an order issued by a Competent Authority, and in the absence thereof, such leave could not be refused. In order to buttress that submission, he relies on the decision of this Court in K. Rajendran -vs- Ambikavathy [(2013) 2 MLJ 406] in which it has been held that though proceedings under the Protection of Women from Domestic Violence Act, 2005, are conducted before the Criminal Court, the reliefs granted under that enactment are purely civil in nature, meaning thereby that the pendency of the proceedings initiated by the said Dhanalakshmi in DVC No. 4 of 2017 before the Chief Judicial Magistrate, Puducherry, cannot be construed as a requirement for the presence of the Petitioner in India to answer a criminal charge. Insofar as the prosecution launched by the Fourth Respondent against the Petitioner in C.C. No. 13 of 2016 before



the Chief Judicial Magistrate, Pondicherry is concerned, it is highlighted that the same has ended in acquittal of the Petitioner, which has been confirmed in appeal and revision and as such, there is no more necessity for the presence of the Petitioner in India. It is also brought to the notice of this Court that the said Dhanalakshmi was unsuccessful to secure an order to issue Look Out Circular against the Petitioner as could be seen from the order dated 06.06.2018 in Crl. O.P. No. 10622 of 2018 passed by this Court.

6. As noticed earlier, the only reasons stated by the First Respondent for refusing permission to the Petitioner to leave India was the pendency of the following legal proceedings:-
(i) Crl.R.C.No. 961 of 2018 before this Court; and
(ii) DVC No.4 of 2017 before the Chief Judicial Magistrate, Puducherry.

It is accepted by the Learned Public Prosecutor appearing for the Third and Fourth Respondents that Crl.R.C.No.961 of 2018 has been dismissed by this Court by an order dated 06.09.2019 confirming the acquittal of the Petitioner in the criminal charges made against him in C.C. No. 13 of 2016 on the file of the Chief Judicial Magistrate, Pondicherry. It would necessarily follow that the said legal proceedings is no longer an hindrance to refuse permission to the Petitioner to leave India. Coming to the pendency of the case in DVC No. 4 of 2017 before the Chief Judicial Magistrate, Puducherry, as rightly pointed out by the Learned Counsel for the Petitioner, it has been held by this Court in the decision in K. Rajendran -vs- Ambikavathy [(2013) 2 MLJ 406] that the proceedings under Protection of Women from Domestic Violence Act, 2005, are civil in nature as the reliefs claimed do not relate to requiring the Petitioner to answer any criminal charge levelled against him. That apart, it is not the case of the First Respondent that the departure of the Petitioner from India has been prohibited under any order by that Court or by any other Competent Authority till the disposal of that legal proceeding. No other reason has been disclosed by the First and Second Respondents to refuse permission to the Petitioner to leave India.

7. In this incontrovertible fact situation coupled with the legal position mentioned supra, it is incumbent upon the First Respondent to take into account the aforesaid conclusions arrived by this Court in respect of the contentions raised by the First Respondent in the Counter Affidavit dated 10.12.2018 filed in this Writ Petition and expeditiously process the application made by the Petitioner for grant of Exit Visa to



leave India, in accordance with law. The Writ Petition is ordered on the aforesaid terms. No Costs.

Sd/-

Assistant Registrar(CS II)

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//True Copy//

Sub Assistant Registrar

To

- 1.The Regional Registration Office
Department of Immigration,
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- 4.The Station House Officer
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+1 cc to M/s.AR.M.Arunachalam,Advocate Sr.No. 99292

AKM/07.01.2020/5P-6C /

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