

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.33250 of 2018

S.Dhamodaran

.. Petitioner

Vs.

1. The Chief Passport Officer,
CPV Division, Ministry of External Affairs,
Room No.8, Patiala House,
Tilak Marg, New Delhi-110 001.
 2. The Regional Passport Officer,
Regional Passport Office,
Royola Towers, No.2 and 4th Floor,
Old No.785, New No.188,
Anna Salai, Chennai-600 002.
- .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent in Letter Ref.No.CNO/307865967/18, dated 20.11.2018 and quash the same and consequently direct the second respondent to renew the passport of the petitioner in Passport No.G7878641.

For Petitioner : Mr.P.Kannan Kumar

For Respondents : Mr.V.Ashok Kumar, ACGSC

O R D E R

Challenge is laid to the order of the second respondent dated 20.11.2018 in Letter Ref.No.CNO/307865967/18 seeking a consequential direction to the second respondent to renew his passport in Passport No.G7878641.

2. Heard Mr.P.Kannan Kumar, learned counsel appearing on behalf of the petitioner and Mr.V.Ashok Kukmar, learned Assistant Central Government Standing Counsel appearing on behalf of the respondents.

3. The petitioner submitted that on 03.04.2008, he obtained a passport from the second respondent which was valid till 02.04.2018. Hence, he submitted a representation on 05.06.2018 seeking for renewal of the same. Since there was no response, he sent an e-mail to the External Affairs Ministry, which came to be forwarded to the second respondent, for further action. Resultantly, the second respondent asked him to appear for an enquiry, which he complied with. Since there was no reply, he filed W.P.No.21888 of 2018, which was disposed of by this Court on 27.08.2018 directing the respondents to consider his renewal application in accordance with law. Thereafter, the impugned order came to be passed by the second respondent on the ground that a criminal case in C.C.No.427 of 2015 is pending on the file of the Judicial Magistrate Court, Tambaram. Challenging the same, the petitioner is before this Court.

4. Refuting the allegations, a counter affidavit dated 22.01.2019 was filed by the respondents.

5. The learned counsel for the petitioner submitted that the act of the petitioner in not disclosing the pending criminal case is an inadvertent one, that too pertaining to a criminal case that has been falsely foisted against him by his sister-in-law and he filed a petition to quash the said proceedings before this Court, wherein, an order of interim stay was granted. Hence, on that sole ground his right to travel cannot be curtailed.

6. Admittedly, the petitioner suppressed the criminal case in C.C.No.427/2017 on the file of the Judicial Magistrate Court, Tambaram, pending against him. According to him, it pertains to a quarrel within the family and even this Court has granted the interim relief of stay. Though it is claimed that it is not deliberate, but only inadvertently he failed to disclose the pending criminal case, that will not absolve him from the liability of suppression. The veracity of the allegations in the criminal case cannot be decided by this Court and it is for the trial Court to appreciate the evidence available on record.

7. At this juncture, it is relevant to be stated that the notification in G.S.R.570(E), dated 25.08.1993 issued by the Ministry of External Affairs, Government of India, mandates certain conditions for permitting a citizen of the country, against whom proceedings are pending before a criminal court in India to fly abroad. The said notification is usefully 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 (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298 (E), dated the 14th April, 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 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

(v) 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."

8. In *Satwant Singh Sawhney Vs. D.Ramarathnam*, Assistant Passport Officer and others, AIR 1967 SC 1836, it is specifically held that travelling to a foreign country is also a fundamental right and refusal to issue passport or withdrawal of the same would certainly violate Articles 14 and 21 of the Constitution of India. In the light of the above facts, it is admitted by the petitioner that suppression of the pendency of the criminal case against him and as already pointed out this Court had granted stay.

9. In view of the the legal position, the impugned order of the second respondent warrants interference.

10. In the result, this writ petition is allowed and the impugned order dated 20.11.2018 is set aside. The second respondent is directed to issue the passport to the petitioner in accordance with law, if otherwise the application is in order within a period of four weeks from the date of receipt of a copy of this order, in terms of GSR 570(E), dated 25.08.1993. The petitioner is also directed to inform the Judicial Magistrate, Tambaram, where the criminal case is pending, about his itinerary well in advance and he should make himself available before the said Court on the effective dates of hearing without fail. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

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VSN II(CO)
GMY(18/02/2019)