

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 17.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE R.SURESH KUMAR****W.P. (MD) No.15341 of 2019****and W.M.P. (MD) No.11916 of 2019**

WEB COPY

N.Muniyasamy

... Petitioner

Vs.

1.The Secretary to Government
Ministry of External Affairs,
South Block, New Delhi - 110 011.

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

3.The Inspector of Police,
Thondi Police Station,
Thondi,
Ramanathapuram District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned letter Ref.No.SCN/308332589/19 dated 26.02.2019 issued by the 2nd respondent and the consequential impugned surrender certificate dated 22.03.2019 in No.MD1071887681319 issued by the 2nd respondent and quash the same and consequently direct the 2nd respondent to return the passport bearing No.S8545874 to the petitioner.

For Petitioners : Mr.N.Pragalathan
For Respondents : Mr.V.Kathirvelu
Assistant Solicitor General
assisted by
Mr.K.Prabhu for R1 and R2
Mr.B.Bagavathi for R3
Government Advocate

ORDER

Challenging the impugned letter dated 26.02.2019 issued by the 2nd respondent and the impugned surrender certificate dated 22.03.2019, the petitioner is before this Court with this writ petition.

<https://hcservices.ecourts.gov.in/hcservices/> 2. Heard the learned counsel for the petitioner, the learned Assistant Solicitor General for the respondents 1 and 2 and the learned Government Advocate for the third respondent.



3. The petitioner was issued a passport in Passport No.S8545874 in the year 2014. Thereafter, after having utilised the passport for some years, the petitioner applied on 15.02.2019 to the second respondent for endorsement that, the "emigration clearance not required" in the passport and on receipt of such application, the second respondent processed the application. As per the usual procedure, they enquired with the police concerned as to whether any adverse report is against the petitioner, the police had given an adverse report against the petitioner stating that, there has been a criminal case pending against the petitioner in Crime No.115/2015 (155/2015) for the alleged offences punishable under Sections 147, 148, 294(b), 323, 324, 336 and 506(ii) IPC on the file of the third respondent.

4. In this context, it is the stand of the second respondent that, after obtaining the passport in the year 2014, since the petitioner involved in a criminal case in the year 2015 and the same is pending while making application on 15.02.2019 for getting the ECNR endorsement, why the petitioner has not intimated or informed the said pendency of the criminal case to the second respondent. Therefore, they construed it as a suppression and that is the reason why, by the impugned communication, dated 26.02.2019, the second respondent issued a show cause notice to the petitioner directing the petitioner to give show cause as to why action should not be initiated against him for the alleged suppression of pendency of the criminal case. It seems that, pursuant to the said impugned communication, the petitioner appeared before the second respondent on 22.03.2019 and had surrendered the passport, as desired by the second respondent and accordingly, the surrender certificate dated 22.03.2019 was also issued by the second respondent office.

5. In the said circumstances only, challenging the said communication, dated 26.02.2019 and the surrender certificate, dated 22.03.2019, the petitioner filed this writ petition with the aforesaid prayer.

6. The learned counsel for the petitioner would submit that, assuming that, there has been a criminal case pending from 2015 onwards at the third respondent police station, which is pending only at the FIR stage. Therefore, there may not be any impediment for the second respondent to decide the application dated 15.02.2019 of the petitioner independently and pass orders thereon on merits. However, without processing the said application, since the surrender certificate was issued and no progress seems to have been made by the second respondent, the petitioner approached this Court and seeks for indulgence of this Court, as has been prayed in the writ petition.

7. However, the learned Assistant Solicitor General for the respondents 1 and 2 would submit that, at the time of making application on 15.02.2019, in the application itself, the factor



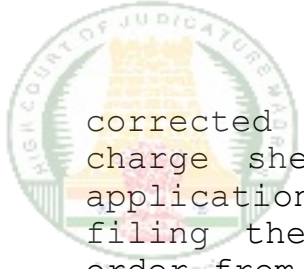
that, the criminal case was pending should have been informed by the petitioner. The non-information definitely would amount to suppression of fact and therefore, for which, the petitioner is liable to be penalised. Only for the said purpose, the second respondent issued show cause notice and based on his explanation, after considering the same, passport was directed to be surrendered. Accordingly, it was surrendered and surrender certificate was also issued and unless and until the criminal case is decided one way or the other or as to whether the charge sheet has been filed is known to the second respondent, the second respondent office cannot proceed further to decide the application of the petitioner for giving an endorsement of "Emigration Clearance Not Required".

8. On the other hand, the learned Government Advocate for the third respondent, on instructions from the station house officer, who present before this Court, would submit that, the criminal case has been investigated and after completing the investigation, charge sheet has been in fact filed before the concerned criminal Court, whereas for certain defects, the same has been returned and after having rectified such mistakes, the charge sheet would be resubmitted within a shortest possible time/within a week and therefore, once the charge sheet is taken on file within a shortest possible time by the criminal Court, accordingly, a decision can be taken by the 2nd respondent.

9. The said submission made by the learned counsel for the parties have been considered and after perusing the materials placed before this Court, this Court is of the view that, though the pendency of the criminal case at the FIR stage against any applicant or passport holder may not be an impediment for further action on the part of the second respondent either to clear the passport application or to clear the application for endorsement etc, in the present case, charge sheet already has been filed, but for some defects, it has been returned. The investigating agency can resubmit the rectified charge sheet within a shortest possible period and if the charge sheet is taken on file within a shortest possible time and if it is accepted by the criminal Court, the case would become ripe for trial as C.C number would be given. In that case, as per the settled law, the passport holder must approach the criminal Court by filing appropriate application and seek indulgence of the competent criminal Court and only after getting order or based on the order to be passed by the competent criminal Court only, the second respondent can be expected to act on the application of the petitioner.

10. In that view of the matter, this Court is inclined to dispose of this writ petition with the following directions:

(a) That the prayer, as has been sought for in this writ petition, cannot be granted, but, at the same time, in view of the aforesaid facts and circumstances, the petitioner can approach the criminal Court, where the case is pending against the petitioner, where the investigating agency would be expected to file the



corrected charge sheet within a period of one week and once the charge sheet is filed and it is taken on file, the necessary application can very well be filed by the petitioner and after filing the necessary petition and after obtaining the necessary order from the criminal Court and if such order to be passed by the criminal Court is produced, based on which, let the second respondent office process the application of the petitioner dated 15.02.2019 and accordingly, pass orders on merits, as expeditiously as possible, thereafter.

No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government
Ministry of External Affairs,
South Block,
New Delhi - 110 011.

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

3.The Inspector of Police,
Thondi Police Station,
Thondi,
Ramanathapuram District.

+1 CC to Mr.N.PRAGALATHAN, Advocate (SR-75868[F] dated 17/07/2019)
+1 CC to Mr.K.PRABHU, Advocate (SR-75876[F] dated 17/07/2019)
+1 CC to SPL GP (SR-75976[F] dated 18/07/2019)

W.P. (MD) No.15431 of 2019
and W.M.P. (MD) No.11916 of 2019
17.07.2019

rr

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