

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2020

CORAM

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.9856 of 2020
and W.M.P.No.11975 of 2020

S.Vishnuram
S/o.T.Sivaganasambandan,
J.Apartment,
23, Hospital Road,
Kavery Nagar,
T.Nagar, Chennai -600 017

.... Petitioner

Vs.

1. The Regional Passport Authority,
Sastri Bhavan,
Chennai -600 006.
2. The Immigration Officer,
Chennai Airport,
Airport Authority of India,
Chennai.
3. The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
4. The Inspector of Police,
W-25, All Women Police Station,
T. Nagar,
Chennai - 600 017.
5. The Deputy Commissioner of Police,
(Crime against Women and Children)
Greams Road, Thousand Lights,
Chennai - 600 006.
(R5 impleaded vide order Dt.
26.08.2020 made in W.M.P.
No.14113 of 2020 in W.P.No.
9856 of 2020)

6. J.Shamla
D/o. B.Jayakumar,
No.82/6, CPWD Quarters,
Kamarajar Salai,
K.K.Nagar,
Chennai - 600 078.
(R6 impleaded vide order Dt.
26.08.2020 made in W.M.P.
No.14119 of 2020 in W.P.No.
9856 of 2020)

... Respondents

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 03.07.2020 by permitting the petitioner to go back to United Kingdom (London) in Passport No.X4076654.

For Petitioner : Mr.R.Sankarasubbu

For Respondents

R3 to R5 : Mr.S.Karthikeyan
Additional Public Prosecutor

R6 : Mr.E.Dharmaraj

ORDER

This writ petition has been filed for direction to direct the respondents to consider the petitioner's representation dated 03.07.2020 by permitting the petitioner to go back to United Kingdom (London) in Passport No.X4076654.

2. The learned counsel appearing for the petitioner would submit that the petitioner got married with the sixth respondent on 12.11.2014. After their marriage, there was strained relationship between them and as such both have decided to get divorce on mutual consent. Therefore, the petitioner and the sixth respondent filed a petition under Section 13(b) of Hindu Marriage Act for divorce in O.P.No.1548 of 2016, before the learned Principal Family Court, Chennai and they were granted divorce on mutual consent by the judgment and decree dated 23.10.2017. Thereafter, the sixth respondent filed petition for maintenance in M.C.No.42 of 2019, and the same was allowed in her favour and directed the petitioner to pay a sum of Rs.10,000/- per month as maintenance by an order dated 06.03.2019.

2.1. While being so, the fourth respondent registered a FIR in Crime No.5 of 2019 for the offences under Section 498-A of IPC on 29.10.2019, on the complainant lodged by the sixth respondent, as against the petitioner and his parents in which, the petitioner is arrayed as A1. In fact, the parents of the petitioner viz., A2 and A3 in Crime No.5 of 2019, challenged the FIR before this Court to quash in Crl.O.P.No.30446 of 2019 and this Court stayed the further proceedings of the FIR by an order dated 13.11.2019. When the petitioner visited India, on 16.06.2020 due to Covid-19 to see his parents, he was informed by the airport authorities about the complaint lodged by the sixth respondent. Thereafter due to Covid-19, the petitioner was under quarantine and he was arrested and remanded to judicial custody. Thereafter, he was released on bail by an order dated 22.06.2020 in Crl.M.P.No.1569 of 2020 passed by the learned XVII Metropolitan Magistrate, Saidapet. After conducting investigation, the fourth respondent returned the petitioner's passport on 25.06.2020.

2.2. The learned counsel further submitted that the look out circular issued as against the petitioner is become infructuous, since the petitioner was arrested and remanded to judicial custody and subsequently, he was released on bail. Further he submitted that the issuance of look out circular as against the petitioner is no longer an impediment to go abroad as per Visa conditions. His employment Visa also expired within a short period and he has to renew the Visa by visiting United Kingdom for continuous of his employment. Therefore, the petitioner necessarily has to go United Kingdom. Therefore, the petitioner submitted his representation dated 03.07.2020 to the respondents 1 to 3 herein, seeking permission to go back to United Kingdom by lawful means. After receipt of the said representation, the respondents 1 to 3 did not take any actions and therefore, he sought for direction from this Court to permit the petitioner to visit abroad i.e., United Kingdom.

3. Per contra, the learned counsel appearing for the sixth respondent submitted that though there are serious allegations made in the complaint, the fourth respondent registered a case in Crime No. 5 of 2019 only for the offences under Sections 498 (A) of IPC. The petitioner is the first accused who got married with sixth respondent. Thereafter the six respondent was driven out from the matrimonial home. Immediately, after the marriage with the petitioner herein, all the accused persons had started torture, humiliation and assaulted by physically and mentally for huge amounts of dowry. The second accused along with his friends had committed sexual assault on the sixth respondent by administering some medicine. Even then, the sixth respondent did

not registered any offence under Section 376 of IPC as against the other accused persons.

3.1. He further submitted that the sixth respondent's signature was forged by the petitioner and filed divorce petition under mutual consent and obtained decree of divorce. In fact, the sixth respondent is taking steps to file an appeal as against the decree of divorce. After committing the offences, the petitioner flew away United Kingdom. After registration of FIR, on repeated representation, the look out circular was issued as against the petitioner. When the petitioner returned to India, he was arrested and remanded to judicial custody. Now he seeks permission to visit abroad. The investigation is still pending and if the petitioner allowed to go abroad, he will not return and the entire investigation would be stalled. Therefore he sought for dismissal of the writ petition.

