



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

WP (MD)No.1387 of 2020

WEB COPY

Jenifer William

: Petitioner

Vs

1.The Regional Passport Officer,
Regional Passport Office, Race Course Road,
Madurai 625 002

2.The Inspector of Police, Kudankulam Police Station
Tirunelveli : Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st Respondent to return the Passport No. L2329595, dated 25.06.2013, issued to the Petitioner, within a reasonable time.

For Petitioner : Mr.L.P.Maurya

For Respondent : Mr.V.Kathirvelu, ASG, assisted by

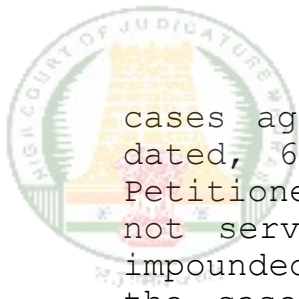
R1 Mrs.S.Ragaventhre, CGSC

R2 Mr.S.Bharathi, GA

ORDER

1.The prayer in this Writ Petition is to issue a Writ of Mandamus, directing the 1st Respondent to return the Passport No.L2329595, issued dated 25.06.2013 to the Petitioner, within time frame.

2.The case of the Petitioner is that he belonged to a fishermen family and since he inured to go abroad for employment, he had applied for passport on 23.04.2013 in File No.MD2061953697513 and the 1st Respondent had issued the passport on 25.6.2013, bearing No. L2329595. While the Petitioner was about to travel abroad through Trivandrum Airport, he was stopped and his passport was seized by AFRRO, Bureau of Immigration on 29.11.2018 and the Petitioner was issued with a receipt for such seizure and the passport is now in the custody of the 1st Respondent. Only after the passport was seized, the Petitioner came to know that criminal cases in Cr.Nos304, 330, 331, 333, 334 of 2012 and 126 of 2013 registered by the Kudankulam Police Station, were pending against him. It was also stated that a show cause notice dated 13.6.2016 was issued to him, calling upon him to show cause as to why action should not be taken to impound his passport under Sections 103(b) and 12(1)(b) of the Passport Act for suppressing and giving wrong information to the authorities regarding the pending criminal



cases against him. Later, it was also informed that by letter dated, 6.7.2016, it was decided to impound the passport of the Petitioner and intimation was given to him. The Petitioner was not served with the show cause notice before the passport was impounded. Only on verification, the Petitioner came to know that the cases have been registered by the 2nd Respondent Police in respect of the agitations conducted against the Kudankulam Nuclear Plant and that the Petitioner being a resident of Idinthakarai, was also arrayed as an accused in all these cases. The Petitioner was not aware of him being implicated in these cases and he was also not arrested and he has not filed any application, seeking anticipatory bail. After completion of the investigation, in all these cases, charge sheets have been filed in PRC.Nos.41 to 43 of 2014, 32 of 2014 and CC.No.339 of 2014 and 364 of 2014. Prior to applying for passport, the Petitioner was not aware of the cases registered against him and thereby, he had not disclosed about the pendency of the cases in the application for passport and there was no wilful suppression of facts by the Petitioner.

3.The family of the Petitioner is entirely depending on him and though he has got opportunities of getting employment abroad, due to withholding of the passport, the Petitioner is unable to pursue his career. All the above cases were registered against the Villagers belonging to the coastal area to curtail agitations against the installation of the Kudankulam Nuclear Power Plant and the cases are pending from the year 2014. The cases were foisted by the 2nd Respondent against the Members of the coastal villages without any proper investigation. Since the cases were registered without any basis, the Petitioner had approached this Court by filing quash petitions in CrI.OP(MD)Nos.2064, 2068, 2070, 2071, 2072 and 2075 of 2020, wherein this Court by order dated, 7.2.2020 had stayed all further proceedings pending against the the Petitioner. Since the cases have been stayed, the present petition has been filed, seeking for a direction to the 1st Respondent to return the passport to the Petitioner within a time frame.

