



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P(MD)No.19113 of 2019

V.Markandayan

... Petitioner

vs.

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

2.The Assistant Passport Officer,
Passport Seva Kendra,
Tirunelveli City,
No.13, South Bypass Road,
Xavier Colony,
Tirunelveli.

3.The Inspector of Police,
Vilathikulam Police Station,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents 1 and 2 to issue a passport on the basis of the petitioner's passport application submitted vide File No.MD2062317853719 as expeditiously as possible within the time stipulated by this Court.

For Petitioner : Mr.R.Anand

For RR 1 & 2 : Mr.V.Kathirvelu,
Assistant Solicitor General
Assisted by
Mr.K.Prabhu

For R - 3 : Mr.K.Mu.Muthu,
Additional Government Pleader.

ORDER

Mr.R.Anand, learned counsel on record for writ petitioner; learned Senior Counsel Mr.V.Kathirvelu, Assistant Solicitor General instructed by Mr.K.Prabhu, learned counsel on behalf of respondents 1 and 2 and Mr.K.Mu.Muthu, learned Additional Government Pleader on behalf of third respondent are before this Court.



2. With consent of aforesaid two counsel and senior counsel / Assistant Solicitor General, main writ petition is taken up, heard out and is being disposed of.

3. It is submitted by all three counsels without disputation or disagreement that the instant matter is directly / squarely covered by an order dated 17.07.2019 in W.P(MD)No.15420 of 2019 by my predecessor Honourable Judge in a similar matter.

4. Relevant paragraphs are 3 to 10 and the same reads as follows:

'3. The petitioner made an application on 20.03.2019 in application No. MD2061979298519 to the first respondent for issuance of fresh passport. However, the same has not been considered or it is kept pending for consideration at the first respondent office and therefore, the petitioner is before this Court with this writ petition with the aforesaid prayer.

4. The learned Assistant Solicitor General appearing for the first respondent would submit that, there has been an adverse report from the second respondent police against the petitioner to state that, there has been a criminal case, which is pending on the file of the second respondent and in that view of the matter, since there is a criminal case pending, unless and until the fate of the criminal case is known to the second respondent or at least the stage of the criminal case is known to the second respondent, they cannot process with the application of the petitioner to issue the passport.

5. I have heard the learned Additional Government Pleader, who would submit that, there is a case pending in Crime No. 231/2018 on the file of the second respondent police station for the alleged offence punishable under Section 379 IPC and in this regard, investigation has already been completed and charge sheet also filed before the competent criminal Court. However, the same has not been taken on file for some alleged defects. Therefore, after rectifying the same, shortly, the charge sheet would be resubmitted.

6. I have considered the said submissions made by the learned counsel for the parties and noted the contents of the materials placed before this Court.

7. Admittedly, there has been a criminal case pending against the petitioner. However, as of now, though it was claimed that, the charge sheet has been



filed, it was not taken on file. Therefore, ultimately, it can be construed that, only it has been pending at the FIR stage. Mere pendency of a criminal case at the FIR stage may not be an impediment for the passport issuing authority for process the application of the petitioner, otherwise on merits. However, in the present case, it is claimed by the second respondent that, charge sheet has also been filed, but the same has not been taken on file.

8. Be that as it may, if at all the charge sheet already filed and the same is not taken up on file by the competent criminal Court, for any defects or any other reason, it is for the investigating agency to rectify the same and re-submit the charge sheet, enabling the criminal Court to take it on file. Merely claiming that, the charge sheet has already been filed and without verifying the same, as to whether it is defective or not, the Investigating Agency cannot act thereupon. Therefore, it is their duty to rectify the defects and file the charge sheet before the competent criminal Court as expected by the Court to take on file.

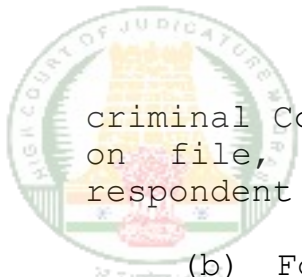
9. Because of the pendency of the criminal case, in between stage, ie., between FIR and the filing of the charge sheet, the application of the petitioner pending with the first respondent is not able to be processed.

10. In view of the facts and circumstances, this Court is of the view that, some outer limit can be given to the second respondent to rectify the mistakes, if any, in the charge sheet already filed and to ensure that, the charge sheet is taken on file by the competent criminal Court, otherwise, a suitable direction can be given to the first respondent to process the application of the petitioner independently.'

5.To be noted paragraph No.7 is the most relevant paragraph.

6.In the light of this Court being informed without disputation or disagreement that this matter is directly / squarely covered by the aforementioned earlier order, instant Writ Petition shall be disposed of with the same set of directions which are as follows:

(a) That the third respondent / Inspector of Police is directed to verify the charge sheet already claimed to have been filed before the competent criminal Court, as to whether it is in order and if



criminal Court to take it on file and once the charge sheet is taken on file, the said development can be informed by the third respondent to the first respondent office immediately ;

(b) For the aforesaid compliance, two weeks time is given, within the said two weeks period, if it is not made by the third respondent and charge sheet is not taken on file, it shall only be construed that, the charge sheet has not been filed and in that circumstances, it is open to the first respondent to take up the application of the petitioner and decide it on merits independently, after giving an opportunity to the petitioner and accordingly, pass final orders thereon within a period of four weeks thereafter. No costs.

Sd/-

Assistant Registrar (Ad-II)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Regional Passport Officer,
Regional Passport Office,
Madurai, Bharathi Ula Veethi,
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Madurai.
- 2.The Assistant Passport Officer,
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Tirunelveli.
- 3.The Inspector of Police,
Vilathikulam Police Station,
Thoothukudi District.

+1 CC to GP SR-86129.

+1 CC to M/s.R.ANAND, Advocate SR-86215.

W.P (MD) No.19113 of 2019
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