4. The learned Additional Public Prosecutor appearing for the respondents 3 to 5 filed a status report submitted by the fourth respondent with regard to the investigation stating that, on the complaint lodged by the sixth respondent, the fourth respondent registered a case in Crime No.5 of 2019 for the offence under Section 498-A of IPC as against three accused persons, in which the petitioner is arrayed as A1. The second and third accused are his parents. The allegations are that even before the marriage and after marriage, the accused persons are demanded huge dowry from the sixth respondent. Further alleged that without the knowledge and consent of the sixth respondent, the first accused obtained divorce decree from the Family Court by mutual consent. Thereafter, look out circular was issued as against the first accused and communicated to the first respondent herein. On the said circular, the petitioner was arrested on 22.06.2020 and his passport was also seized by the fourth respondent. Thereafter, he was released on bail by the learned XVII Metropolitan Magistrate, Saidapet in CrI.M.P.No.1569 of 2020 by an order dated 22.06.2020. Though he was released on bail, if the petitioner allowed to go to United Kingdom, the entire investigation would affect, since there is a possibility to escape from India once for all by the petitioner. Therefore, he prayed for dismissal of this petition.

5. Heard Mr.R.Sankarasubbu, learned counsel appearing for the petitioner, Mr.E.Dharmaraj, learned counsel appearing for the sixth respondent and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondents 3 to 5.

6. The petitioner and the six respondent got married on 12.11.2014 and due to strained relationship, they got separated. Thereafter, the petitioner and the sixth respondent filed divorce petition under Section 13(b) of Hindu Marriage Act on mutual consent before the Principal Family Court, Chennai, and the Family Court granted divorce to the petitioner and the sixth respondent in O.P.No.1548 of 2016 by the judgment and decree dated 23.10.2017. In fact, after granting divorce decree, the sixth respondent filed maintenance case in M.C.No.42 of 2019, before the Principal Family Court, Chennai and the same was allowed by an order dated 06.03.2019, thereby the petitioner was directed to pay monthly maintenance of Rs.10,000/- to the sixth respondent herein.

7. On perusal of decree of divorce on mutual consent under 13(b) of Hindu Marriage Act, in O.P.No.1548 of 2016 dated 23.10.2017, the Court below recorded the presence of the six respondent and also the presence of the petitioner herein and marked documents as Ex.P.1 to Ex.P.6. The trial Court also recorded that "the parties reiterated their stands for divorce and their own volition. There is no meeting of minds between the parties and there is no scope of reunion." Therefore, the trial Court granted divorce and thereby dissolved the marriage between the petitioner and the sixth respondent dated 12.11.2014, by mutual consent. Further it is also seen from the order of maintenance in M.C.No.42 of 2019 dated 06.03.2019, there is absolutely no whisper about the allegations made in the present FIR in Crime No.5 of 2019 on the file of the fourth respondent. Therefore, the present complaint itself after thought and clear abuse of process of law, since the divorce decree was granted to the petitioner and the sixth respondent by the decree dated 23.10.2017.

8. After the period of two years, on 29.10.2019, the sixth respondent lodged a complaint alleging that without her consent and without her knowledge, the divorce decree was obtained by the petitioner herein. Further alleged that the sixth respondent was rapped by the second accused as well as his friends. It is very unfortunate that on the said false and furious complaint, the petitioner was arrested and remanded to judicial custody on the look out circular issued in pursuant to the FIR registered as against the petitioner in Crime No.5 of 2019. Further, he was released on bail and his passport was also returned to the petitioner on 25.06.2020. Now the Visa of the petitioner is getting expired and it has to be extended by his employer at the United Kingdom. Therefore, the petitioner necessarily has to visit United Kingdom to save his employment.

9. That apart, the second and third accused viz., the parents of the petitioner challenged the FIR in Crime No.5 of 2019 before this Court in Crl.O.P.No.30446 of 2019 and this Court stayed all further proceedings of the FIR in Crime No.5 of 2019. Therefore, entire proceedings has been stayed on the file of the fourth respondent. Hence, this Court is of the considered opinion that the petitioner can be permitted to visit abroad i.e., United Kingdom to save his employment. Accordingly, this Court is inclined to pass the following order that :

- i. the respondents 1 to 3 are directed to permit the petitioner to visit U.K. (London) through his passport No.X4076654.
- ii. the petitioner shall return to India on or before 15.03.2021 and report before the fourth respondent in Cr.No. 5 of 2019.
- iii. the petitioner shall furnish his address in which he is going to stay at U.K and also travelling particulars such as date of travel, tickets etc., to the fourth respondent.
- iv. if the petitioner violated any of the conditions, the fourth respondent is directed to take appropriate steps to secure the petitioner in accordance with law.

10. With the above directions, the writ petition is allowed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The Regional Passport Authority,
Sastri Bhavan,
Chennai - 600 006.

2. The Immigration Officer,
Chennai Airport,
Airport Authority of India,
Chennai.
3. The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
4. The Inspector of Police,
W-25, All Women Police Station,
T. Nagar,
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5. The Deputy Commissioner of Police,
(Crime against Women and Children)
Greens Road, Thousand Lights,
Chennai - 600 006.
6. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.E.Dharmaraj, Advocate Sr.29608
+1cc to Mr.R.Sankara Subbu, Advocate Sr.2980

W.P.No.9856 of 2020
and W.M.P.No.11975 of 2020

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