

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.02.2020

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THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.35835 of 2019

Moosa

... Petitioner

vs

1. The Regional Passport Officer
Rayala Towers - 4th Floor
Chennai-600 002.
 2. The Foreigners Regional Registration Officer
Shasthri Bhavan, Haddows Road,
Chennai-600 006.
 3. The Principal Chief Conservator of Forests
K.M Munshi Road, Nagaram Palem
Guntur-522 004.
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st Respondent to issue a passport to the petitioner in pursuance of his application in File No.MA 2071558334718 dated 09.10.2018 as the earlier passport has expired on 9.11.2018 and also to direct the 2nd respondent to rescind the LOC issued against Mahammad Moosa Sahib which hinders petitioner's travel abroad.

For Petitioner : Mr.T.Saikrishnan

For Respondents: Mr.V.Ashok Kumar for R1 and R2
CGSC

Mr.Vijay Prasanth for R3
Special Government Pleader

ORDER

This writ petition has been filed in the nature of Mandamus directing the 1st respondent namely, the Regional Passport Officer, Chennai to issue passport to the petitioner in pursuance of application in File No.MA 2071558334718 dated 09.10.2018 as the earlier passport has expired on 9.11.2018 and for further direction to the 2nd respondent namely, the Foreigners Regional Registration Officer, Chennai to rescind the Look Out Circular issued against Mahammed Moosa Sahib.

2. The petitioner has an identity crisis. In the affidavit, he claims that his name is Moosa, S/o.Kunhavarana Kutty. He takes advantage of the fact that in a criminal case filed against him in C.C.No.189 of 2003, in which the judgment was delivered on 28.02.2017, wherein, he was the 7th accused which fact is not disputed by the learned counsel for the petitioner, he was described as Mahammed Musa Saheb, W/o. Proprietor Rezwan International, Madhavaram, Chennai, Tamil Nadu. The description of the petitioner in the aforesaid manner, according to the affidavit filed by N.Prateep Kumar, I.F.S, the 3rd respondent, namely, the Principal Chief Conservator of Forests, Guntur, is a typographical error. This typographical error had not been corrected by the learned Judicial Magistrate of First Class, Venkatagiri, while delivering the judgment on 28.02.2017, acquitting the 7th accused of all the charges. Thereafter, as against the said order of acquittal, a criminal appeal has been filed under Section 372 of Cr.P.C. by the prosecution, namely, the Forest Range Officer, Venkatagiri Forest Range, Venkatagiri, SPSR Nellore District, Andhrapradesh, wherein, they diligently carried over the said mistake and the 7th respondent/7th accused was also described as Mohammed Musa Saheb, W/o. The Proprietor Rezwan International, R/o.Madhavaram, Chennai, Tamilnadu. But, the petitioner has no doubt that he was the person who stood trial before the Judicial Magistrate of First Class Court in Venkatagiri and in that as against him, Criminal Appeal No.154 of 2017 has been filed in the Court of Sessions at Nellore. Very fortunately, though neither the learned counsel for the petitioner nor the learned standing counsel for the 3rd respondent pointed out, the petitioner had filed a Criminal petition No.10990 of 2009 before the High Court of Judicature at Hyderabad in the State of Telangana and the State of Andhra Pradesh and in the order dated 17.10.2016, the learned Single Judge, Justice C.Praveen Kumar, High Court of Judicature, Hyderabad, had in the cause title corrected the said mistake and described the petitioner as follows:

"Mohammed Moosa Saheb (as shown in Charge sheet, actual name is as below) Moosa, S/o.M.K.Kutti Business R/o.Managalassery, Ulanam PO., Malppuram District, Kerala".

This clarifies the aspect of the clerical mistake by the Forest Range Officer, by the Judicial Magistrate and carried by the prosecution in the Criminal Appeal. It reflects extreme negligence on the part of the prosecution. This application namely, CrI.P No.10990 of 2009, a copy of which has been filed in the typed set of papers is a petition under Section 482 of Cr.P.C seeking to quash the proceedings in C.C No.189 of 2003. After elaborately discussing the entire case, the learned Single Judge was pleased to dismiss the criminal petition. The trial

Court was directed to dispose of the calendar case as expeditiously as possible.

3. In the affidavit filed in support of the present writ petition, taking advantage of the wrong declaration in the cause title, the petitioner had stated that the criminal case was only against Mohammed Musa Saheb, W/o. The Proprietor of Rezwan International, Madhavaram, Chennai, Tamil Nadu, and that the petitioner is Mohammed Moosa Saheb, S/o.Kunhavarana Kutty. Unfortunately, the petitioner was physically present when he was interrogated post arrest in the criminal case. A report was prepared, wherein, his address has been given as No.45, (New No.7), 5th Avenue, Harrington Road, Chetpet, Chennai-600 031, which is the address the petitioner has also stated as his address in the affidavit filed in support of the present writ petition. Therefore, the claim of the petitioner that he is a different person and he never stood trial before the Court of Judicial Magistrate No.I, Venkatagiri is different, has to be rejected. When the petitioner has pleaded a false fact in the affidavit filed before this Court, every other statement made by the petitioner has also to be rejected.

4. The learned counsel for the petitioner, however has relied the judgment of a learned Single Judge reported in 2018 SCC OnLine Mad 3392 in Durai Murugan v. The Regional Passport Officer, Chennai in W.P No.29902 of 2018 decided on 06.12.2018. A learned Single Judge of this Court, had granted relief in that writ petition and the respondent therein, namely, the Regional Passport Officer was directed to consider the application to reissue the passport to the petitioner Durai Murugan therein. The facts of the said case are totally different. The petitioner therein, namely Durai Murugan was discharged by the order of this Court. Thereafter, a criminal revision case in CrI.R.C No.486 of 2017 had been filed before this Court. Notice had not been served to the petitioner Durai Murugan. Therefore, he disclaimed knowledge about the pendency of the CrI.R.C No.486 of 2017. In that circumstances, the learned Single Judge passed an order directing the respondent to reissue the passport. In the present case, a full-fledged trial was conducted and issue no.2 specifically related to the present petition, whether seized logs from A6 was meant for the present petitioner who was A7. No doubt, after trial, the petitioner was acquitted. But, thereafter, a criminal appeal has been filed which is a statutory appeal. The decision relied on by the learned counsel for the petitioner on facts is not applicable to the facts of this case. There cannot be any mandamus issued to the officer who has independent power to pass necessary orders on the merits of the application. Therefore, I am not inclined to grant any relief to the petitioner.

5. In fine, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Regional Passport Officer
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+1cc to Mr.T.Saikrishnan, Advocate, S.R.No. 13905
+1cc to the Special Government Pleader, S.R.No. 13985

W.P.No.35835 of 2019

SJ(CO)
GN(26/05/2020)

सत्यमेव जयते

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