4.The 1st Respondent has filed a counter, wherein it has been stated that the passport had been obtained by the Petitioner by suppressing information regarding the criminal cases pending against him on the file of the 2nd Respondent and that a show cause notice was issued to the Petitioner and since the Petitioner had not replied to the show cause notice, the passport was seized and it was also intimated to the Petitioner.

5.This court heard the learned counsel on either side and also perused the materials placed on record.

6.The learned counsel for the Petitioner would submit that till such time the Petitioner was stopped at the Trivandrum Airport and his passport was seized, the Petitioner was not aware of the criminal



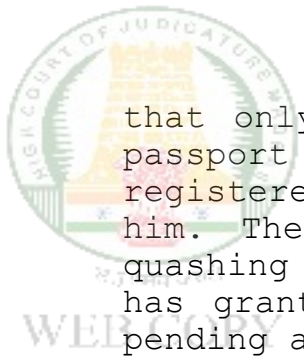
cases pending against him. Only after the passport was seized, he came to know about the cases registered by the 2nd Respondent and at the time of making application for the passport, he was not aware of the pendency of the cases against him and that the Division Bench of this Court, in WA(MD)No.301 of 2019, by order dated, 27.3.2018, has stated that unless cognizance is taken by a concerned Magistrate with regard to a First Information Report, it will not amount to pendency of the criminal case and thereby pending of an First Information Report cannot be construed as pendency of a criminal case. He would further submit that this Court, in WP(MD)No.7056 of 2017, by order dated, 21.4.2017, has held that when an application for quashing is filed and pending before this Court, this Court is the concerned Court, as per the notification of the Ministry of External Affairs, dated 25.8.1993 in GSR.No.570E and this Court can pass orders for return of his passport. He would further submit that the cases against the Petitioner are pending from the year 2014 and due to seizure/impounding of the passport, the Petitioner is unable to go abroad for seeking employment and that the Petitioner is prepared to furnish necessary undertaking that he will appear before the Court or the concerned authorities as and when required by them and the Petitioner is also prepared to give the details of his employment and stay at abroad. He would also reiterate that the Petitioner undertakes to appear before the concerned Court as and when required.

7. On the other hand, Mr.V.Kathirvelu, the learned Assistant Solicitor General, assisted by Mrs.S.Ragaventhre, the learned standing counsel appearing for the 1st Respondent would submit that six criminal cases are pending against the Petitioner and if the Petitioner approaches the Office of the 1st Respondent with a copy of the order of disposal of the cases, passport facility given to him can be restored and that he should either approach the Office of the 1st Respondent with orders regarding disposal of the criminal cases or he should approach them with orders of this Court.

8. Mr.S.Bharathi, the learned Government Advocate for the 1st Respondent would submit that the Petitioner is an accused in the criminal cases in PRC.Nos.41 to 43 of 2014, 32 of 2014 and CC.No.339 of 2014 and 364 of 2014 and that the cases are pending before the concerned courts. However, he would further submit that this Court granted stay of all further proceedings for a limited period and the cases have been posted on 1.4.2020.

9. Now coming to the case of the Petitioner, the Petitioner has applied for passport while First Information Reports were pending against him. It is the case of the Petitioner that he was not aware of the criminal cases registered and pending against him. Further, he was also not arrested and he had also not approached

https://hcservices.courts.gov.in/hcservices seeking anticipatory bail. Further, it is his case



that only when he was stopped at the Trivandrum Airport and the passport was seized, he came to know that the cases were registered against him and final reports have been filed against him. Thereafter, the Petitioner has approached this Court for quashing the proceedings and this Court, by order dated, 7.2.2020, has granted an order of interim stay of all further proceedings pending against the Petitioner.

