

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :20.01.2020
CORAM
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
W.P.No.30326 of 2019
and
W.M.P.30323 of 2019

Nargis Banu

...Petitioner

vs

1. The Chief Immigration Officer
Bureau of Immigration
Ministry of Home Affairs
Government of India
Shastri Bhavan, Haddows Road
Nungambakkam, Chennai-600 006.
2. The Home Secretary
Ministry of Home Affairs
Union of India
New Delhi.
3. The Secretary to Government
Ministry of External Affairs
Union of India
New Delhi.
4. Foreigners Regional Registration Office
(FRRO CHENNAI)
Haddows Road, Subba Road Avenue
Nungambakkam, Chennai-600 006.
5. The Consulate General
Visa Section
Indian High Commission at London
United Kingdom.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the immigration authorities to refrain from preventing the petitioner's husband Mr.Mohammed Sadaqathullah Basheer Ali (holding British passport No.560595309) from entering India on having a valid visa issued by the 5th Respondent or such authorities duly authorised by them.

For Petitioner : Mr.D.Ferdinand

For Respondents : Mr.Venkataswamy Babu

O R D E R

The petitioner has filed the present Writ Petition in the nature of Mandamus, directing the immigration authorities to refrain from preventing the petitioner's husband Mr. Mohammed Sadaqathullah Basheer Ali (holding British passport No.560595309) from entering into India.

2. The petitioner, claims that she is an Indian Citizen by birth and she got married to one Mohammed Sadaqathullah Basheer Ali in the year 2004. They have three children. The husband of the petitioner had obtained British Passport since he was a citizen of United Kingdom. He often came down to India on Indian visa to visit the petitioner and the family members. On 27.01.2013, during his stay, he had unfortunately met with an accident which caused severe injury to his spinal cord. Therefore, he was not in a position to go back to U.K and he overstayed in India till May 2017. In the mean time, neither the petitioner nor her husband obtained exist visa. Only after the recovery of health condition, the petitioner's husband, visited the FRRO office in Chennai, who is the 4th respondent for obtaining exist visa. It is stated that the petitioner's husband had committed an offence under Section 14 of the Foreigner's Act, 1946. Therefore, documents were sought by them in accordance with the immigration laws. The petitioner's husband paid a sum of Rs.52,375/- on 26.03.2017 as penalty for overstaying in India. Thereafter, exit visa was issued and he left for U.K on 17.04.2018. In the affidavit filed in support of the writ petition, the writ petitioner has stated as follows:

"I further state that only after all the formalities were completed by the immigration authorities, my husband without any more delay left for United Kingdom on 17.04.2018 and during the same time the immigration authorities had informed by husband that he cannot travel to India for a period of two years from the exit date. When my husband enquired with the immigration authorities to inform him on the provision under which his travel ban for 2 years was imposed, there was no proper reply/response from them".

3. It is thus clear that both the petitioner and her husband were informed that he was banned to enter India for a period of 2 years. It is stated that the husband of the petitioner came to Chennai from London via Abu Dhabi on 14.02.2018 under the previous visa which was valid from 17.10.2017 till 16.10.2018. However, the Immigration Authorities did not permit him to enter into the country. Since the petitioner's husband had already

booked his returned tickets, the immigration officials had changed the date from 14.03.2018 to 15.02.2019 and deported him to Abu Dhabi. The husband of the petitioner was directed to go Abu Dhabi for obtaining a visa clearance on the basis of medical emergency and he received an e-visa on 23.02.2018 and it was granted from 22.02.2018 to 22.06.2018. After reaching India, he wrote to the Ministry of External Affairs, the 3rd respondent explaining the circumstances under which he overstayed in India and thereafter, the husband of the petitioner went back to United Kingdom. On 13.03.2019, it is claimed that Indian High Commission in London sent an e-mail to the petitioner's husband stating that "nothing adverse noticed against the name of the individuals in our records". After receiving the said email, the present writ petition has been filed wherein a Mandamus is sought.

4. On the other hand, the respondents have filed a counter affidavit which has been sworn by Mr.S.Xavier Dhanaraj, who is working as the Foreigners Regional Registration Officer. In para 3 of the counter affidavit, it is stated as follows:

"3.I respectfully submit that Basheer Ali Mohamed Sadaquathullah (husband of the petitioner) is figuring in a "Ban Entry" Look Out Circular (LOC) initiated by FRRO, Chennai for overstaying in India from 15.04.2013 to 07.05.2017".

