



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P. (MD) No.13487 of 2019

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Naveenkumar

... Petitioner

Vs.

1.The Regional Passport Officer,
The Regional Passport Office,
Pass port Seva Kendra,
Kochadai,
Madurai District.

2.The Regional Passport Officer,
The Regional Passport Office,
Bharathi Ula Road,
Race Course Road,
Madurai District.

... Respondents

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to reissue passport with the charge of emigration check not required to the petitioner within the time within the time fixed by this Court.

For Petitioner : Mr.K.Selvam

For Respondents : Mr.V.Kathirvelu, ASG Asst.by

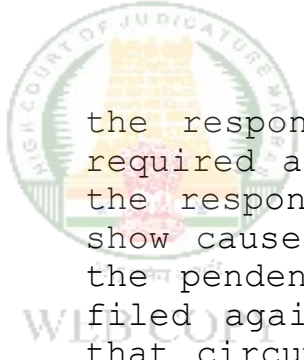
Ms.V.Raghaventhari, CGSC

ORDER

The prayer in the Writ petition is for a Writ of Mandamus, directing the respondents to reissue passport of the petitioner with Emigration Check not required, within a time frame.

2.Heard Mr.K.Selvam, learned counsel appearing for the petitioner and Mr.V.Kathirvelu, learned Assistant Solicitor General appearing for the respondents.

3.According to the learned counsel for the petitioner, the petitioner is the holder of the passport No.E6164894 and the said passport was issued with an endorsement Emigration Check not required, for the period from 2003 to 2013. Using the passport, the petitioner had gone abroad for job. Subsequently, for the further period, for want of the Emigration Check not required, the petitioner had made an application on 09.04.2019 and 22.05.2019 to



the respondents to get the endorsement of Emigration Check not required and since the same has not been considered and in fact, the respondents issued a show cause notice on 29.05.2019 asking show cause from the petitioner, since he has allegedly suppressed the pendency of the criminal case, where charge sheet has been filed against him before the competent criminal Court, only in that circumstances, the petitioner has approached this Court with the aforesaid prayer.

4.The learned Assistant Solicitor General appearing for the respondents, on instruction, would submit that, when the petitioner made the said application to the respondents for having the endorsement of Emigration Check not required and when it was scrutinized, the respondents received information that, the petitioner allegedly involved in a criminal case and in this regard, the criminal case is pending in C.C.No.397 of 2016 which means, charge sheet has been filed against him and the same is pending before the learned Judicial Magistrate, Sivagangai for trial.

5.When that being the position, it is not open to the petitioner to directly approach the respondents Department to make an endorsement that Emigration Check not required in his passport and if it all the petitioner wants such facility, he should approach the concerned Court and get an order to that effect for a particular period. Such kind of facility can be extended to the petitioner only on production of the Court order, based on which, the respondents authority can consider and pass necessary orders to that effect.

6.In support of his contention, the learned Assistant Solicitor General has relied upon the notification issued by the Ministry of External Affairs, Government of India, in GSR 570(E) dated 25.08.1993, where he relied upon Clause a(i), which reads thus -

"(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."

7.By relying upon the said notification, the learned Assistant Solicitor General submits that, in view of the said notification issued by the Government of India, there must be a specified period in the order of the Court concerned on specific application to be made in this regard by the passport holder or an applicant seeking passport and only based on the order to be passed by the concerned Court, accordingly, necessary orders would be passed for issuing passport or for renewing passport with the endorsement as has been sought for by the petitioner in this case.



8. I have considered the said submissions made by the learned counsel for the petitioner as well as the learned Assistant Solicitor General appearing for the respondents.

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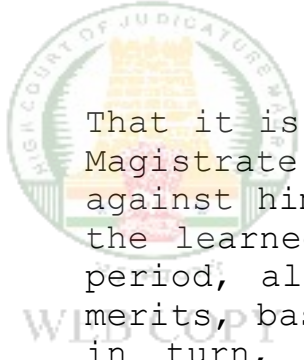
9. No doubt true that, the petitioner is a passport holder and he originally, was enjoying the facility of Emigration Check not required and subsequently, the same was withdrawn. When the petitioner made an application to reissue or re-extend such facility, on enquiry, the respondents came to know that a criminal case is pending against him and therefore, in order to get explanation to that effect, the notice has been issued on 29.05.2019.

10. Moreover, when a criminal case is pending, that too, at the stage of trial, as the charge sheet has already been filed, definitely, it is an impediment for issuing passport or releasing the passport with an endorsement of Emigration Check not required, otherwise, the emigration people, without such endorsement, if the petitioner wants to use the passport and go abroad, they will issue look out notice on the ground that, the criminal case is pending against the petitioner.

11. In order to overcome this issue, it is for the petitioner to approach the concerned criminal Court and file a necessary application, explaining the position and seek indulgence of the Court concerned for obtaining an order for a particular period, permitting him to go abroad. If such an order is passed by the criminal Court, on production of the same, certainly, the respondents would consider it and accordingly, they will do the needful by making such an endorsement for a particular period, depending upon the order to be passed by the criminal Court concerned.

12. Here in the case on hand, since admittedly, a criminal case is pending against the petitioner, where charge sheet has already been filed, which has become a calendar case, it is for the petitioner to approach the Judicial Magistrate concerned, where the case is pending, by filing an application to get an order that for a particular period he can go abroad and once that order is passed by the learned Judicial Magistrate on merits, the same can be produced by the petitioner, to the respondents and accordingly, the respondents can consider the same.

13. In that view of the matter, this Court is inclined to dispose of this Writ petition with the following directions -



That it is open to the petitioner to approach the learned Judicial Magistrate No.I, Sivagangai, where C.C.No.397 of 2016 is pending against him, by filing necessary application to seek indulgence of the learned Judicial Magistrate to pass orders for the particular period, allowing him to go abroad and if such order is passed on merits, based on such order, he can approach the respondents, who, in turn, can pass orders in favour of the petitioner for a particular period and accordingly, the passport of the petitioner can be released with or without endorsement.

14.With these observations, this Writ petition is disposed of as the prayer sought for in this Writ petition cannot be granted. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Regional Passport Officer,
The Regional Passport Office,
Pass port Seva Kendra,
Kochadai, Madurai District.

2.The Regional Passport Officer,
The Regional Passport Office,
Bharathi Ula Road,
Race Course Road, Madurai District.

+1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-70904[F] dated 24/06/2019)

+1 CC to M/s.K.SELVAM, Advocate (SR-70865[F] dated 24/06/2019)

NBJ

W.P. (MD) No.13487 of 2019
24.06.2019

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