10. This Court, in WA(MD)301 of 2018, by order dated 27.03.2018, has held as follows:-

"8.A Single Bench of this Court (M.SATHYANARAYANAN, J.) has considered the similar issue and after placing reliance upon the following judgements:

(i)1998 SCC Online Cal 181 : [1998] 2 Cal LT 415 [Shree Pradeed Kundalia V. Union of India and others];

(ii)2004 CrL.L.J. 1281 [Abhijit Sen Vs. Superintendent [Administration], Regional Passport Officer and others];

(iii)2014 SCC Online Mad 2900 [WP [MD] No.8343/2014 etc., batch dated 27.06.2014] [W.Jaihar William and others Vs. The State of Tamil Nadu rep. by its Secretary to Government, Home Department, Fort St George, Chennai 600 009];

(iv)AIR 1962 Cal 135 [A.K.Roy V. State of West Bengal];

(v)AIR 1957 Cal 379 [Parulbala Sen Gupta Vs. State];

(vi)AIR 1967 SC 1836 [Satwant Singh Sawhney v. D.Ramarathnam, Assistant Passport Officer & Others];

has concluded that mere pendency of the criminal proceedings cannot be construed as pendency of the criminal proceedings. The decisions relied on for reaching the said conclusion in the above cited decision, would also disclose that unless cognizance is taken by the concerned Magistrate, it does not amount to pendency of the criminal proceedings. Admittedly, in the case on hand, the case is in FIR stage and even for the sake of arguments, subsequently, the charge sheet has been filed, as on the date of submission of the application for passport, only FIR is pending and it cannot be construed as pendency of a criminal and it cannot be said that the petitioner has suppressed the material fact of pendency of the criminal case."

11. Notification in GSR.No.570E, dated 25.8.1993 issued by the Ministry of External Affairs, deals with exemptions and conditions with regard to issuance of passport and permission to travel

<https://hcservices.mca.gov.in/hcservices/index.html>



respect of an offence alleged to have been committed by them or pending before a criminal Court in India.

12. This Court in WP(MD)No.7056 of 2017, by order dated, 21.04.2017 has held as follows:-

"3. The admitted fact is that the petitioner is facing trial in C.C.No.21 of 2015 before the learned Judicial Magistrate No.V, Trichy. It is also a fact that the petitioner has filed Crl.O.P.(MD).No.3533 of 2017, challenging the criminal prosecution in C.C.No.21 of 2015 and this Court has admitted the quash application and in Crl.M.P.(MD).No.2642 of 2017, has granted interim stay of all further proceedings in C.C.No.21 of 2015 before the learned Judicial Magistrate No.V, Trichy. At this juncture, it may be relevant to discuss the legal position with regard to the right of a person facing criminal prosecution to demand issuance of passport. To decide this issue, it may be necessary to extract the following legal provisions from the Passports Act, 1967.

"Section 5(2) of the Passports Act, 1967

On receipt of an application under this section, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-

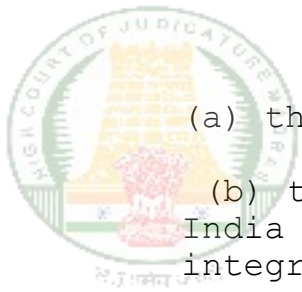
(a) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries ; or

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement."

Section 6(2) of the Passports Act, 1967

Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground,



(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at an time during the period of five years immediately preceding the date of his application, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

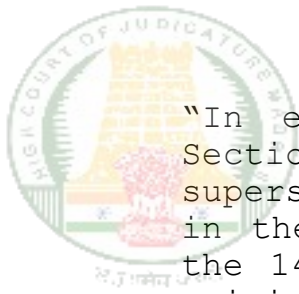
(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a Court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such Court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest."

