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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.10.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE M.SUNDAR**

W.P(MD)No.20888 of 2019

Pandi

... Petitioner

/vs./

1.The Government of India,
Ministry of External Affairs,
Regional Passport Office,
Madurai, Bharathi Ula Veethi,
Race Course Road, Madurai - 625 002.

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records, relating to the impugned order passed by the 1st respondent vide his proceedings in Letter Ref.No.IMP/308979943/19 dated 05.08.2019 and to quash the same as illegal and consequently to direct the 1st respondent to permit the petitioner to go to abroad forthwith for his job.

For Petitioner : Mr.M.S.Jeyakarthick

For R-1 : Mr.V.Kathivelu
Assistant Solicitor General of India
instructed by Mr.K.Prabhu

For R-2 : Mr.Aayiram K.Selvakumar
Additional Government Pleader



ORDER

Mr.M.S.Jeyakarthick, learned counsel on record for writ petitioner, Mr.V.Kathirvelu, learned Senior Counsel and learned Assistant Solicitor General of India instructed by Mr.K.Prabhu (learned Standing counsel) on behalf of first respondent and Mr.Aayiram K.Selvakumar, learned Additional Government Pleader on behalf of second respondent are before this Court.

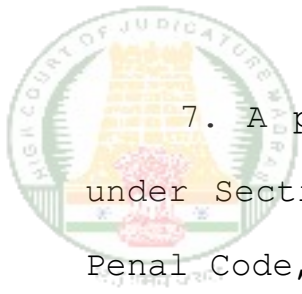
2. With consent of learned counsel for writ petitioner, learned Senior Counsel / Assistant Solicitor General of India as well as learned State counsel, main writ petition is taken up, heard out and is being disposed of.

3. In the light of the trajectory of the hearing today, entire writ petition now turns on a very narrow compass. Therefore, short facts shorn of unnecessary details or in other words factual matrix in a nutshell imperative for appreciating this order will suffice.

4. Short facts shorn of elaboration are that the writ petitioner being a citizen of India holds an 'Indian Passport bearing No.R 2375250' which was issued in 2007, subsequently, renewed from 18.04.2017 to 17.04.2027 (hereinafter referred to as 'said passport' for the sake of clarity / convenience). There is no disputation or disagreement that said passport is now in the possession of the writ petitioner. There is also no disputation that said passport is now valid.

5. Under the aforesaid circumstances, writ petitioner made an application for 'Police Clearance Certificate' ('PCC' for brevity). PCC application is dated 17.10.2018. In the PCC application, which is to be made in a prescribed form there is one column where the query is/reads 'Any criminal proceedings pending against you in a court of India?' In this column, writ petitioner filled in / answered in the negative by saying 'NO'. This is the genesis of the entire *lis*.

6. Be that as it may, a First Information Report (FIR) had been registered against writ petitioner vide Crime No.51 of 2018 dated 07.05.2018 in Thondi Police Station in Ramanathapuram District and the same was pending at FIR stage on the date of PCC application ie., 17.10.2018.



7. A perusal of the FIR reveals that the alleged offences are under Sections 147, 148, 341, 294 (b), 323, 336 and 307 of 'Indian Penal Code, 1860' ('IPC' for brevity).

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8. What is of significance is, there is no dispute or disagreement before this Court that the said FIR is pending until today, but, no charge sheet has been filed.

9. Now, reverting to the aforesaid PCC application of the writ petitioner, as the writ petitioner had answered in the negative to the column which asks the applicant to disclose whether any criminal proceedings is pending against the applicant in a Court of India, a show cause notice was issued to the writ petitioner. Writ petitioner sent a reply and thereafter sent a further explanation. Alleging inaction, the writ petitioner filed an earlier writ petition being W.P.(MD)No.25180 of 2018. Pending aforesaid writ petition, first respondent passed an order dated 05.08.2019 bearing Letter Reference No.IMP/308979943/19 wherein and whereby the writ petitioner's passport ie., said passport was impounded in exercise of powers under Section 10(3)(e) of the 'Passport Act, 1967 (15 of 1967)' (hereinafter referred to as 'Passport Act' for the sake of brevity). The said order is as follows:



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W.P(MD)No.20888 of 2019


**GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
REGIONAL PASSPORT OFFICE, MADURAI**

Tel No: 04522521280, 04522521284
Fax No: 04522522270
E-mail: info.madurai@ma.gov.in
Website: www.passportindia.gov.in
File No: BAUA31813217
Letter Ref. No: MFI/208879043/15

REGIONAL PASSPORT OFFICE
MADURAI BHARATHI ILA VEETHI,
SAFEE CROSS ROAD, MADURAI-
625002, TAMIL NADU

To,
PANDI BALU
S/O BALU
J-741, MULLIMUNAI KARANKADU PO
NAMBUTHALAI VIA TIRUVADANAI TK
RAMANATHAPURAM DIST

(Date: Aug 5, 2019)

Subject: Intimation of Impounding of the passport bearing Passport No. R2375258

Dear Sir/Madam,

It has been decided to impound the passport bearing Passport No. R2375258, issued on date 18/04/2017 to Shri/ Smt. / Kuman PANDI BALU S/o, D/o, W/o, C/o BALU under Section 10 (3) (a) "Criminal case is pending before the Court" of the Passports Act, 1967.

You are, therefore, requested to return the Passport to the passport office with immediate effect, if not already done.