It is also stated in para 6 as follows:

"6. I respectfully submit that since Basheer Ali Mohamed Sadaqathullah, the husband of the petitioner had overstayed in India, blacklist was initiated by FRRO, Chennai against him. The blacklist is still in force and the retention period is till 17.05.2020."

5. It is the grievance of the learned counsel for the petitioner that the order of blacklisting the husband of the petitioner from entering into the country had not been communicated to the petitioner. Thereafter, she had sent several letters. But the respondents have not given any order in writing. However, the learned counsel for the respondents stated that it has been informed to the husband of the petitioner and it is further stated that the said fact was also affirmed by the petitioner in the affidavit.

6. This Court, on these facts cannot issue a Mandamus. If the petitioner seeks an order in writing for blacklisting, then, the said order should be challenged by way of Writ of Certiorari and not by a Mandamus. As on today, blacklisting the petitioner's husband from entering into the country is in force till 17.05.2020. The learned counsel for the petitioner stated

that the husband of the petitioner was suffering from heart ailment. Unfortunately, this Court cannot insist the officials to pass orders directing the respondents to permit the petitioner's husband to enter into the country inspite of the order of blacklisting him. These are the issues to the exclusive purview of the respondents who have to pass necessary orders. If the petitioner is aggrieved by the order of blacklisting, she has to challenge the same. Further, if the order of blacklisting was not given to her, she can seek remedy only before the appropriate forum and this Court cannot also issue any direction. In view of the aforesaid reasons, this Court is not able to grant any relief to the petitioner.

6. In fine, this Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Burea of Immigration
Ministry of Home Affairs
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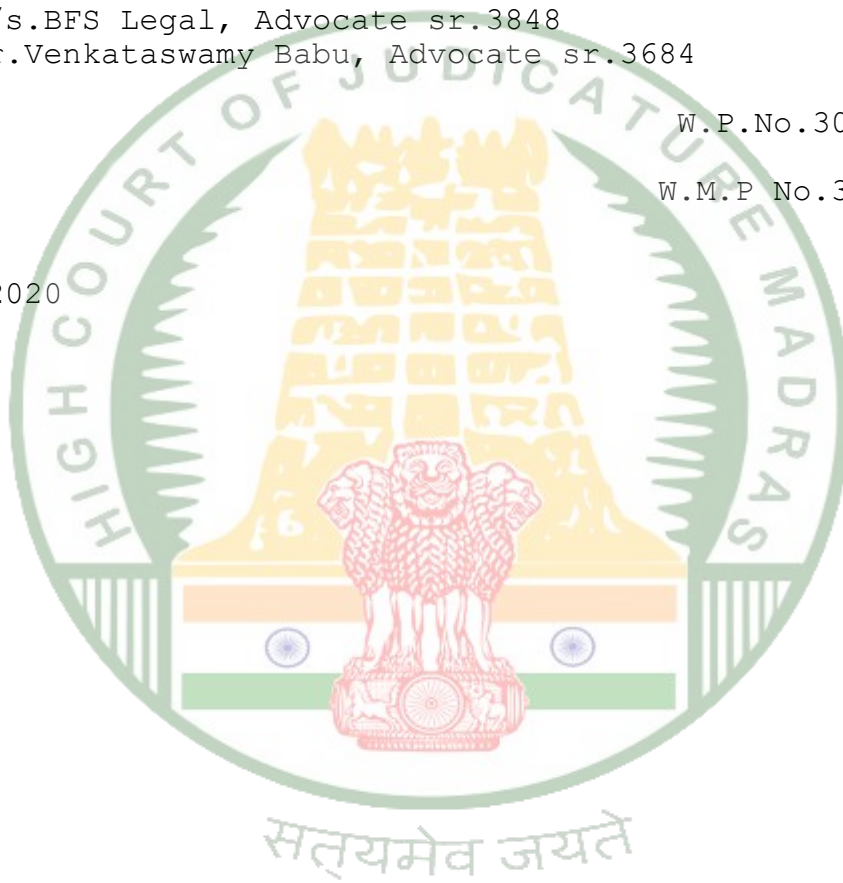
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+1cc to M/s.BFS Legal, Advocate sr.3848
+1cc to Mr.Venkataswamy Babu, Advocate sr.3684

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nr 31/01/2020



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