4. For deciding the issue at hand, Section 6(2)(f) will be relevant. A reading of the said provisions shows that the power of the Passport Authority to refuse issuance of passport under Section 5(2)(c) is governed by Section 6(2). Thus, for any of the reasons given in Clause (a) to (i) of Section 6(2), the Passport Authorities can refuse to issue a passport in exercise of power under Section 5(2)(c). The Parliament, in its wisdom, has conferred the aforesaid power, which is administrative in nature, on the Passport Authority. The Central Government has issued the following Notification 6 dated 25.08.1993, for regulating the exercise of power by the Passport Authority under Section 6(2) (f):



"In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:-

(a) The passport to be issued to every such citizen shall be issued-

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.



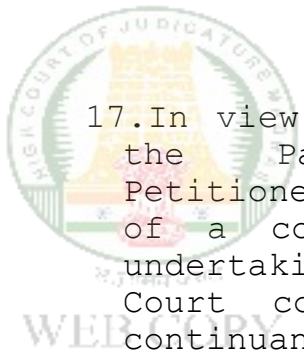
5. From a reading of the aforesaid Notification, in the opinion of this Court, the expression 'concerned Court' will mean the Court before whom the person is facing the prosecution. In this case, had there not been a quash petition pending, the 'concerned Court' would be the learned Judicial Magistrate No.V, Trichy before whom the petitioner is facing trial in C.C.No.21 of 2015. However, this Court, in exercise of its power under Section 482 of Cr.P.C., has admitted Crl.O.P.(MD)No.3533 of 2017 and has granted stay of all further proceedings in C.C.No.21 of 2015 on the file of Judicial Magistrate No.V, Trichy. Under such circumstances, the expression 'concerned Court' in the context of the present case will mean the High Court and not the Judicial Magistrate No.V, Trichy."

13.This Court, in WA(MD)No.301 of 2018, by order dated 27.03.2018, has concluded that mere pendency of a First Information Report cannot be construed as pendency of a criminal proceedings. Further, on the date of application for passport, criminal Court has not taken cognizance of the case and thereby, it could not be stated that there was suppression on the part of the Petitioner while making the application for passport. Further, the criminal cases pending against the Petitioner have been stayed pursuant to the order of this Court in Crl.OP(MD)Nos.2064, 2068, 2070, 2071, 2072 and 2075 of 2020 and when the quash petitions are pending before this Court, this Court falls within the expression "concerned Court" within the meaning of the Court in the notification mentioned supra.

14.The question for consideration is as to whether this Court can direct the 1st Respondent to return the passport to the Petitioner. As stated earlier, at the time of application for passport the Petitioner was not aware of the pendency of the First Information Report. Further, the final reports in the First Information Reports have been filed only after the issuance of the passport. Further, while analysing the final reports with regard to the desirability of permitting the Petitioner to go abroad, it is seen that excepting mentioning the name of the Petitioner in the final reports, no specific allegation has been made against him in any of the cases. All the cases are in respect of agitations against the Kudankulam Atomic Power issue.

15.The Petitioner has also stated that he is prepared to give an undertaking in writing to the passport issuing authorities or the concerned Court regarding the details of employment and his stay at abroad.

16.This Court is of the opinion that the Petitioner cannot be prevented from going abroad and the passport cannot be withheld / impounded by the 1st Respondent on account of the pendency of the



17. In view of the above, the 1st Respondent is directed to return the Passport No.L2329595, dated 25.06.2013 issued to the Petitioner within a period of two weeks from the date of receipt of a copy of this order, after obtaining an affidavit of undertaking from the Petitioner that he shall if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued. The said undertaking shall be given by the Petitioner as contemplated in the notification of the Central Government, dated 25.8.1993 in GSR.No.570E and the Petitioner shall appear before the concerned Court as and when required.

18. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

gns/Srcm

To:

1. The Regional Passport Officer,
Regional Passport Office,
Race Course Road, Madurai 625 002
2. The Inspector of Police,
Kudankulam Police Station, Tirunelveli
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.L.P.MAURYA, Advocate (SR-8962[F] dated 27/02/2020)

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MK (20.03.2020) 9P 5C