



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P. (MD) No.13846 of 2019

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Petitioner

Vs.

The Regional Transport Officer,
Regional Passport Office,
Bharathi Ula Street,
Race Course Road,
Madurai.

...

Respondent

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent herein to hand over the petitioner's passport No.J 4952410 on the basis of his representation dated 06.06.2019 more fully in view of the acquittal from the criminal case.

For Petitioner	: Mr.B.Santhanam Rajesh Kumar
For Respondents	: Mr.V.Kathirvelu, ASG Asst.by Ms.S.Ragaventhire, CGSC

O R D E R

The prayer in the Writ petition is for a Writ of Mandamus, directing the respondent herein to hand over the petitioner's passport No.J 4952410 on the basis of his representation dated 06.06.2019 more fully in view of the acquittal from the criminal case.

2.Heard Mr.B.Santhanam Rajesh Kumar, learned counsel appearing for the petitioner and Mr.V.Kathirvelu, learned Assistant Solicitor General appearing for the respondent.

3.The petitioner is the holder of the passport in bearing passport No. J4952410. With that passport, the petitioner was trying to go abroad on 15.10.2015 via Chennai and at that time, the immigration officials at Chennai Airport found that, there is an LOC issued against the petitioner in view of the pendency of the criminal case and in that view of the matter, the immigration department did not allow the petitioner to abroad and they referred the matter to the respondent - Passport Authority to impound the passport in view of the pendency of the criminal case against the petitioner.



4. Accordingly, the passport of the petitioner, though has not been impounded, he has not been permitted to go abroad and this was happened in the year 2015.

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5. Thereafter, the criminal case pending against the petitioner in C.C.No.96 of 2009 on the file of the Judicial Magistrate Court, Melur, was finally disposed of by judgment dated 12.02.2019, whereby, the petitioner has been acquitted from the charges.

6. Since the petitioner has been acquitted from the criminal case, there is no impediment for the respondent in detaining the petitioner from going abroad by using the passport.

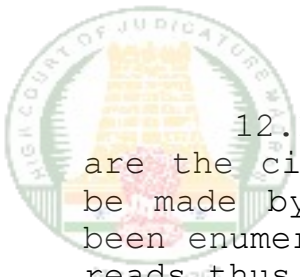
7. Only in that circumstances, the petitioner has approached this Court by filing this Writ petition with the aforesaid prayer.

8. The learned counsel for the petitioner, who reiterated the said facts mentioned supra, seeks indulgence of this Court and he further stated that in view of the clear acquittal given by the Criminal Court, there is no necessity on the part of the respondent to retain the passport and hence, the same can be handed over to the petitioner.

9. However, the learned Assistant Solicitor General appearing for the respondent, on the other hand, would submit that, due to the issuance of the look out circular, the immigration department in October 2015 not permitted the petitioner to go abroad and referred the matter to the respondent - Passport Authority. Based on which, the passport has been retained by the respondent, but, not impounded within the meaning of Section 10 of the Passport Act. However, subsequently, the criminal court has acquitted the petitioner insofar the criminal proceedings is concerned and the same had been cleared and for the said reason, the petitioner's passport need not be impounded.

10. The learned Assistant Solicitor General would also submit that, since the petitioner has suppressed the pendency of the criminal case before the respondent, he is liable to be fined. Accordingly, a fine has been imposed, which the petitioner has paid. Therefore, the two impediments, which are stalling the petitioner for getting back his passport, since have now been cleared, this position would be considered by the respondent on merits and a decision would be taken thereon.

11. I have considered the said submission made by the learned counsel appearing for the petitioner as well as the learned Assistant Solicitor General appearing for the respondent.



12. Insofar as the impounding of passport is concerned, what are the circumstances under which, such impounding of passport can be made by the issuing authority ie., the respondent herein, has been enumerated under Section 10(3) of the Passport Act, 1967, which reads thus -

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"10. Variation, impounding and revocation of passports and travel documents

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made. "



13. Among these reasons, Clause 3 (e) is relevant for the present case. As under Sub section 3(e) of Section 10 of the Act, if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document is pending before a criminal court, that can be one of the reason for impounding the passport or cause to be impounded or revoke a passport or travel document.

14. On reading, the said Section 10(3)(e) makes it clear that, among various reasons, the pendency of the criminal case is one of the reason to impound the passport or revoke the passport, and in the present case, in the year 2015 since there was a criminal case pending against the petitioner, such kind of action of impounding the passport could have been taken by the respondent rightly.

15. Though it was claimed by the learned Assistant Solicitor General appearing on behalf of the respondent that, such an action was taken and the passport was impounded for the said reason, there is no separate order seems to have been passed by the respondent specifically stating that for the particular reason, invoking any of the Sub section of Section 10(3) of the Act, the passport has been either impounded or revoked, this Court cannot view that the passport of the petitioner has been impounded.

16. But at the same time, there was every reason to impound such passport between 2015 and till the acquittal made in the criminal case.

17. That apart, insofar as the suppression of the said pendency of the criminal case is concerned, it is an admitted fact that the petitioner has suppressed, for which, he was imposed with fine by the respondent and the said fine has also been paid by the petitioner and this factor has been admitted by the respondent.

18. Since there has been no impounding of passport in the eye of law, ie., under Section 10(3)(e) of the Act, even though there has been reasons for doing such action on the part of the respondent and more over, the only reason available for impounding the passport of the petitioner is no more available now, since the petitioner has been acquitted by the judgment of the competent criminal court made in C.C.No.96 of 2009 dated 12.02.2019, the first reason to impound the passport of the petitioner has gone.

<https://hcservices.ecourts.gov.in/hcservices/> 19. Insofar as the second reason of suppression of the fact is concerned, the petitioner has already paid the fine and that has been accepted by the respondent. Therefore, these two reasons since



have been cleared, there is no further impediment for the respondent to issue or return back the passport of the petitioner which is having its validity till 06.12.2020.

20. In that view of the matter, this Court is inclined to allow this Writ petition by giving the following direction:

That the respondent is directed to return back the passport of the petitioner in passport No. J 4952410, which is held by the respondent, to the petitioner immediately, at any rate, within a period of one week from the date of receipt of a copy of this order. With this direction, the Writ petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar (CS-)

To

The Regional Transport Officer,
Regional Passport Office,
Bharathi Ula Street,
Race Course Road,
Madurai.

+1 CC to M/s.S.RAGAVENTHRE, Advocate
(SR-70906[F] dated 24/06/2019)

+1 CC to M/s.B.SANTHANAM RAJESH, Advocate
(SR-71042[F] dated 25/06/2019)

W.P. (MD) No.13846 of 2019
24.06.2019

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