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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.13333 OF 2021

V.Sathiamoorthy

... Petitioner

Versus

The Inspector of Police,
W23 All Women Police Station,
Royapettah,
Chennai.
Cr.No.1 of 2014

... Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crl MP No.5346 of 2021 dated 21.06.2021 on the file of the Learned XVIII Metropolitan Magistrate, Saidapet and set aside the same, thereby permitting for renewal of the passport of the petitioner bearing No.J4490193 pending with the Trichy Regional Passport authority in reference No.TR1073174460320 and further to permit the petitioner to travel to US for his employment purpose.

For Petitioner : Mr.R.Ganesh Kumar

For Respondents : Mr.A.Damodharan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set-aside the order passed by the XVIII Metropolitan Magistrate, Saidapet in Crl.M.P.No.5346 of 2021 dated 21.06.2021.

2. The petitioner, who is A1 in C.C.No.2165 of 2015, is facing trial for the offences under Sections 498 and 406 IPC r/w 4 of Dowry Prohibition Act. The contention of the petitioner is that the petitioner had filed a Crl.M.P.No.5346 of 2021 before the XVIII Metropolitan Magistrate Court, Saidapet seeking permission to travel abroad for the purpose of renewing his passport and the Trial Court, by an order



dated 21.06.2021, dismissed the same. Against which, the present petition has been filed.

3. The learned counsel for the petitioner would submit that the petitioner is a citizen of India and a permanent Resident of USA. He is holding a Green Card in USA and he is living in Washington DC and working at Neustar, Washington DC as Manager. The petitioner has filed a divorce petition before the Loudoun Conty Circuit Court, Virginia, USA in the year 2013, in which, the defacto complainant failed to participate and thereafter, exparte divorce was granted in favour of the petitioner. The petitioner has also filed a divorce petition before the Sub- court, Thanjavur on the ground of cruelty. The petitioner's ex-wife, Mahalakshmi as counter blast had filed a petition under Section 9 of the Hindu Marriages Act for restitution of Conjugal Rights in HMOP No.3845 of 2013 before the Family Court, Chennai. Later, the divorce petition filed by the petitioner before the Subordinate Court, Thanjavur, had been transferred to Family Court, Chennai and renumbered as HMOP No.2190 of 2014. The petitioner's wife had also filed M.C.No.507 of 2013 before the Family Court, Chennai, seeking maintenance. This being the case, a criminal complaint in Crime No.1 of 2014 for the offences under Sections 406, 498A IPC, came to be registered on 09.01.2014. Later, on conclusion of investigation, charge sheet has been filed in this case, which is pending in C.C.No.2165 of 2015. In that case, along with the petitioner, his parents and 10 of his relatives are arrayed as accused. Thereafter, a look out circular had also been issued against the petitioner. Not knowing the same, the petitioner had landed in the year 2014. Thereafter, he was detained and after showing the order of this court, he was let out. Thereafter, the petitioner has been travelling on various dates from India to USA., i.e., from 01.09.2014 to 16.11.2014, 18.05.2015 to 31.05.2015, 11.10.2015 to 18.10.2015, 24.07.2016 to 03.08.2016, 14.01.2017 to 12.02.2017, 18.11.1027 to 03.12.2017, 07.04.2018 to 22.04.2018, 29.10.2018 to 26.11.2018, 27.10.2019 to 18.11.2019 and 15.12.2019 to 28.12.2019 and lastly, he has come down to India, in the month of October 2020, to visit his parents and to attend some family functions. Thereafter, he was staying for some time and later for the purpose of renewing his Passport bearing No.J4490193, which was to expire by June 2021, he had applied for the renewal with the Trichy Regional Passport Office on 23.12.2020 vide reference No.TR1073174460320 and vide communication dated 18.01.2021, they directed the petitioner to get permission from the Court for travelling abroad. Thereafter, the petitioner had filed a petition in WP No. (MD) No.4070 of 2021 and the same was dismissed on 18.03.2021 with a direction to the petitioner to approach the Criminal Court or Appellate Court, wherever, Criminal cases are pending, and seek appropriate direction for renewal of his passport. As per the direction, the petitioner had filed a petition before the XVIII Metropolitan Magistrate, Saidapet in Cr1.M..No.5346 of 2021 and the same was dismissed



on 21.06.2021. Hence, the petitioner is before this Court with the petition.