Yours Sincerely,

For Regional Passport Office, Madurai

ENQUIRY TIMINGS OF REGIONAL PASSPORT OFFICE MADURAI IS BETWEEN 9:30 AM TO 12:00 PM ON ALL WORKING DAYS.

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10. Therefore, writ petitioner withdrew the earlier writ petition which is for Mandamus simpliciter, filed and pursued instant writ petition where the aforesaid 'order dated 05.08.2019 made by the first respondent' (hereinafter referred to as 'impugned order' for the sake of brevity, clarity and convenience) has been called in question.

11. Notwithstanding very many averments made in the affidavit filed in support of this writ petition, notwithstanding very many grounds urged/contentions canvassed in the affidavit filed in support of this writ petition, notwithstanding an expansive prayer, learned counsel for writ petitioner abridged the prayer as well as the scope of the writ petition at the hearing. To be noted, prayer in the writ petition itself is in two (2) limbs.

12. A perusal of the prayer reveals that the first limb pertains to a certiorari for quashing the impugned order made by the first respondent, whereas second limb pertains to a mandamus/direction to the first respondent to permit the petitioner to go abroad.

13. In the hearing, learned counsel for writ petitioner abridged the prayer and said prayer is now restricted to the first limb namely, certiorari limb seeking quash of the impugned order. This is recorded.

14. With regard to the second limb, it is made clear by learned Assistant Solicitor that it is for the writ petitioner to seek VISA by following applicable procedures and impugned order will not impede such application when the writ petitioner makes an application for VISA to any country in a manner known to law in the days to come.

15. Before this Court proceeds further, to be noted, Sub-Inspector of Police from the aforesaid Police Station namely, Thondi Police Station in Ramanathapuram District is present and on instructions from the police officer, learned State counsel submits that aforementioned FIR is pending at the FIR stage even as of today or in other words no charge sheet has been laid as of today.

16. Reverting to the impugned order, learned Senior Counsel and Assistant Solicitor General of India very fairly submitted that the expression 'proceedings pending in a Court of India' fell for consideration more than once before this Court ie., a Hon'ble Single Judge as well as Hon'ble Division Bench. A Hon'ble Single Judge of this Court in a judgment reported in **(2014) 8 MLJ 61** in the case of **W.Jaihar William and Others vs. State of TamilNadu** pressed into service by writ petitioner lays down the principle that mere pendency of FIR cannot be construed as pendency of criminal proceedings in respect of the offences alleged to have been



committed by the applicant before the Criminal Court. There is no dispute that such a principle has been laid down by Hon'ble Division Bench also.

17. In the light of the fair submission made by the learned Senior Counsel and learned Assistant Solicitor General of India, the narrowed down scope of the instant writ petition gets further simplified. If pendency of the FIR cannot be construed as criminal proceedings pending in a Court of India, the answer 'NO' or the answer in negative given by the writ petitioner in PCC application cannot be considered to be incorrect. If the answer is correct, it follows as a sequitur that there is no suppression within the meaning of Section 10(3)(b) of Passport Act and it follows as a sequitur that there is no ground to invoke Section 10(3)(b) of Passport Act. This Court deems it appropriate to extract Sections 10(3)(b) and 10(3)(e) of Passport Act, which read as follows:

'10(3)(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;

Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

....
....

10(3)(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.'

(underlining made by this Court to highlight and supply emphasis).

18. Besides the impugned order, writ petitioner was also visited with a show cause notice dated 05.08.2019 bearing Letter Reference No.SCN/308979917/19 which pertains to Section 10(3)(b) of Passport Act proceedings.

19. It operates as a natural sequitur that the impugned order as well as aforementioned show cause notice are liable to be quashed as there is neither pendency of a case in a criminal Court in India nor suppression.

20. For the purpose of clarity and specificity, the order of this Court (based on discussion thus far and dispositive reasoning set out supra) is made as adumbration and set out as follows:

(a) impugned order made by the first respondent being order dated 05.08.2019 bearing Letter Reference No.IMP/308979943/19 impounding



the writ petitioner's passport is quashed.

(b) Show cause notice dated 05.08.2019 bearing Letter Reference No.SCN/308979917/19 issued by the first respondent to the writ petitioner pertaining to suppression qua Section 10(3)(e) of the Passport Act is also quashed.

(c) With regard to the petitioner going abroad, it is open to the writ petitioner to apply for VISA depending on the country he intends to travel to and VISA application will be processed in accordance with law without being impeded but, aided by this order.

(d) Consequent upon the impugned order and the show cause notice being quashed, the first respondent and the jurisdictional passport office under the first respondent is directed to carry out all consequential ministerial acts like removal of endorsements etc., on presentation of the passport along with a copy of this order by the writ petitioner within a week from the date of such presentation.

21. Instant Writ Petition is partly allowed. 20 (b) supra ie., quashing SCN is done by consent in exercise of powers of this Court to pass such further or other order/orders deemed fit and proper in the facts and circumstances of a case. No costs.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS-)

To

1.The Government of India,
Ministry of External Affairs,
Regional Passport Office, Madurai, Bharathi Ula Veethi,
Race Course Road, Madurai - 625 002.

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

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate(SR-94504[F] dated 25/10/2019)
+1 CC to M/s.SPL GP (SR-94617[F] dated 25/10/2019)

Order made in
W.P(MD)No.20888 of 2019
(2/2)

Dated:24.10.2019

sm

<https://hcs.caserecord.gov.in/hcservices/> 5C