4. The learned counsel for the petitioner further submitted that some of the accused in this case had filed discharge petition, which came to be dismissed by the lower court and against which a revision petition in CrI.R.C.No.1342 of 2018 has been filed before this Court and this Court, by order dated 27.03.2019 dismissed the said revision. Thereafter, they had approached the Hon'ble Apex Court in SLP.Cr.No.2973 of 2020. The Hon'ble Apex Court, by an order dated 10.07.2020 had issued notice and further stayed the impugned judgment. In view of the same, no trial is proceeding as of now. He further submitted that as per the U.S law, a Lawful Permanent Resident (LPR) to have maintain their status, for which, they have to follow certain guidelines. In the U.S Embassy & Consulates notice, it is mentioned as follows :-

"If you plan on remaining outside the United States for longer than one year, you must apply for a re-entry permit (Form 1-131) with the U.S.Citizenship and Immigration Services. Extensions of LPR Status may not be obtained from outside the United States."

Thus, the petitioner, being a LPR, if he seeks extension of LPR status, it has to be done only in United State and not outside, for which, the petitioner has to necessarily travel. He further submitted that if an LPR planning to travel outside of the United States for one year or more, it is important that he has to apply for a reentry permit before he depart United States. If he stay outside United States for one year or more and did not apply for a reentry permit before he leave, he may be considered to have abandoned his permanent resident status. If this happens, he may be referred to appear before an immigration judge to decide whether or not he has abandoned his status. Hence, for renewal of his LPR status, he is necessarily to travel to United States, for which, he has to apply for his renewal of passport and has to travel to United States. Otherwise, great prejudice would cause and irreparable loss would be created, which cannot be rectified easily and his status cannot be restored back.

5. The learned Additional Public Prosecutor submitted that in this case, the petitioner, who is A1, along with 10 other accused are facing trial for the offences under Sections 406, 498(A) IPC, r/w 4 of Dowry Prohibition Act in C.C.No.2165 of 2015. The case is of the year 2015 and for the past 6 years, the case is pending without trial since one or other accused are filing one petition or other and successfully stalling the trial. Some of the accused have filed a discharge petition, which came to be dismissed, against which, they had filed a Revision Petition and this court had also dismissed the same. Aggrieved over the same. they filed a petition



before the Apex Court, in which, the Apex Court ordered notice and also granted Stay. The apprehension of the prosecution is that if the petitioner is permitted to travel to United States, he will never return back and it would further add to the delay of the trial in the C.C.No.2165 of 2015.

6. At this stage, the learned counsel for the petitioner, submitted that no such delay would be caused at the instance of the petitioner and he is ready to file an affidavit before the trial Court informing that he would never be the reason or the cause, for any delay. If the presence of the petitioner is required by the trial Court, he would appear and submit to the trial Court orders. Whenever his presence is absolutely necessary, he shall appear. On the other dates, his counsel would continue with the proceedings and will not seek any adjournments or defer the cross examination for the reason that instruction is to be received from the petitioner and the presence of the petitioner is required. He further submitted that return of passport is only for the purpose of renewal and he will be back to India after completing his work and the formalities there. Since his root is in India and his parents and family are in India, he has to necessarily come back.

7. In view of the same, the petitioner is directed to file an undertaking affidavit to that effect before the Court below. This Court directs the Regional Passport Office, Trichy to renew the passport bearing No.J4490193 and also to permit the petitioner to undertake his travel to USA.

8. With the above directions, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Inspector of Police,
W23 All Women Police Station,
Royapettah,
Chennai.
2. The Public Prosecutor,
High Court, Madras.



Copy To:

The Regional Passport Office,
Trichy.

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+1cc to Mr.R.Ganesh Kumar, Advocate, S.R.No.51801

CRL.O.P.NO.13333 OF 2021

RLD (CO)
PBS/08/10/2021